DOCKET NO. CV21-5000960	: STATE OF CONNECTICUT SUPERIOR COURT : SUPERIOR COURT : G.A. 19	
MATTHEW BOUTILIER	:	
	: 2024 APR 29 A 8:33	JUDICIAL DISTRICT
	:	OF TOLLAND
V.	:	
	:	
	:	
COMMISSIONER OF CORRECTION	:	APRIL 29, 2024

MEMORANDUM OF DECISION ON RESPONDENT'S MOTION TO DISMISS

Matthew Boutilier, the petitioner, has filed this petition for a writ of habeas corpus. The respondent filed a motion to dismiss and supporting memorandum seek dismissal of the petition premised on Practice Book § 23-29 because the claims raised in this petition are either procedurally defaulted or collaterally estopped. For the reasons articulated more fully below, the motion is denied in part and granted in part.

I. LEGAL STANDARD

A. Motion to Dismiss

"It is well established that, when a habeas court considers a motion to dismiss a petition for a writ of habeas corpus, '[t]he evidence offered by the [petitioner] is to be taken as true and interpreted in the light most favorable to [the petitioner], and every reasonable inference is to be drawn in [the petitioner's] favor.' (Internal quotation marks omitted.) Ham v. Commissioner of Correction, 152 Conn. App. 212, 223–24, 98 A.2d 81, cert. denied, 314 Conn. 932, 102 A.3d 83 (2014); see also Orcutt v. Commissioner of Correction, 284 Conn. 724, 739, 937 A.2d 656 (2007). It is equally well settled that '[t]he petition for a writ of habeas corpus is essentially a pleading and, as such, it should conform generally to a complaint in a civil action ... [and it] is fundamental in our law that the right of a plaintiff to recover is limited to the allegations of his complaint.' (Internal quotation marks omitted.) Thiersaint v. Commissioner of Correction, 316 Conn. 89, 125, 111 A.3d 829 (2015). Thus, '[w]hile the habeas court has considerable discretion to frame a remedy that is

commensurate with the scope of the established constitutional violations ... it does not have the discretion to look beyond the pleadings ... to decide claims not raised.... The purpose of the [petition] is to put the [respondent] on notice of the claims made, to limit the issues to be decided, and to prevent surprise.' (Internal quotation marks omitted.)" Nelson v. Commissioner of Correction, 326 Conn. 772, 780–81, 167 A.3d 952 (2017), citing and quoting Newland v. Commissioner of Correction, 322 Conn. 664, 678, 142 A.3d 1095 (2016). Pursuant to Practice Book § 23-29 (1), this court "may, at any time, upon its own motion or upon motion of the respondent, dismiss the petition, or any count thereof, if it determines that: (1) the court lacks jurisdiction...."

B. Procedural Default

"In essence, the procedural default doctrine holds that a claimant may not raise, in a collateral proceeding, claims that he could have made at trial or on direct appeal in the original proceeding and that if the state, in response, alleges that a claimant should be procedurally defaulted from now making the claim, the claimant bears the burden of demonstrating good cause for having failed to raise the claim directly, and he must show that he suffered actual prejudice as a result of this excusable failure." Hinds v. Commissioner of Correction, 151 Conn. App. 837, 852, 97 A.3d 986 (2014), aff'd, 321 Conn. 56, 136 A.3d 596 (2016); Orcutt v. Commissioner of Correction, supra, 284 Conn. 737 ("As a general matter, a defendant who files a petition for a writ of habeas corpus will be deemed to have procedurally defaulted unless he exhausts at least one of those remedies.").

In applying the doctrine of procedural default, courts must consider two steps. First, was the claim, raised for the first time in a habeas proceeding, able to be raised at trial or on direct appeal. Hinds v. Commissioner of Correction, supra, 151 Conn. App. 852; Gaskin v. Commissioner of Correction, 183 Conn. App. 496, 511, 193 A.3d 625 (2018); Orcutt v. Commissioner of Correction; supra, 284 Conn. 724. If a petitioner is not required to raise the claim at trial or on direct appeal; State v. Leecan, 198 Conn. 517, 504 A.2d 480, cert. denied, 476 U.S. 1184, 106 S. Ct. 2922, 91 L. Ed.

2d 550 (1986); or the factual predicates for the claim are not apparent on the record and require additional testimony; Collins v. Commissioner of Correction, 202 Conn. App. 789, 798–99, 246 A.3d 1047, cert. denied, 336 Conn. 931, 248 A.3d 1 (2021) (holding conflict of interest claim is not subject to the procedural default doctrine and declining to apply cause and prejudice test, as the record on direct appeal was not adequate to review the claim); Gaskin v. Commissioner of Correction, supra, 183 Conn. App. 511-512 (petitioner did not procedurally default on claim of undisclosed agreement with witness "where trial counsel thoroughly cross-examined [witness] regarding the state's promise to him, to no avail, and that information regarding [witness'] sentencing only became available after the conclusion of the petitioner's criminal trial...;" appellate court "[failed] to see how the petitioner could 'properly raise' his claim on appeal from the record"); see also Taylor v. Commissioner of Correction, 324 Conn. 631, 646, 153 A.3d 1264 (2017) (holding that claim of structural error based on complete denial of counsel was apparent on the record and subject to procedural default); then he has not procedurally defaulted and this ends the inquiry.

