

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

KAMAL THOMAS,	)	Case No: ST-16-MC-45
	)	
Petitioner,	)	
vs.	)	HABEAS CORPUS
	)	
GOVERNMENT OF THE VIRGIN ISLANDS,	)	
	)	
Respondent,	)	
_____	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Petitioner Kamal Thomas's Petition for Habeas Corpus Relief. For the reasons set forth herein, Thomas's petition will be granted.

I. Relevant Background

On August 3, 2007, Kamal Thomas was arrested in connection with the assault and murder of James Cockayne in St. John on June 19, 2007. Thomas was charged with first-degree murder, second-degree murder, two counts of third-degree assault, two counts of using a dangerous weapon during the commission of a crime of violence, and simple assault.

Thomas began trial in the Superior Court of the Virgin Islands on October 8, 2008; and on October 10, 2008, a jury found him guilty of third degree assault, using a dangerous weapon during a crime of violence, and simple assault.

However, on September 10, 2009, the Court granted Thomas a new trial based on newly discovered evidence that the victim's family allegedly paid or compensated certain government witnesses who testified at the trial.

At his second trial, Thomas was charged with third-degree assault, using a dangerous weapon, simple assault, and two counts of threatening a witness—which arose from Thomas's alleged attempts to intimidate witnesses who were to appear at the second trial. On March 24, 2010, the jury convicted Thomas of all charges.

On June 30, 2016, Thomas filed the instant Petition for Habeas Corpus Relief. Thomas claims he is entitled to relief based upon being sentenced improperly pursuant to 14 V.I.C. § 104, "*Brady* Violations", being tried by a biased jury, insufficient assistance of counsel, and insufficient evidence to sustain his conviction.

II. Discussion

Granting a writ of habeas corpus,

constitutes an intermediate step in the statutory procedure—it does not address the underlying merits of the petition's allegations, nor does it entitle the petitioner to the ultimate relief sought in the petition. Instead, issuing the writ and serving it on the Government respondents is simply the first step of the process, requiring the Government to file a return responding to the petition and to produce the petitioner in court for a hearing on the merits of the petition.

Alexander v. People of the Virgin Islands, 65 V.I. 385, 390 (V.I 2016) (internal citation omitted). Title 5 V.I.C. §§ 1301-02 provides that, by petition, "every person unlawfully imprisoned or restrained of his liberty...may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment." "[T]he issuance of the writ comprises

two prongs.” *Simon v. Gov't of the V.I.*, 2017 V.I. Supreme LEXIS 43, *8 (VI. July 26, 2017).

First, the petition must set forth a prima facie case for relief. *Id.* A prima facie case only requires the petitioner to state facts, which if true, would entitle him to relief. *Id.* Second, the issue must not be procedurally barred. *Mosby v. Mullgrav*, 65 V.I. 261, 265 (V.I. 2016). A habeas claim is procedurally barred where it was already raised on direct appeal and decided on the merits by the Supreme Court of the Virgin Islands. *Alexander v. People of the Virgin Islands*, 65 V.I. 385, 391 (V.I. 2016).

The Court will examine the claims.

III. Analysis

Thomas has stated a prima facie case for relief from an improper sentence pursuant to Title 14 V.I.C. § 104.

Title 14 V.I.C. § 104 states:

An act or omission which is made punishable in different ways by different provisions of this Code may be punished under any of such provisions, but in no case may it be punished under more than one. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other.

Thus, “[t]he plain language of section 104 indicates that despite the fact that an individual can be charged and found guilty of violating multiple provisions of the Virgin Islands Code arising from a single act or omission, that individual can ultimately only be punished for one offense.” *Williams v. People of the Virgin Islands*, 56 V.I. 821, 832 (V.I. 2012).

Accordingly, if a defendant is found guilty of multiple offenses arising from a single act, “the proper procedure is to sentence the defendant for one offense and stay the imposition of any punishment for all the remaining offenses which arose out of the same act or indivisible course of conduct.” *Williams*, 56 V.I. at 834 n. 9. (emphasis added).

Merely suspending the sentences, or having the sentences run concurrently violates 14 V.I.C. § 104. See *Estick v. People of the Virgin Islands*, 62 V.I. 604, 623 (V.I. 2015) (“Merely suspending the sentences, and not staying the execution of the sentences, violates section 104.”); see also *Fontaine v. People of the Virgin Islands*, 59 V.I. 640, 659 (V.I. 2013) (“the Superior Court's failure to heed section 104, even where the court provided for the sentences to run concurrently, is a plain error that requires reversal”).

Thomas was sentenced as follows: for Count IV: Third Degree Assault—forty-eight months of incarceration, with eighteen months suspended; for Count V: Using a Dangerous Weapon during a Third Degree Assault—ten years of incarceration, with two years suspended; and for Count VI: Simple Assault—six months of incarceration.¹ The sentences of Counts IV and V were ordered to run consecutively, and Count VI were ordered to run concurrently.²

Thomas claims that he was sentenced improperly because the Court did not stay the execution of the sentences, although they arose from the same indivisible

¹*Judgment and Commitment*, Virgin Island of the Superior Court Order, ST-07-CR-298 (November 19, 2010).

