

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLTON PINNOCK : CIVIL ACTION
 :
 v. :
 :
 WARDEN, SCI DALLAS, et al. : NO. 99-2452

ORDER - MEMORANDUM

AND NOW, this 31st day of August, 2000, upon consideration of the petition of Charlton Pinnock for a writ of habeas corpus, the responses, the Report and Recommendation, and Supplemental Report and Recommendation of United States Magistrate Judge M. Faith Angell, and petitioner's objections, the following is ordered:

The Report and Recommendation and the Supplemental Report and Recommendation are approved and adopted, excepting that the petition for writ of habeas corpus is dismissed without prejudice. Petitioner shall have until October 27, 2000 within which to file a petition in state court asserting the invalidity of his conviction under the Pennsylvania Corrupt Organizations Act (PACOA), 18 Pa. C.S.A. § 911 et seq. If he does not do so by that date, the dismissal of the present petition will be with prejudice.

On October 24, 1990, petitioner, an illegal alien from Jamaica, pleaded guilty in state court to a number of drug-related charges – one of which was a charge under the PACOA.¹ Commonwealth v. Pinnock, No. 566 (C.P. Phila. 1990).

¹ The other charges were criminal conspiracy and two counts of
(continued...)

On April 17, 1996, the Supreme Court of Pennsylvania, in considering the application of the PACOA to a illegal drug conspiracy, held that “the statute does not encompass the prosecution of a wholly illegitimate enterprise.” Commonwealth v. Besch, 544 Pa. 1, 1, 674 A.2d 655, 655 (1996).²

Petitioner was a member of an illegal drug enterprise, an activity, under Besch, outside the purview of the PACOA at the time of his guilty plea. Therefore, petitioner’s claim is correct – his conduct, as it turned out, was not a crime. However, his § 2254 petition was untimely, and at this point, review would require consideration of the constitutionality of the Antiterrorism and Effective Death Penalty Act of 1996 – specifically, whether its one-year statute of limitations, § 2244(d), would bar a habeas petition where actual innocence was shown as a matter of law. In this anomalous case, the conviction and present imprisonment are for activity subsequently declared by the state’s highest court to be non-criminal.

Before reaching the limitations constitutionality issue, the state judicial system should have an opportunity to consider petitioner’s claim on the

¹(...continued)

possession of a controlled substance with intent to deliver. He was sentenced to 10 to 20 years on the PACOA charge, two to four years on the conspiracy charge, and four to eight years on each of the possession with intent to distribute charges. The sentences were ordered to be served consecutively – an aggregate total of 20 to 40 years. If the PACOA is set aside, a re-sentencing would appear to be necessary.

² Approximately two months later, the Pennsylvania Legislature amended the PACOA to include wholly illegitimate businesses under the definition of enterprise. 18 Pa. Const. Stat. §911(h)(3), as amended June 19, 1996. The amendment does not apply retroactively. See Commonwealth v. Shaffer, 557 Pa. 453, 459, 734 A.2d 840, 843 (1999).

merits. Inasmuch as petitioner's sentence appears, at least retrospectively, to have become invalid, petitioner will be given time within which to file a motion to vacate the conviction in state court.

Edmund V. Ludwig, J.