If, however, the petitioner has raised a claim in a habeas petition that could have and should have been raised at trial or on direct appeal, courts then consider the second step: whether there is cause to excuse the default and prejudice to the petitioner. Salters v. Commissioner of Correction, 141 Conn. App. 81, 88, 60 A.3d 1004, cert. denied, 308 Conn. 932, 64 A.3d 330 (2013) (where factual predicate for Brady claim was clear from the record, petitioner procedurally defaulted for not raising it on appeal). "Under [the cause and prejudice] standard, the petitioner must demonstrate good cause for his failure to raise a claim at trial or on direct appeal and actual prejudice resulting from the impropriety claimed in the habeas petition. The cause and prejudice test is designed to prevent full review of issues in habeas corpus proceedings that counsel did not raise at trial or on appeal for reasons of tactics, inadvertence or ignorance." (Cleaned up.) Johnson v. Commissioner of Correction, 285 Conn. 556, 567–68, 941 A.2d 248 (2008); Hinds v. Commissioner of Correction,

321 Conn. 56, 71, 136 A.3d 596 (2016). Typically, cause and prejudice is met by making a showing of ineffective assistance of counsel; Johnson v. Commissioner of Correction, supra, 285 Conn. 569–70; Sinchak v. Commissioner of Correction, 173 Conn. App. 352, 366, 163 A.3d 1208, cert. denied, 327 Conn. 901, 169 A.3d 796 (2017); but it is not the only way. See e.g., Reed v. Ross, 468 U.S. 1, 14, 104 S. Ct. 2901, 82 L. Ed. 2d 1 (1984) ("cause requirement may be satisfied under certain circumstances when a procedural failure is not attributable to an intentional decision by counsel made in pursuit of his client's interests [and] the failure of counsel to raise a constitutional issue reasonably unknown to him is one situation in which the requirement is met.") If a petitioner cannot demonstrate cause and prejudice, the claim will be deemed procedurally defaulted.

C. Res Judicata

"Our courts have repeatedly applied the doctrine of res judicata to claims duplicated in successive habeas petitions filed by the same petitioner. In fact, the ability to dismiss a petition if it presents the same ground as a prior petition previously denied and fails to state new facts or to proffer new evidence not reasonably available at the time of the prior petition is memorialized in Practice Book § 23-29 (3)." (Cleaned up.) Gudino v. Commissioner of Correction, 191 Conn. App. 263, 270, 214 A.3d 383, cert. denied, 333 Conn. 924, 218 A.3d 67 (2019). Contained within the doctrine of res judicata is collateral estoppel, which "prohibits the relitigation of an issue when that issue was actually litigated and necessarily determined in a prior action between the same parties upon a different claim." (Cleaned up.) Carter v. Commissioner of Correction, 203 Conn. App. 794, 807, 249 A.3d 749, cert. denied, 336 Conn. 952, 251 A.3d 992 (2021). "For an issue to be subject to collateral estoppel, it must have been fully and fairly litigated in the first action. It also must have been actually decided and the decision must have been necessary to the judgment. An issue is actually litigated if it is properly raised in the pleadings or otherwise, submitted for determination,

and in fact determined. An issue is necessarily determined if, in the absence of a determination of the issue, the judgment could not have been validly rendered." Id.

II. DISCUSSION

Boutilier has filed a second petition for a writ of habeas corpus. In it, he raises six different claims. The first two are premised on the state's failure to disclose and correct false testimony about a cooperation agreement with its witness. The third faults trial counsel for failing to investigate and discover this agreement and properly impeach the witness. The fourth alleges that his right to a fair and impartial judge was violated. Fifth is a jail credit claim and lastly, in count six, he alleges ineffective assistance of prior habeas counsel for failing to raise all the above claims. The respondent, in its return, has alleged the defenses of res judicata as to counts one through three and procedural default as to count four. In his reply, Boutilier denies the defenses and alleges ineffective assistance of counsel and cause and prejudice to excuse any defaults. To defeat the claim of a successive petition, he alleges that there is newly discovered evidence of an agreement between the state's witness and the state that has only come to light at a sentence modification hearing for the witness held two months ago. The court has not been provided with this transcript.

Based on the above, the court denies the motion as to counts one and two, since counsel has made a good faith representation that those claims are based on new evidence not available to prior counsel. Count three, however, must be dismissed. Counsel cannot be faulted for not discovering evidence that only came to light some fifteen years after the criminal trial. Count four is subject to the law of procedural default and Boutilier has to be given the opportunity, at a trial, to prove cause and prejudice to overcome the default. Counts five and six shall also remain.

III. CONCLUSION

Count three is dismissed. The other counts remain.

Bhatt, J.

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Judge Bhatt
by: Kathryn Stackpole, First Asst. Clerk 4/29/2024