

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

JENSEN ALEXANDER

Petitioner,

vs.

PEOPLE OF THE VIRGIN ISLANDS

Respondent.

CIVIL NO. ST-14-CV-506

**MOTION FOR WRIT OF
HABEAS CORPUS**

MEMORANDUM OPINION

Pending before the Court is Jensen Alexander's *pro se* Petition for Writ of Habeas Corpus. For the following reasons, Alexander's Petition is denied.

FACTUAL AND PROCEDURAL HISTORY

Following a trial from January 31, 2012, to February 3, 2012,¹ a jury returned a verdict of guilty on: Count I, first degree murder, in violation of 14 V.I.C. §§ 921, 922(a)(1); Counts II and III, aggravated rape in the first degree, in violation of 14 V.I.C. § 1700(a)(c); Counts IV and V, rape in the first degree, in violation of 14 V.I.C. § 1701(2); Count VI, assault in the first degree, in violation of 14 V.I.C. § 295(3); Count VII, assault in the first degree, in violation of 14 V.I.C. § 295(1); and Count VIII, carrying or using a dangerous weapon during the commission or attempted commission of a crime of violence- rape, in violation of 14 V.I.C. § 2251(a)(2)(b). The Court entered judgment on the convictions and sentenced Petitioner to life imprisonment without the possibility of parole on Count I; twenty five (25) years on Count II, to run concurrently with the sentence on Count I; ten (10) years on Count VI, to run concurrently with the sentence on Count

¹ Judgment was entered on February 3, 2012, and was reduced to a written judgment signed March 28, 2012.

I; Count VII merged with Count I, with no additional sentence; ten (10) years on Count VIII to run concurrently with the sentence on Count I, with a fine of ten thousand dollars (\$10,000); the Court did not impose a sentence on Counts IV and VII, holding that they merged with other counts; and Counts III and V were dismissed with prejudice.²

Petitioner appealed his conviction to the Supreme Court of the Virgin Islands arguing that the Superior Court erred 1) by denying his Motion in Limine to exclude the contradictory testimony of Peets, 2) in *sua sponte* setting the time parameters for alibi witnesses' testimony, 3) in admitting a photo of the deceased Richardson into evidence, 4) in excluding evidence attacking the credibility of D.S., and 5) in limiting the testimony of a defense expert witness. Alexander also argued that the evidence was insufficient to convict him of all crimes. While determining that the Superior Court erred when it admitted a photo of the victim into evidence and excluded testimony that D.S. had previously falsely accused Alexander of giving her a STD, the Supreme Court affirmed Petitioner's conviction, finding the errors to be harmless.³ The Supreme Court also rejected Petitioner's other arguments on appeal, finding that the Superior Court did not err when it denied the motion in limine, *sua sponte* set time parameters for the notice of alibi, excluded evidence attacking D.S.'s credibility, and limited the testimony of the Defense's expert witness.⁴

Petitioner initially filed a Petition for Writ of Habeas Corpus on March 14, 2014, with the Supreme Court of the Virgin Islands.⁵ The Supreme Court dismissed his petition without prejudice

² Petitioner was also assessed Seventy-five dollars (\$75.00) in court costs and ordered to register and comply with the requirements of the Sexual Offender Registration and Community Protection Act, 14 V.I.C. § 1722 *et. seq.*

³ *Alexander v. Virgin Islands*, No. S.CT.CRIM. 2012-0020, 2014 WL 323063, at *3-*14 (V.I. Jan. 29, 2014).

⁴ *Id.*

⁵ When asked to provide a statement explaining why his application was not filed with the Superior Court, he stated that he was not aware of the Superior Court's mailing address.

for re-filing in the Superior Court, granted his motion to proceed in *forma pauperis*, and denied his motion for the appointment of counsel.⁶

Petitioner now claims in his November 6, 2014, Petition for Writ of Habeas Corpus that he received ineffective assistance of counsel for both his trial and appeal and that he is entitled to the appointment of new counsel. In two supplemental letters dated November 17, 2014, and January 9, 2015, Petitioner asserts that a different judge should decide his petition because a conflict of interest exists since the undersigned presided over his criminal trial.

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. . . .” A petition must satisfy the requirements of 5 V.I.C. § 1302, which provides:

(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.

