

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

STEVEN SHELTON,)
)
 Petitioner,)
)
 v.) Civil Action No. 00-78-SLR
)
 ROBERT SNYDER,)
 Warden, Delaware)
 Correctional Center,)
)
 Respondent.)

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A. Pederson, Esquire, of Wilmington, Delaware, attorneys for
Petitioner.

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Respondent.

MEMORANDUM OPINION

Dated: March 28, 2002

Wilmington, Delaware

ROBINSON, Chief Judge

I. PROCEDURAL BACKGROUND

In 1993, petitioner Steven Shelton was convicted by a Delaware Superior Court jury of first degree murder and related charges. Petitioner received a sentence of death. On direct appeal, the conviction and sentence were affirmed. Outten v. State, 650 A.2d 1291 (Del. 1994).

In his application for post-conviction relief, petitioner raised a number of claims, including: 1) the existence of significant defects with respect to the testimony of Christine Gibbons, the State's main witness against petitioner; 2) trial counsel was ineffective in failing to prevent and to object timely to the testimony of Lisa Bedwell, who commented on the stand that petitioner had been in prison; 3) petitioner was prejudiced by a joint penalty hearing with codefendants Nelson Shelton and Jack Outten and that counsel rendered ineffective assistance in failing to move to sever the hearing and to raise adequately the issue on direct appeal; 4) the court erred in limiting petitioner's right to allocution and that counsel was ineffective in failing to object to the court's limitation at trial and on direct appeal; 5) during the penalty hearing the prosecutor made an improper comment concerning petitioner's failure to express remorse in allocution, that trial counsel was ineffective in failing to raise the issue and to request a curative instruction and that appellate counsel was ineffective

in failing to raise the issue on appeal; 6) trial counsel rendered ineffective assistance in the penalty phase by failing to prepare for the penalty hearing and to investigate adequately mitigating evidence, by failing to have petitioner examined by a psychiatrist and to present such findings at the penalty hearing, and by failing to present to the jury school and Family Court records containing mitigating evidence; and 7) the Superior Court abused its discretion in dismissing petitioner's motion for post-conviction relief without granting an evidentiary hearing. The trial court rejected all of petitioner's claims, holding that they were either procedurally barred or without merit. The Supreme Court affirmed. Shelton v. State, 744 A.2d 465 (Del. 2000).

Petitioner has moved for an evidentiary hearing to expand the record as it pertains to the testimony of Christine Gibbons, alleging that she was intoxicated during a portion of the trial and that the prosecutors caused her to recant exculpatory testimony through intimidation.

II. FACTUAL BACKGROUND¹

On January 11, 1992, Jack Outten and Nelson and Steven Shelton, along with Christine Gibbons, spent the day drinking heavily at various locations. Nelson and Steven Shelton were

¹The facts are taken from the Delaware Supreme Court's decision in Shelton v. State, 744 A.2d at 473-74.

brothers. Outten was their cousin. Gibbons was Nelson's girlfriend. Their last stop of the day was a bar they called the "Green Door." While inside, Gibbons struck up a conversation at the bar with the victim, Wilson Mannon.

After last call at 1:00 a.m., Mannon, Outten, Gibbons, and the Sheltons left the Green Door. Nelson drove them in his car to an isolated street in Wilmington, Delaware, where the three defendants pulled Mannon from the car and beat him severely. These beatings caused Mannon's death. Over the course of the investigation and trial, Gibbons gave multiple accounts of what occurred that night.

Gibbons initially testified that Nelson and Outten beat Mannon to death, first by punching him in the face, then by striking him in the head with a heavy object. Although Steven was at the scene and took some of the victim's money and jewelry, Gibbons testified that he went behind the car to be sick and did not participate in the beating.

After her initial testimony, Gibbons requested to retake the stand because she had lied during her previous testimony. The trial court permitted her to recant any prior testimony. Gibbons' new testimony was essentially the same, except she directly implicated Steven in the beating. This time, Gibbons testified she saw Steven kick and punch Mannon many times in the face. Gibbons further testified that Steven had told her to say

he had gone off into the woods at the time of the murder. She stated that she earlier had given different versions of the story because she was confused. She explained that it would not be fair to blame just Nelson and Outten when Steven also had a part in the murder.

In addition to Gibbons' testimony, the forensic and other physical evidence implicated petitioner in the murder. The jury convicted all three defendants of first degree murder and the death sentence was imposed by the court.²

III. STANDARD OF REVIEW

Petitioner filed his application for federal habeas review after the effective date of the Antiterrorism and Effective Death Penalty Act ("AEDPA") and, therefore, his request for an evidentiary hearing must be evaluated under the provisions of 28 U.S.C. § 2254(e), which provide that:

(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that -

²Nelson Shelton was executed on March 17, 1995.

