

DOCKET NO. CV205000664

BRYAN JORDAN

V.

COMMISSIONER OF CORRECTION

STATE OF CONNECTICUT
SUPERIOR COURT
G.A. 19

2024 MAY 14 P 12: 29

SUPERIOR COURT

JUDICIAL DISTRICT
OF TOLLAND

MAY 14, 2024

MEMORANDUM OF DECISION ON RESPONDENT’S MOTION TO DISMISS

Bryan Jordan, the petitioner, has filed this petition for a writ of habeas corpus. The respondent filed a motion to dismiss and supporting memorandum seeking dismissal of the first two counts of the petition premised on Practice Book § 23-29 because the claims raised in this petition are successive and collaterally estopped. The court heard from both parties on May 14, 2024. 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. 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

Jordan previously filed a petition for a writ of habeas corpus, “raising claims in eight counts: first; ineffective assistance of trial counsel, Attorney Diane Polan, for failing to present evidence of self-defense; second, ineffective assistance of trial counsel for failing to impeach state's witnesses; third, a Brady violation; fourth, ineffective assistance of trial counsel for failure to raise a third-party culpability defense; fifth, ineffective assistance of trial counsel premised on juror removal; sixth, a Brady violation premised on failure to correct false testimony; seventh, ineffective assistance of trial counsel for failure to object to prosecutorial misconduct and request a curative instruction; and eighth, failure to disclose information.” Jordan v. Warden, Superior Court, judicial district of Tolland, Docket No. CV154007011S (Kwak, J., Oct. 1, 2018), rev'd sub nom. Jordan v. Commissioner of Correction, 197 Conn. App. 822, 234 A.3d 78 (2020), aff'd, 341 Conn. 279, 267 A.3d 120 (2021). Counts three, five, six and eight were withdrawn.

He then filed the instant petition for a writ of habeas corpus. In it, he raises three different claims. The first alleges ineffective assistance of trial counsel. The second alleges that the state failed to disclose material exculpatory evidence. The third alleges ineffective assistance of prior habeas counsel. The respondent seeks to dismiss the first two counts as successive. Jordan responds that neither count was fully and fairly litigated in the prior habeas – the allegations against trial counsel were not raised because of ineffective assistance of prior habeas counsel and the claim against the prosecution was withdrawn.

The court finds that count one is successive. The claim of ineffective assistance of trial counsel was raised and decided by the prior habeas court. Jordan has not alleged that the new basis for ineffective assistance of trial counsel was not reasonably available at the time of the prior habeas petition. Therefore, count one is successive and must be dismissed. Count two was not raised and fully and fairly litigated in the prior habeas, since it was withdrawn and therefore not ruled on.

Based on the above, the court grants the motion as to count one and denies it as to count two.

III. CONCLUSION

Count one is dismissed. The other counts remain.



Bhatt, J.

Copies sent to:

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by: Kathryn Stackpole, First Asst. Clerk
5/14/2024