The Superior Court has jurisdiction “to issue writs of habeas corpus with respect to prisoners sentenced and confined by that court.”⁷

⁶ *In re Jensen Alexander*, No. S.CT.CIV. 2014-0020 (V.I. May 9, 2014).

⁷ 5 V.I.C. § 1303; *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).

ANALYSIS

I. Petitioner has failed to meet the procedural requirements of 5 V.I.C. § 1305, *et seq.*, and Super. Ct. R. 23, *et seq.*

Petitioner has not satisfactorily identified the proper custodial respondent in his Writ of Habeas Corpus and has failed to provide proof of service. Pursuant to 5 V.I.C. § 1305, “[t]he writ shall be directed to the person having custody of or restraining the person on whose behalf the application is made,” and 5 V.I.C. § 1302 further instructs the Petitioner to “name[sic] all the parties . . . or describe them, if they are not known.” In his November 11, 2014, Petition for Writ of Habeas Corpus, Petitioner named the People of the United States Virgin Islands as the respondent. To unambiguously identify the custodial party respondent,⁸ Petitioner should have named the Virgin Islands Bureau of Corrections, and the Warden of Wallens Ridge State Prison,⁹ where Petitioner indicated he is currently imprisoned. Although Petitioner has not identified the proper respondent, *pro se* pleadings should be liberally construed,¹⁰ and this error is not fatal to Alexander’s Petition.

On the other hand, proper service of the Petition is mandatory. A petition for writ of habeas corpus is a civil action brought pursuant to 5 V.I.C. § 1301, *et seq.*, and must also comply with the applicable rules of civil procedure, including perfecting service of process pursuant to Super. Ct. R. 23, *et seq.* Here, there is no evidence that process was issued and served on Respondent.

⁸ See *Donovan v. Government of the Virgin Islands*, No. ST-12-CV-547, 2013 WL 1961789, at *2 (V.I. Super. Mar. 25, 2013)(where the petitioner failed to identify the proper custodial respondent and named the Government of the Virgin Islands and copied the petition to the Office of the Attorney General).

⁹ See *Rumsfeld v. Padilla*, 542 U.S. 426, 428 (2004).

¹⁰ *Boyd-Richards v. de Jongh*, 2012 WL 13682 (D.V.I. Jan. 4, 2012).

II. Petitioner has failed to demonstrate ineffective assistance of counsel.

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, Alexander's Petition also fails to demonstrate a constitutional violation for ineffective assistance of counsel. Petitioner "bears the burden of proving the facts supporting the petition or establishing ground[s] entitling [him] . . . to relief."¹¹ To establish ineffective assistance of counsel, Alexander "must show deficient performance and prejudice."¹² Thus, even construed liberally, a Petition must plead specific factual allegations, rather than conclusory or speculative assertions, which would entitle Petitioner to habeas relief.¹³

The right to counsel comes from the Sixth Amendment of the Constitution of the United States.¹⁴ The mere presence of an attorney is not enough and "the right to counsel is the right to the effective assistance of counsel."¹⁵ A Court considering claims of ineffective assistance of counsel must review the totality of the evidence in making its findings of fact and conclusions of law.¹⁶ The Supreme Court of the United States established a two part test in *Strickland v. Washington*,¹⁷ holding:

¹¹ *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).

¹² *Francis v. People*, No. 2009-0106, 2012 WL 3183823, at *13 (V.I. July 31, 2012) (citing *Berghuis v. Thompkins*, 130 S.Ct. 2250, 2264 (2010)).

¹³ *Id.* (noting that a Petitioner must present an "adequate substantiation of his claim" to even proceed with a hearing on the merits of petition.)

¹⁴ "In all criminal prosecutions, the accused shall enjoy the right to . . . the Assistance of Counsel for his defense." U.S. Const. amend. VI.

¹⁵ *Strickland v. Washington*, 466 U.S. 668, 685-86, 104 S. Ct. 2052, 2063 (1984).

¹⁶ *Id.*; *Francis*, 2012 WL 3183823, at *18 (Swan, J., dissenting); *Delsol v. Gov't of Virgin Islands*, No. 88/2004, 2007 WL 4698610, at *4 (V.I. Super. Nov. 8, 2007); *Government of the Virgin Islands v. Petersen*, 19 F.Supp.2d 430 (D.Vi.1998).