² *Id.* at 5.

course of conduct. This allegation, if true, would entitle Thomas to relief; and therefore he has stated a prima facie case for relief. In addition, the Government agrees that the sentence is a violation of Title 14 V.I.C. § 104.³ Thomas would have to show that all charges did arise from a single indivisible act and that nothing in the V.I. Code permits double sentence for charges. However, at this juncture, his allegations are sufficient to meet the threshold burden for granting a habeas petition.

Thomas's claim of "*Brady*" violations is without merit.

Thomas's claim of "*Brady* Violations" states that the victim's family allegedly paid certain government witnesses to testify. However, that claim was raised after the first trial and was the basis of Thomas being granted his second trial. Thus the Court finds that when the case went to trial the second time Thomas was fully aware of this prior violation and thus it was no longer a *Brady* violation. Nothing within Thomas's petition suggests that witnesses received a second round compensation from the victim's family without Thomas's knowledge.

Thomas has stated a prima facie case for relief on his claim that he was not tried by an impartial jury.

Thomas claims that a juror was exposed to national news of the case on CNN. In regards to media coverage possibly tainting a jury, "where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should

³ See Government Opp. to Petition, 3 ("The People request that Thomas be resentenced in conformance with section 104")

continue the case until the threat abates, or transfer it to another county not so permeated with publicity.” *Melendez v. People of the Virgin Islands*, 56 V.I. 244, 267 (V.I. 2012) . “The Virgin Islands Code authorizes a judge of the Superior Court...with the approval of the presiding judge, to transfer any action or proceeding pending in one judicial division to the other judicial division for hearing and determination if such a change in venue is ‘in the interest of justice.’” *Id.* at 266 (quoting 4 V.I.C. § 78).

Although the Supreme Court of the Virgin Islands has previously examined a variety of factors to determine if a defendant has received a fair trial in light of media coverage,⁴ this Court reiterates it is not to evaluate the merit of Thomas’s claim at the current procedural phase of his Habeas Petition.⁵ Instead, the Court is solely to determine if Thomas has stated a *prima facie* case for relief.

Thomas claims that because this case was constantly covered on CNN, and the fact that at least one juror, apparently during voir dire, notified the court of possible bias because of their prior knowledge of the case from the media, the entire jury may

⁴ See e.g., *Rivera v. People of the Virgin Islands*, 64 V.I. 540, 568, (V.I. 2016), in which the Supreme Court examined *Skilling v. United States*, 561 U.S. 358, 130 S. Ct. 2896, 177 L. Ed. 2d 619 (2010) (“*Skilling* factors”), of (1) the size and characteristics of the community in which the crime occurred, (2) the extent of the media coverage surrounding the case and whether the stories contained a confession or other blatantly prejudicial information of the type readers or viewers could not reasonably be expected to shut from sight, (3) the amount of elapsed time between the alleged conduct and trial, and (4) the jury verdict, and whether it acquitted or found the defendant not guilty of any counts, implying that it was not predisposed to a finding of guilt, no matter the evidence.

⁵ See *Alexander v. People of the Virgin Islands*, 65 V.I. 385, 390 (“Granting a writ of habeas corpus constitutes an intermediate step in the statutory procedure—it does not address the underlying merits of the petition’s allegations, nor does it entitle the petitioner to the ultimate relief sought in the petition.”)

have been tainted. If Thomas' allegation is true, it would entitle him to relief. Therefore he has stated a prima facie case for relief.

Thomas has stated a prima facie case for relief for ineffective assistance of counsel.

A petitioner may make a prima facie claim for relief in his petition by alleging that his conviction was the result of his counsel's failure to present evidence favorable to his defense. *Alexander v. People of the Virgin Islands*, 65 V.I. 385, 392 (2016).

Thomas alleges that his counsel was ineffective because they did not subpoena members of the victim's family to elicit testimony that they had paid certain witnesses. Also, Thomas alleges his counsel allowed the introduction of witness statements, who were not present at trial or available for cross examination. The Court finds that these allegations, if true, would entitle Thomas to relief, and therefore he has stated a prima facie case for relief.

Thomas has stated a prima facie case for relief for insufficient evidence to sustain a conviction.

A habeas petitioner can raise purely legal question through their habeas petition, including challenges to the sufficiency of the evidence, when not otherwise procedurally barred. *Blyden v. Gov't of the Virgin Islands*, 64 V.I. 367, 376 (V.I. 2016). See *Rodriguez v. Bureau of Corr.*, 58 V.I. 367, 386 (V.I. 2013) (Hodge, R., concurring) ("A habeas petition addressing insufficient evidence, then, properly raises a constitutional claim and is cognizable in habeas corpus proceedings in the Virgin Islands courts.)

Thomas claims there was no evidence presented on the record to prove he was present at the location where the victim was allegedly attacked. The Court finds that these allegations, if true, would entitle Thomas to relief, and therefore he has stated a prima facie case for relief.

IV. Conclusion

Thomas' "Petition for Habeas Corpus Relief" has set forth a prima facie cases for relief, which have not been procedurally barred. Therefore, the writ will be issued and the matter set for an evidentiary hearing on the merits.

An Order consistent with this Memorandum Opinion will be entered.

DATED: March 19, 2018 Kathleen Mackay
Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court

BY: Donna Donovan
DONNA DONOVAN
Court Clerk Supervisor 3/19/18