

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

DENISE DONOVAN,

Petitioner,

V.

GOVERNMENT OF THE VIRGIN ISLANDS

Respondent,

CASE NO. ST-12-CV-547

MEMORANDUM OPINION

Pending before the Court is Denise Donovan's *pro se* September 26, 2012, Petition for Writ of Habeas Corpus.¹ For the following reasons, Donovan's Petition is denied.

FACTUAL AND PROCEDURAL HISTORY

Following a trial from December 15, 2003, to December 18, 2003, a jury returned a verdict of guilty on charges of first degree murder in violation of 14 V.I.C. §§ 921, 922(a)(1) (Count I), possession of a dangerous or deadly weapon during the commission of a crime of violence in violation of 14 V.I.C. § 2252(a)(2)(b) (Count II); and first degree assault with intent to commit murder in violation of 14 V.I.C. § 295(1) (Count III) for the murder of her boyfriend, Clayton Laurent. The Court entered judgment on the convictions and sentenced Petitioner to life imprisonment without the possibility of parole on Count I; ten (10) years on Count II, to run concurrently with the sentence on Count I; and fifteen (15) years on Count III, with five (5) years suspended, to run concurrently with the sentences of Count I and Count II.²

¹ In a December 13, 2012, Order, the Court ordered the Government to respond to Petitioner's September 26, 2012, Petition for Writ of Habeas Corpus by January 11, 2013. The Government responded on March 13, 2013, explaining that the counsel of record did not receive a copy of the Order until March 7, 2013. Petitioner has not replied.

² Petitioner was also assessed a fine of Ten thousand dollars (\$10,000.00) and Seventy-five dollars (\$75.00) in court costs.

Petitioner appealed her conviction to the District Court of the Virgin Islands arguing that the Superior Court erred by (1) excluding medical testimony from a defense witness; (2) admitting character evidence regarding the Petitioner as well as the victim; (3) admitting “racially-charged” prejudicial evidence; and (4) denying her a public trial. While determining that the Superior Court erred when it admitted evidence of the victim’s good character and of the Petitioner’s prior bad acts, the Appellate Division of the District Court affirmed Petitioner’s conviction, finding the error was harmless.³ Petitioner subsequently appealed the District Court’s decision to the United States Court of Appeals for the Third Circuit, which affirmed the District Court’s decision.

STANDARD

Under 5 V.I.C. § 1301, “[e]very person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment. . . .” 5 V.I.C. § 1302 provides that,

. . . The petition shall comply with the following requirements:

- (1) It shall specify that the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty and the officer or person by whom, and the place where, he is so confined or restrained, naming all the parties, if they are known, or describing them, if they are not known.
- (2) If the imprisonment is alleged to be illegal, the petition shall state in what the alleged illegality consists.
- (3) The petition shall be verified by the oath of the party making the application.

³ The District Court also rejected Petitioner’s other arguments on appeal, finding that the Superior Court did not err when it excluded the defense’s cumulative and immaterial medical testimony; the Superior Court did not abuse its discretion when it allowed testimony that Donovan’s stated she was being locked up for killing “a friggin’ island man;” and that “Donovan’s trial was never closed to any member of the public.” *Donovan v. Gov’t of the Virgin Islands*, D.C. Crim. App. No. 2004-84 (decision not for publication) (Gomez, J.), *aff’d*, 335 Fed. Appx. 206 (3d Cir. 2009), *cert. denied*, 130 S.Ct. 772 (2009).

The Superior Court has jurisdiction “to issue writs of habeas corpus with respect to prisoners sentenced and confined by that court” pursuant to 5 V.I.C. § 1303.⁴

ANALYSIS

I. Petitioner has failed to meet the procedural requirements necessary under 5 V.I.C. § 1301, *et seq.*, and Super. Ct. R. 23, *et seq.*

Respondent argues that Petitioner has failed to obtain *in personam* jurisdiction because service was not made on Respondent by Petitioner and Petitioner has failed to name the proper custodial party as a Respondent. The Court recognizes that Petitioner bears “the burden of proving all facts entitling [her] . . . to a discharge from custody,” including not only “the substantive elements of a petitioner's claim,” but also “the procedural requisites that entitle [her] . . . to relief as well.”⁵