¹⁷ 466 U.S. at 687-88 ("This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to

- (1) that counsel's performance must fall below an objective standard of reasonableness;
and
- (2) that counsel's deficient performance must have prejudiced the defendant, resulting in an unreliable or fundamentally unfair outcome in the proceedings.¹⁸

To prove the conviction is unreliable the defendant must prove more than just counsel error; he must also show that there is a reasonable probability, but for counsel's error, the outcome would have been different.¹⁹ A court must balance the "right of a defendant to effective assistance of counsel versus an attorney's independent judgment regarding the method of representation."²⁰

Here, the Petitioner had the same appointed counsel for both his criminal trial and appeal. It was only after Petitioner received the results of his appeal that he claimed ineffective assistance of counsel. In Alexander's Writ of Habeas Corpus he raises ten claims of error from trial, all of which allege that counsel either failed to present evidence or properly question witnesses. Alexander then raises three claims of error against counsel on appeal, two of which are claims of error from trial. First, he claims that counsel failed to "amend" any cases or file any motions during the thirteen month period his appeal was pending. Second, he argues appointed counsel failed to question the trial court's *sua sponte* action in setting alibi time parameters, while recognizing the Supreme Court found this to be harmless error. Lastly, he claims that appointed counsel failed to introduce evidence that D.S. had previously falsely accused Alexander of giving her a STD.

deprive the defendant of a fair trial, a trial whose result is reliable."); *see also Knowles v. Mirzayance*, 129 S.Ct. 1411, 1419 (2009).

¹⁸*Francis*, 2012 WL 3183823, at *18 (Swan, J., dissenting) (citing *Strickland*, 446 U.S. at 687-88).

¹⁹*Strickland*, 446 U.S. at 694.

²⁰*Delsol v. Gov't of Virgin Islands*, No. 88/2004, 2007 WL 4698610, at *6 (V.I. Super. Nov. 8, 2007); *Strickland*, 446 U.S. at 693 ("representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another").

Aside from Alexander's claim of ineffective assistance of counsel on appeal, Petitioner's arguments are blatant attempts to re-litigate issues that were already raised and resolved on appeal. "Habeas corpus is . . . not a substitute for a direct appeal."²¹ On appeal, Alexander asserted numerous evidentiary errors, including admission of the conflicting testimonies of Peets and Alexander, exclusion of testimony that D.S. had previously falsely accused Alexander of giving her a STD, and admission of an irrelevant photograph of the deceased Richardson smiling at trial.²² However, the court concluded these errors were harmless.²³ Further, the court determined, the trial court's *sua sponte* action in setting alibi time parameters was harmless error, as was the limitation of the testimony of Dr. Manion.²⁴ Without alleging any new or specific facts, Petitioner now raises exactly the same arguments. Because the Supreme Court of the Virgin Islands clearly addressed and resolved those questions, Petitioner may not use a petition for habeas corpus to revisit them.

Additionally, as previously discussed, habeas corpus may not be used as a vehicle to revisit a jury's verdict and insufficiency of the evidence unless a "violation of constitutional principles are implicated"²⁵ because the writ is an extraordinary remedy limited to collaterally attacking unlawful imprisonment.²⁶ Here, the Petitioner attempts to prove a Constitutional violation through the claim of ineffective assistance of counsel. However, all Petitioner has done is emphasize that

²¹ *Dowling*, 44 V.I. at 259.

²² *Alexander*, 2014 WL 323063, at *14.

²³ *Id.*

²⁴ *Id.*

²⁵ *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 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).

²⁶ 5 V.I.C. § 1301.

counsel made some errors, without accepting that they have been held harmless. To prove the conviction is prejudicial and unreliable the defendant must prove more than just counsel error, which he has failed to do. The conviction is supported by overpowering evidence introduced at trial and affirmed on appeal by the Virgin Islands Supreme Court. Specifically, the Supreme Court found “the evidence that Alexander raped and assaulted D.S. ... overwhelming”²⁷ and the murder evidence,

sufficient for a reasonable jury to conclude that Alexander must have formed the requisite intent to kill Richardson. Richardson died from not one, but seven stab wounds inflicted upon him by Alexander which further proves that Alexander intended to kill Richardson. No self-defense or other comparable defense was raised by Alexander at trial.²⁸

Therefore, Petitioner’s convictions were a result of the sufficiency of the evidence presented to the jury, not any prejudicial error on the part of appointed counsel.

