

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

DARYL BLYDEN,

Petitioner,

SX-13-CV-327

v.

Re: Case No. SX-05-CR-399

**GOVERNMENT OF THE VIRGIN
ISLANDS: KENNETH E. MAPP,
Governor; CLAUDE WALKER, Attorney
General; RICK MULLGRAV, Director
Virgin Islands Bureau of Corrections;
MILDRED TROTTER, Warden Golden
Grove Correctional Facility,¹**

Respondents.

MEMORANDUM OPINION

THIS MATTER comes before the Court pursuant to an opinion from the Supreme Court of the Virgin Islands (hereinafter, "Supreme Court"), dated March 3, 2016, remanding Petitioner Daryl Blyden's amended petition for writ of habeas corpus to this Court for further proceedings (hereinafter, "March 3, 2016 Opinion").

BACKGROUND²

In September 2005, Petitioner Daryl Blyden was arrested on suspicion of the killing of Kevin Walker and the shooting of Iba Matthews. Thereafter, the People of the Virgin Islands (hereinafter, "the People") charged Blyden with, *inter alia*, first-degree murder and possession of an unlicensed firearm.

¹ Although Blyden's petition originally named Governor John P. deJongh, Attorney General Vincent Frazer, Director Julius Wilson, and Warden Basil Richards as respondents in their official capacity, these officials are no longer in office. In accordance with the Supreme Court's March 3, 2016 Opinion, the caption of this case has been updated to reflect the succession of these offices. *Blyden v. Gov't of the V.I.*, 2016 V.I. Supreme LEXIS 5, n. 1 (V.I. 2016) ("Although Blyden originally named Governor John P. deJongh, Attorney General Vincent Frazer, Director Julius Wilson, and Warden Basil Richards in his petition, these officials are no longer in office. Accordingly, this Court automatically substituted them with their successors in office under Supreme Court Rule 34(c)").

² The factual and procedural background are gathered from the Supreme Court's March 3, 2016 Opinion, various filings from this matter, and various filing from *People of the V.I. v. Blyden*, Crim. No. 399/2005.

Blyden's trial began on June 25, 2007. At trial, when the People attempted to call former detective Joel Dowdye³ to testify regarding Blyden's arrest, Dowdye refused to do so.⁴ After concluding that Dowdye could not be compelled to testify, the court granted the People's request to have Dowdye declared unavailable and permitted the People to read into the trial record Dowdye's earlier testimony from the pre-trial suppression hearing.

Blyden was ultimately convicted of first-degree murder, unauthorized possession of a firearm and several other crimes, and sentenced to life imprisonment without parole. Blyden filed a timely notice of appeal with the Supreme Court. On direct appeal, the Supreme Court affirmed Blyden's convictions—except for one count of unauthorized possession of ammunition, which the Supreme Court reversed for insufficient evidence. *Blyden v. People*, 53 V.I. 637 (V.I. 2010). In affirming Blyden's remaining convictions, the Supreme Court held that the admission of the firearm into evidence was not an abuse of discretion "because the local rules of evidence do not require specific authentication of non-writings and because both the People and Blyden made full use of the procedure suggested in 5 V.I.C. § 778." *Id.*, at 660. The Supreme Court also held that the admission of Dowdye's prior suppression hearing testimony did not violate Blyden's right to confront a witness against him, and that nevertheless, any error would have been harmless because the pre-trial testimony was, at most, cumulative of other testimony properly admitted at trial." *Id.*, at 654-55, 665. Blyden then petitioned the United States Court of Appeals for the Third Circuit for a writ of certiorari, seeking review of the Supreme Court's decision.⁵ The Third Circuit granted the petition, and subsequently affirmed the Supreme Court's decision in an unpublished opinion. *People of the V.I. v. Blyden*, 437 Fed. Appx. 127 (3d Cir. 2011).

³ Dowdye is the detective who recovered the murder weapon at the time of Blyden's arrest.

⁴ Prior to the start of Blyden's trial, Dowdye was convicted of first-degree murder in an unrelated case, and sentenced to life imprisonment without parole.

⁵ The Third Circuit had temporary certiorari jurisdiction over the decisions of the Supreme Court in all cases commended before December 28, 2012. *Blyden*, 2016 V.I. Supreme LEXIS 5, n. 3.

Blyden then filed an amended petition for a writ of habeas corpus⁶ pursuant to section 1301 of Title 5 of the Virgin Islands Code (hereinafter, "Amended Petition") with the Superior Court on December 12, 2013. In his Amended Petition, Blyden raised the following four arguments: (1) the firearm introduced at trial was not authenticated, and therefore, should not have been introduced; (2) the cross-examination was inadequate because his right to confront witness was violated when Dowdye's prior suppression-hearing testimony was introduced at trial even though Dowdye himself did not testify at the jury trial; (3) the firearm introduced at trial was not the firearm seized from him at the time of his arrest—namely, the serial number of the firearm introduced at trial is different from the serial number of the firearm identified in the police report, and that the People fabricated the evidence; and (4) his trial counsel provided ineffective assistance by failing to introduce evidence showing that the firearm introduced at trial was not the firearm seized from him at the time of his arrest.