While considering that *pro se* pleadings should be liberally construed,⁶ Petitioner has not satisfactorily identified the proper custodial respondent. Unlike *Nunez v. Government of the Virgin Islands*, where the Petitioner named the Government of the Virgin Islands, Office of the Attorney General, and the Bureau of Corrections, all individually as Respondents and further indicated that he was an inmate at Golden Grove Adult Correction Facility,⁷ here, Petitioner has only named the “Government of the Virgin Islands” as a Respondent, copied the Petition to the Office of the Attorney General, and indicated she was an inmate at Golden Grove Adult Correction Facility. 5 V.I.C. § 1305 instructs that “[t]he writ shall be directed to the person having custody of or restraining the person on whose behalf the application is made,” 5 V.I.C. §

⁴ *Joseph v. de Castro*, 27 V.I. 297 (D.C.V.I. 1992), *aff'd*, 28 V.I. 546, 995 F.2d 217. *See Parrott v. Gov't of the Virgin Islands*, 41 V.I. 188 (D.C.V.I. 1999).

⁵ *Brown v. Cuyler*, 669 F.2d 155, 158 (3d Cir. 1982).

⁶ *Boyd-Richards v. de Jongh*, 2012 WL 13682 (D.V.I. Jan. 4, 2012).

⁷ 2013 WL 946447, at *2 (V.I. Super. Ct. Mar. 6, 2013).

1302 also states that the writ should “name[sic] all the parties . . . or describe them, if they are not known.” Thus, the Petitioner should have specifically named the Warden of Golden Grove Adult Correctional Facility⁸ as a Respondent, or, at least, the “Virgin Islands Bureau of Corrections,” the overarching bureau that manages Golden Grove Adult Correction Facility, to unambiguously identify the custodial party respondent.

Were this Petitioner’s only failing, the Court would likely be inclined to overlook the error. But, Petitioner has also not perfected service of process pursuant to Super. Ct. R. 23, *et seq.* A petition for writ of habeas corpus is civil in nature brought pursuant to 5 V.I.C. § 1301, *et seq.* Thus, a petition for writ of habeas corpus must also comply with the applicable rules of civil procedure, including perfecting service of process pursuant to Super. Ct. R. 23, *et seq.*, insofar as the procedures are consistent with 5 V.I.C. § 1301, *et seq.* Here, there is no evidence that process was issued and served on Respondent.

II. Petitioner has failed to allege facts which entitle her to habeas corpus relief.

Nevertheless, assuming *arguendo*, that all statutory procedural requirements pursuant to 5 V.I.C. § 1301, *et seq.*, and Super. Ct. R. 23, *et seq.*, were met, Donovan’s Petition also fails to plead any basis for granting the writ. Petitioner “bears the burden of proving the facts supporting the petition or establishing ground entitling [her] . . . to relief”⁹ such “that the petition cross some threshold of plausibility.”¹⁰ Thus, while considering that *pro se* pleadings should be

⁸ See *Rumsfeld v. Padilla*, 542 U.S. 426, 428 (2004).

⁹ *Dowling v. Gov’t of the Virgin Islands*, 44 V.I. 256, 259 (V.I. Super. Ct. 2002); see *Ibrahim v. Gov’t of the Virgin Islands*, 2008 WL 901503 (V.I. Jan. 18, 2008).

¹⁰ *Dellenbach v. Hanks*, 76 F.3d 820, 822 (7th Cir. 1996) (finding that since “habeas corpus is an extraordinary remedy,” Fed. R. Civ. P. 12(b)(6) does not necessarily apply in *federal* habeas cases, particularly because a habeas decision that is not decided on the merits is not barred by res judicata; but, a petition must still cross “some threshold of probability” to be considered).

liberally construed, a Petitioner must plead specific factual allegations, rather than conclusory or speculative allegations, which would entitle Petitioner to habeas relief, as well as state the relief sought.¹¹ “Habeas corpus is . . . not a substitute for a direct appeal.”¹²

As a basis for her Petition, Petitioner argues that her constitutional rights to due process and a fair and impartial trial were violated because (1) the Court permitted the admission of impermissible character evidence; (2) the Court permitted the admission of “racially-charged” evidence; and (3) her conviction was based solely on circumstantial evidence.

Petitioner’s first two arguments are blatant attempts to re-litigate issues that were already raised and resolved on appeal. Specifically, the District Court of the Virgin Islands held that the Superior Court erred when it permitted testimony that the victim was an exemplary father and when it permitted testimony about previous incidents when Petitioner had threatened the victim with a knife. However, the District Court held that this testimony constituted “harmless error” because it did not have any substantial effect on the jury’s verdict, and the United States Court of Appeals of the Third Circuit affirmed that decision.¹³ Further, the District found that the Superior Court did not abuse its discretion when it permitted “racially-charged” testimony, namely that Petitioner stated she was being locked up for killing a ‘friggin island man.’ That ruling was also affirmed by the Third Circuit. Petitioner now, without alleging any new or specific facts, raises exactly the same arguments, and argues that these errors did have a

¹¹ *Id.* (noting that a Petitioner must present an “adequate substantiation of his claim” to even proceed with a hearing on the merits of petition.)