(A) the claim relies on -

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

It generally is recognized that

§ 2254(e) (1) does not require findings to be based on evidentiary hearings. This is the major difference between § 2254(e), part of [AEDPA], and its predecessor 28 U.S.C. § 2254(d). The former statute required deference to "a determination after a hearing on the merits of a factual issue" unless one of eight conditions was satisfied. Section 2254(e), by contrast, omits any mention of a hearing. If a state court's finding rests on thin air, the petitioner will have little difficulty satisfying the standards for relief under § 2254. But if the state court's finding is supported by the record, even though not by a "hearing on the merits of [the] factual issue," then it is presumed to be correct.

Mendiola v. Schomig, 224 F.3d 589, 592-93 (7th Cir. 2000). In order for a state court's findings to be deemed "supported by the record," the record must be based upon "probative evidence."

Riley v. Taylor, 277 F.3d 261, 285 (3d Cir. 2001) (citing Rushen v. Spain, 464 U.S. 114, 121 n.6 (1983)). "Probative evidence" includes the observations and credibility determinations made by the trial judge. Indeed, the deference given a state court's findings of fact "is ordinarily based, at least in part, on the original trial court's ability to make contemporaneous assessments." Riley, 277 F.3d at 285.

Unlike § 2254(e)(1), which addresses the case where factual determinations have been made by a State court, § 2254(e)(2) addresses the situation where the petitioner has failed to develop the factual basis of a claim. The United States Supreme Court has held that "a failure to develop the factual basis of a claim is not established unless there is lack of diligence, or some greater fault, attributable to the prisoner or the prisoner's counsel." Williams v. Taylor, 529 U.S. 420, 432 (2000). The Court reasoned as follows:

There is no doubt Congress intended AEDPA to advance these doctrines [of comity, finality, and federalism]. Federal habeas corpus principles must inform and shape the historic and still vital relation of mutual respect and common purpose existing between the States and the federal courts. In keeping this delicate balance we have been careful to limit the scope of federal intrusion into state criminal adjudications and to safeguard the States' interest in the integrity of their criminal and collateral proceedings. . . .

It is consistent with these principles

to give effect to Congress' intent to avoid unneeded evidentiary hearings in federal habeas corpus, while recognizing the statute does not equate prisoners who exercise diligence in pursuing their claims with those who do not. Principles of exhaustion are premised upon recognition by Congress and the Court that state judiciaries have the duty and competence to vindicate rights secured by the Constitution in state criminal proceedings. . . . For state courts to have their rightful opportunity to adjudicate federal rights, the prisoner must be diligent in developing the record and presenting, if possible, all claims of constitutional error. If the prisoner fails to do so, himself or herself contributing to the absence of a full and fair adjudication in state court, § 2254(e)(2) prohibits an evidentiary hearing to develop the relevant claims in federal court, unless the statute's other stringent requirements are met. Federal courts sitting in habeas are not an alternative forum for trying facts and issues which a prisoner made insufficient effort to pursue in state court. Yet comity is not served by saying a prisoner "has failed to develop the factual basis of a claim" where he was unable to develop his claim in state court despite diligent efforts. In that circumstance, an evidentiary hearing is not barred by § 2254(e)(2).

Id. at 436-37.

IV. DISCUSSION

Petitioner has moved for an evidentiary hearing to expand the record on two separate factual issues. He first claims that the intimidation of Christine Gibbons, causing her to recant exculpatory testimony, constituted prosecutorial misconduct, depriving petitioner of his due process right to a fair trial.

Petitioner is seeking a fact finding hearing to establish the facts surrounding Gibbons' desire to recant exculpatory testimony and to determine if her decision was the product of prosecutorial misconduct. Petitioner also claims that he was denied due process to a fair trial because Gibbons was intoxicated during a portion of the trial. Petitioner is seeking to interrogate Gibbons, Lori Shotwell (a witness who allegedly has knowledge of Gibbons' alcohol consumption during trial), and Carl Kent (an investigator who interviewed Gibbons and Shotwell, among others, concerning the allegations of coercion and intoxication) to confirm the extent of Gibbons' intoxication during the period she was testifying.

In connection with these claims, the record demonstrates that the trial court offered defense counsel an opportunity to question Gibbons outside the presence of the jury about the circumstances of her return and recantation. Gibbons never indicated during her testimony that the State had threatened or coerced her recantation, or otherwise engaged in prosecutorial misconduct. Likewise, the trial court had the opportunity to observe Gibbons' demeanor during the course of the trial, as did defense counsel and the defendants. There is no indication of record that anyone in the courtroom detected any change in Gibbons' demeanor suggestive of alcohol or drug consumption.

The court concludes that the factual basis of these claims

was adequately developed in the State court proceedings; therefore, petitioner is not entitled to an evidentiary hearing pursuant to § 2254(e)(2). The court further concludes that petitioner, at this stage of the proceedings, has failed to present clear and convincing evidence to rebut the presumption of correctness as to the State court's factual determinations in this regard, as such determinations are supported by the record.

V. CONCLUSION

For the reasons stated, petitioner Steven Shelton's motion for an evidentiary hearing is denied

An order shall issue.