In a memorandum opinion, date June 19, 2014 (hereinafter, "June 19, 2014 Memorandum Opinion"), the Court denied Blyden's Amended Petition, and explained that: (1) Blyden's ineffective assistance of counsel claim was rejected because the Amended Petition failed to show that his attorney's performance was deficient; and (2) Blyden's other claims were procedurally barred because they were previously raised on direct appeal and Blyden "may not use his petition for writ of habeas corpus to re-litigate issues previously raised on [direct] appeal." On July 21, 2014, Blyden filed a timely notice of appeal with the Supreme Court.

The Supreme Court subsequently affirmed in part and reversed in part the Court's June 21, 2014 Memorandum Opinion denying Blyden's Amended Petition. The Supreme Court affirmed the Court's denial of writ with regard to Blyden's claims for lack of authentication of the firearm and inadequate cross-examination. *Blyden*, 2016 V.I. LEXIS at 13, 17. However, the Supreme Court

⁶ It is unclear from the record whether Blyden filed an initial petition prior to filing this Amended Petition.

reversed the Court's denial of writ with regard to Blyden's claim for firearm fabrication, and pointed out that this claim was not procedurally barred because it was never argued in his direct appeal. *Id.*, at 17. The Supreme Court also reversed the Court's denial of writ with regard to Blyden's claim for ineffective assistance of counsel, and noted that the Court, "by going directly to the merits of Blyden's claims based only on the allegations of his petition, the [Court] demanded too much of Blyden too soon." *Id.*, at 20. Accordingly, the Supreme Court remanded that matter to the Court with directions to "issue the writ and conduct further proceedings as dictated by chapter 91 of title 5 of the Virgin Islands Code." *Id.*, at 22.

STANDARD OF REVIEW

The Superior Court has jurisdiction "to issue writs of habeas corpus with respect to prisoners sentenced and confined by that court." 5 V.I.C. § 1303.⁷

Under section 1301 of Title 5 of the Virgin Islands Code, "[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 set forth in section 1302 of Title 5 of the Virgin Islands Code:

- (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.
- 5 V.I.C. § 1302.

⁷ See *Parrott v. Government of the Virgin Islands*, 41 V.I. 188 (D.C.V.I. 1999) (Territorial Court [now Superior Court] retained concurrent jurisdiction with District Court over Virgin Islands habeas corpus statute, and Territorial Court's [now Superior Court's] dismissal of District Court defendant's habeas corpus petition was affirmed based on Revised Organic Act, and not merely on grounds of comity and judicial economy advanced below.); see also, *Walker v. V.I.*, 43 V.I. 265 (3d Cir. V.I. 2000) (Because 4 V.I.C. § 76(a) operated to divest District Court of jurisdiction for all civil actions, including habeas proceedings, correct forum for inmate's habeas petition under this section was not District Court but Territorial Court [now Superior Court]).

In *Rivera-Moreno v. Gov't of the Virgin Islands*, 61 V.I. 279, 311 (V.I. 2014), the Supreme Court spelled out the procedural requirements for the Court to follow under the Virgin Islands habeas corpus statute:

When presented with a petition for a writ of habeas corpus, a court must first determine whether the petition states a prima facie case for relief -- that is, whether it states facts that, if true, entitle the petitioner to relief -- and also whether the stated claims are for any reason procedurally barred. If the court determines that the petition does not state a prima facie case for relief or that the claims are all procedurally barred, the court will deny the petition outright, but if it appears that the writ out to issue, the Superior court shall grant [a writ of habeas corpus] without delay. (citations omitted).

The Supreme Court emphasized, however, that the writ alone did not entitle the petitioner to the ultimate relief sought in the petition. *Rivera-Moreno*, 61 V.I. at 312; *Blyden*, 2016 V.I. Supreme LEXIS at 9. Granting the writ constitutes an intermediate step in the statutory procedure; it does not address the underlying merits of the petition's allegations. *Blyden*, 2016 V.I. Supreme LEXIS at 9. "Instead, issuing the writ and serving it on the Government respondents simply requires the Government to file a return responding to the petition and to produce the petitioner in court for a hearing on the merits of his allegations." *Id.* (citing *Rivera-Moreno*, 61 V. I. at 311).