¹² *Dowling*, 44 V.I. at 259.

¹³ *Donovan*, D.C. Crim. App. No. 2004-84, *aff’d*, 335 Fed. Appx. 206. The United States Court of Appeals declined to decide whether the testimony of Petitioner’s prior threats against the victim were admitted in error, because the court found that, assuming *arguendo* that the alleged error occurred, the error was harmless. *Donovan*, 335 Fed. Appx. 206 (3d Cir. 2009).

“substantial influence on the verdict.”¹⁴ Because the District Court and United States Court of Appeals of the Third Circuit clearly addressed and resolved those questions, Petitioner may not use a petition for habeas corpus to revisit them.

Petitioner also argues her constitutional rights were violated because the jury’s verdict relied solely on circumstantial evidence, “having no corroborating connection that establish motive or opportunity to commit the charges and crimes(s) for which Petitioner was . . . convicted of.”¹⁵ [sic] Even assuming that the record supports Petitioner’s contention, simply because a jury verdict’s finding of “guilty” is based solely on circumstantial evidence, without more, is not a defacto constitutional violation.¹⁶ Petitioner did not argue that newly found evidence has been discovered or that the prosecution failed to prove beyond a reasonable doubt every element of the offenses of which Petitioner was convicted. Thus, the Petition is insufficient on its face to sustain a petition for habeas corpus or even cross the threshold of plausibility.

Additionally, as previously discussed, habeas corpus may not be used as a vehicle to revisit a jury’s verdict unless a “violation of constitutional principles are implicated”¹⁷ because

¹⁴ Petition for Habeas Corpus, Sep. 26, 2012, at 3, 5-6.

¹⁵ Petition for Habeas Corpus, Sep. 26, 2012, at 7.

¹⁶ See e.g., *Medina v. Diguglielmo*, 461 F.3d 417 (3d Cir. 2006); *Com. v. Wentzel*, 360 Pa. 137, 143, 61 A.2d 309, 312 (1948) (“The mere fact that the evidence to establish appellant’s authorship of the crime is wholly circumstantial is not fatal to the . . . case.”) See generally 41 C.J.S. Homicide § 440 (“In a homicide prosecution, the corpus delicti generally may be established either by direct evidence, circumstantial evidence, or both. However, the corpus delicti may be established by circumstantial evidence only. Moreover, such evidence alone can provide a sufficient basis upon which a trier of fact can rest its determination of guilt, even for murder.”) (internal citations omitted).

¹⁷ *Dowling*, 44 V.I. at 259; see *Ex parte Morgan Circuit Court*, 620 So. 2d 148, 151 (Ala. Crim. App. 1993) (“[A]lleged insufficiency of the evidence to support a conviction is a ground for a petition for post-conviction relief and not for a writ of habeas corpus”). See generally 39 C.J.S. Habeas Corpus § 136 (“Where a habeas corpus petitioner asserts deprivation of the fundamental right to require proof by the prosecution beyond a reasonable doubt of every element of the offense with which a defendant is charged, the court can consider such claim. A petition for habeas corpus relief is an appropriate vehicle to challenge convictions where there is no substantial evidence in

the writ is an extraordinary and limited remedy to collaterally attack unlawful imprisonment.¹⁸ On appeal Petitioner did not argue that there was insufficient evidence to support her conviction. Nevertheless, the District Court and United States Court of Appeals of the Third Circuit, both found that there was a “smorgasbord” of overwhelming evidence – apart from the improperly admitted testimony -- upon which a reasonable jury could find Petitioner guilty of the crimes with which she was charged.¹⁹

Accordingly, for the foregoing reasons, Donovan’s Petition for Writ of Habeas Corpus shall be denied. An Order consistent with this Memorandum Opinion shall follow.

Dated: March 26, 2013

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court ____/____/____

for by: Paula Clayton
Donna D. Donovan
Court Clerk Supervisor 3/26/2013


HON. MICHAEL C. DUNSTON for
HON. KATHLEEN MACKAY
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

support thereof. A contention that a conviction without proof to support some essential element of the alleged crime deprives a defendant of due process may be asserted by habeas corpus.”) (internal citations omitted).

¹⁸ 5 V.I.C. § 1301.

¹⁹ *Donovan*, 335 Fed. Appx. at 209.