III. Petitioner is not entitled to the appointment of counsel.

The Court will consider Petitioner’s Motion for the Appointment of Counsel as a supplement to Petitioner’s Application for a Writ of Habeas Corpus. The Sixth Amendment of the Constitution established the right to counsel²⁹ in all criminal prosecutions. While the United States Supreme Court has “required appointment of counsel for the initial appeal as of right from a criminal conviction, no constitutional provision requires appointment of counsel—whether in a trial or appellate court—in a purely civil case.”³⁰ A petition for writ of habeas corpus is civil in nature brought pursuant to 5 V.I.C. § 1301, *et seq.* and therefore, there is no right to counsel.

²⁷ *Alexander v. Virgin Islands*, 2014 WL 323063, at *13.

²⁸ *Id.*

²⁹ U.S. Const. amend. VI.

³⁰ *In Re Morton*, No. 2011-0116, 2012 WL 653786, at *5 (V.I. Feb. 27, 2012)(internal quotation marks omitted) citing *See Bell v. Pleasantville Housing Auth.*, 443 Fed. Appx. 731, 735 n.4 (3d Cir.2011) (unpublished) (“Indigent civil litigants have neither a constitutional nor a statutory right to counsel.”).

Moreover, the Supreme Court of the Virgin Islands previously addressed the Petitioner's motion for appointment of counsel and denied the motion in a May 9, 2014, Order. Petitioner may not now bring an identical motion with the Superior Court of the Virgin Islands.

IV. Petitioner has failed to prove a conflict exists that would require recusal by Judge Dunston.

Petitioner alleges that Judge Dunston should be disqualified from presiding over his Writ, because of a conflict of interest. Under 4 V.I.C. § 284,

No judge or justice shall sit or act as such in any action or proceeding:

- (1) To which he is a party or in which he is primarily interested;
- (2) When he is related to either party, or to an officer of a corporation which is a party, by blood or marriage within the third degree;
- (3) When in the action or proceeding or in any prior action or proceeding involving the same issues, he has been of counsel for any party to the action or proceeding; or
- (4) When it is made to appear probable that, by reason of bias or prejudice of such judge, a fair and impartial trial cannot be had before him.

Here, none of the four requirements under 4 V.I.C. § 284 are satisfied.³¹ Petitioner argues that Judge Dunston should recuse himself because, as presiding Judge over Alexander's criminal trial, he was biased, leading to his convictions.³² Petitioner fails to cite, and no authority exists, stating a *per se* rule requiring judges to automatically recuse themselves where they have previously presided over a case with a defendant.³³

³¹ See *Joseph v. Zinke-Smith, Inc.*, No. CIV. 207-1967, 1967 WL 177653, at *2 (V.I. Mun. Aug. 18, 1967) ("The basis of the disqualification is that 'personal bias or prejudice' exists by reason of which the judge is unable to impartially exercise his functions in the particular case.").

³² Supplemental Letter submitted by the Petitioner, dated November 17, 2014.

³³ See *Maduro v. P & M Nat'l, Inc.*, No. CIV. 375-91, 1994 WL 16043237, at *2 (D.V.I. Oct. 20, 1994) ("The mere observation that the trial judge presided over a previous case involving appellant in a small claims matter does not come close to demonstrating bias.").

CONCLUSION

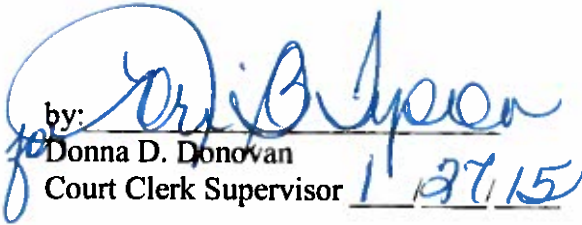
Accordingly, for the foregoing reasons, Alexander's Petition for Writ of Habeas Corpus shall be DENIED. An Order consistent with this Memorandum Opinion shall follow.

Dated: January 26, 2015

ATTEST: Estrella H. George
Acting Clerk of Court ____/____/____



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

by: 
for Donna D. Donovan
Court Clerk Supervisor 1/27/15