DISCUSSION

1. Specification of Respondent Requirement under Title 5 V.I.C. § 1302(1)

As noted above, Blyden originally named the "Government of the Virgin Islands," "John P. deJongh, Governor," "Vincent Frazer, Attorney General," "Julius Wilson, Director Virgin Islands Bureau of Corrections," and "Basil Richards, Warden Golden Grove Correctional Facility" in his Amended Petition. These originally named officials are no longer in office and have since been substituted with their successors in office. *Blyden*, 2016 V.I. Supreme LEXIS at n. 1. The Amended Petition also indicated that Blyden was an inmate at the Red Onion State Prison.

Pursuant to Title 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 Title 5 V.I.C. § 1302(1)

further instructs the petitioner to name all the parties or describe them, if they are unknown.

Although Blyden was originally incarcerated in the Golden Grove Correctional Facility, at the time he filed the Amended Petition, Blyden was incarcerated at the Red Onion State Prison. Hence, Blyden should have named the Red Onion State Prison as a respondent to this writ. *See, Alexander v. People of the V.I.*, 2015 V.I. LEXIS 9, 6 (Super. Ct. 2015) (unpublished) (where the petitioner's writ only named the People of the United States Virgin Islands as the respondent, the court held that he has not satisfactorily identified the proper custodial respondent, and that "[t]o unambiguously identify the custodial party respondent, Petitioner should have named the Virgin Islands Bureau of Corrections, and the Warden of Wallens Ridge State Prison, where Petitioner indicated he is currently imprisoned."); *see also, Donovan v. Gov't of the V.I.*, 2013 V.I. LEXIS 21, *4-6 (Super. Ct. 2013) (unpublished) (where the petitioner only named the "Government of the Virgin Islands" as a respondent, copied the petition to the Office of the Attorney General, and indicated that she was an inmate at Golden Grove Adult Correction Facility, the court held that she has not satisfactorily identified the proper custodial respondent because she should have "specifically named the Warden of Golden Grove Adult Correctional Facility 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."); *cf., Nunez v. Gov't of the V.I.*, 2013 V.I. LEXIS 14, *4 (V.I. Super. Ct. Mar. 6, 2013) (unpublished) (the petitioner satisfactorily identified the proper custodial respondent when the Petitioner named the Government of the Virgin Islands, Office of the Attorney General, and Virgin Islands Bureau of Corrections, all individually as Respondents and further indicated that he was an inmate at Golden Grove Adult Correction Facility). The Court finds that Blyden has not satisfactorily identified the proper custodial respondent in his Amended Petition.

However, this error is not fatal to Blyden's Amended Petition. Superior Court Rule 8 permits the Court to "amend any process or pleading for any omission or defect therein." *See also, Brooks v. Gov't of the Virgin Islands*, 58 V.I. 417, n. 11 (V.I. 2013) ("Superior Court Rule 8...states the general rule that a court can correct errors or defects in pleadings."). Pursuant to Superior Court Rule 8, the Court will permit Blyden to amend his Amended Petition to name the party currently having custody of him. Upon Blyden's amendment to include the proper custodial respondent, Blyden's Amended Petition will be in compliance with the requirements of section 1302(1).

2. Illegality Requirement under Title 5 V.I.C. § 1302(2)

In light of the Supreme Court's March 3, 2016 Opinion affirming the Court's denial of writ with regard to Blyden's claims for lack of authentication of the firearm and inadequate cross-examination, the Court will only address Blyden's remaining arguments with regard to his firearm fabrication claim and ineffective assistance of counsel claim.

Firearm Fabrication Claim

Blyden asserted the People fabricated the firearm evidence at trial. More specifically, Blyden alleged that the firearm introduced at trial was not the firearm seized from him at the time of his arrest—namely, the serial number of the firearm introduced at trial is different from the serial number of the firearm identified in the police report,⁸ and that the People fabricated the evidence.

⁸ Blyden's Amended Petition, provided in pertinent part:

A gun was reported stolen from the Ron DeLugo Federal Building to the St. Thomas Police Department on 05/11/03 by Security Officer Bedminister. There exist two offense reports with the same Offense Report No. 03B07229. On the first report, the serial number is 759682, the firearm ostensibly seized from Petitioner at his arrest. The second report lists two serial numbers: 759682 and VC935925. Serial No. VC935925 was sent for forensic testing. There was insufficient evidence to show the chain of custody of the gun seized by Officer Dowdye 759682 and the gun entered into evidence VC935925 and the stolen gun reportedly stolen from the Federal Building. Amended Petition, at 16.

In support of his claim, Blyden submitted two police reports, an affidavit from Dowdye, and an affidavit from Carlos Vasquez, the custodian of records for Taurus International Manufacturing, Inc., Miami, Florida. Both police reports identified the firearm as a ".38 Taurus handgun." According to Dowdye's affidavit, Dowdye told Blyden's counsel, Julie Smith-Todman, that "the firearm that the Government attempted to introduce at trial against Mr. Blyden was not the firearm that [he] seized from [Blyden]" and that he submitted an affidavit memorializing his statements. Dowdye Affidavit, ¶¶ 7-8. According to Vasquez's affidavit, the "Taurus .38 Special firearms manufactured by Forjas Taurus,

This claim is not procedurally barred because Blyden never argued this in his direct appeal. *Blyden*, 2016 V.I. Supreme LEXIS at 17.

The Court finds that Blyden's Amended Petition states a prima facie case for relief for the firearm fabrication claim—that is, it states facts that, if true, entitle the petitioner to relief. As the Supreme Court pointed out in its March 3, 2016 Opinion, “Blyden’s allegation that the People knowingly introduced a firearm at trial that was not the firearm seized from Blyden during his arrest presents a prima facie case for relief since a government lawyer’s fabricating evidence against a criminal defendant [is] a violation of due process.” *Blyden*, 2016 V.I. Supreme LEXIS at 18 (internal quotation omitted).

Ineffective Assistance of Counsel Claim

Additionally, Blyden also asserted that his trial counsel provided ineffective assistance by failing to introduce evidence showing that the firearm introduced at trial was not the firearm seized from him at the time of his arrest. This claim is similarly not procedurally barred. The Supreme Court held that a claim for ineffective assistance of counsel is rarely procedurally barred in a habeas proceeding since it is “not appropriately reviewed for the first time on appeal...because the necessary facts about counsel’s representation of the defendant have not been developed.” *Blyden*, 2016 V.I. Supreme LEXIS at 19-20 (quoting *Codrington v. People*, 57 V.I. 176, 191 (V.I. 2011)).

The Court finds that Blyden's Amended Petition also states a prima facie case for relief for the ineffective assistance of counsel claim. As the Supreme Court pointed out in its March 3, 2016 Opinion, “[Blyden’s] allegation that his attorney was constitutionally ineffective for failing to introduce evidence to that effect at trial presents a prima facie case for relief because [o]ne of

S.A. in Brazil and imported by Taurus International Manufacturing, Inc., in Miami Florida, only have one unique serial number for each firearm.” Vasquez Affidavit, ¶ 3.

defense counsel's duties is to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process." *Blyden*, 2016 V.I. Supreme LEXIS at 19 (internal quotation omitted).

Thus, Blyden's Amended Petition presents a prima facie case for relief that is not procedurally barred with regard to the firearm fabrication claim and the ineffective assistance of counsel claim. Accordingly, The Court finds Blyden to be in compliance with section 1302(2).

3. Verification Requirement under Title 5 V.I.C. § 1302(3)

Blyden failed to comply with section 1302(3) in that his Amended Petition was not verified by oath. Again, this error is not fatal to Blyden's Amended Petition. In *Rivera-Moreno*, the Supreme Court held that section 1302 does not provide for dismissal if a prisoner files an unverified petition, and that section 1302 does not codify a jurisdictional defect so its enforcement does not implicate any judicial interests beyond those of the parties. 61 V. I. at 300-01; *see also, Hughley*, 61 V.I. at 335-36 (holding that Superior Court erred when it denied the petitioner's habeas corpus petition for failure to verify his petition). Pursuant to Superior Court Rule 8, the Court will permit Blyden to amend his Amended Petition to rectify this defect. *Rivera-Moreno*, 61 V.I. at 301 ("the failure to verify a habeas corpus petition may be easily rectified by permitting the prisoner to amend his petition"); Super. Ct. R. 8. ("The court may amend any process or pleading for any omission or defect therein.")

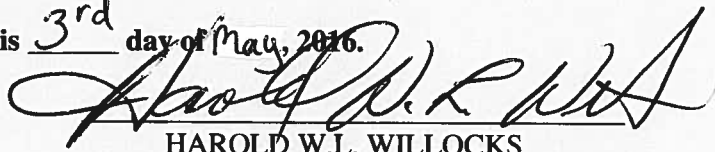
CONCLUSION

Blyden's Amended Petition presents a prima facie case for habeas corpus relief that is not procedurally barred as to his firearm fabrication claim and the ineffective assistance of counsel claim. Thus, Blyden is entitled to a writ of habeas corpus without delay. An Order consistent with this Memorandum Opinion shall follow.

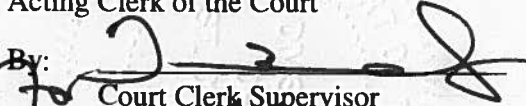
DONE and so **ORDERED** this 3rd day of May, 2016.

ATTEST:

Estrella H. George
Acting Clerk of the Court



HAROLD W.L. WILLOCKS
Administrative Judge of the Superior Court

By: 

Court Clerk Supervisor

Dated: 5/3/14