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

H. BEATTY CHADWICK	:	**CIVIL ACTION**
	:	
v.	:	
	:	
JAMES JANECKA	:	**NO. 00-1130**

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J. **January 3, 2002**

Petitioner H. Beatty Chadwick, Esq.[1] ("Chadwick"), filing a petition for writ of habeas corpus under 28 U.S.C. § 2254, challenges his continued incarceration for civil contempt. In his petition, Chadwick argues that his imprisonment is impermissibly punitive and he has been denied due process because: (1) he was and is unable to comply with a state court order of which he has been adjudged contemptuous; (2) he was denied a jury trial and other procedural rights; (3) he was imprisoned after a summary proceeding; (4) his imprisonment has become punitive; (5) he was imprisoned for failure to pay money; (6) his civil imprisonment is indefinite; (7) the imprisonment order is facially unlawful; (8) the state court ordering the incarceration lacked jurisdiction; and (9) he was denied a prompt appeal.

United States Magistrate Judge Arnold C. Rapoport issued a

[1]Chadwick is an inactive member of the Pennsylvania Bar.

Report and Recommendation ("R&R") to deny and dismiss the petition without an evidentiary hearing and find no probable cause to issue a certificate of appealability. Petitioner filed objections and Barbara Jean Crowther Chadwick (“Ms. Chadwick”), petitioner’s estranged wife and the Intervenor in this action, filed a motion to dismiss Chadwick’s petition. For the reasons stated herein, the motion to dismiss will be denied and after de novo consideration of Chadwick’s petition, the petition for writ of habeas corpus will be granted.

BACKGROUND

Ms. Chadwick filed a divorce action in the Delaware County Court of Common Pleas in November, 1992. During an equitable distribution conference in February, 1993, Chadwick informed the state court and Ms. Chadwick he had transferred $2,502,000 of the marital estate to satisfy an alleged debt to Maison Blanche, Ltd. (“Maison Blanche”), a Gibraltar partnership. See Chadwick v. Chadwick, No. 1555 Philadelphia 1995 at 2 (Pa. Super. Ct. Aug. 22, 1996) (“Chadwick I”). Ms. Chadwick had no knowledge of any debt owed by Chadwick to Maison Blanche.

After hiring a private investigator and further discovery, Ms. Chadwick determined: (1) one of the principals of Maison Blanche returned $869,106.00 from Gibraltar to an American bank

account in Chadwick's name, and the funds were used to purchase three annuity contracts; (2) $995,726.41 had been transferred to a Union Bank account in Switzerland in Chadwick's name; and (3) $550,000.00 in stock certificates Chadwick claimed he had transferred to an unknown barrister in England to forward to Maison Blanche were never received. Id. at 3; Chadwick v. Hill, No. 2192 Philadelphia 1996 at 2 n.1 (Pa. Super. Ct. Apr. 23, 1997)("Chadwick II"). The state court entered a freeze order on the marital assets on April 29, 1994.

In May, 1994, Chadwick redeemed the annuity contracts and deposited the funds in a Panamanian bank. See Chadwick II, at 2 n.1. On July 22, 1994, the state court held a hearing at which Chadwick and his counsel were present. After hearing testimony regarding disposition of the $2,502,000.00 sent to Gibraltar, the court determined Chadwick's transfer of the money was an attempt to defraud Ms. Chadwick and the court. On the day of the hearing, the court ordered Chadwick to return the $2,502,000.00 to an account under the jurisdiction of the court, pay $75,000.00 for Ms. Chadwick's attorney's fees and costs, surrender his passport and remain within the jurisdiction. See id. at 3.

Chadwick refused to comply with the July 22, 1994 order; Ms. Chadwick filed a petition for contempt. The state court held contempt hearings on August 29, 1994, October 18, 1994, and October 31, 1994. Chadwick failed to appear at any of the

hearings, but his attorney was present. See id. The state court found Chadwick in contempt of the July 22, 1994 order and issued a bench warrant for his arrest.

Chadwick, learning a bench warrant had been issued, fled the jurisdiction but was arrested and detained on April 5, 1995. The state court then determined Chadwick had the present ability to comply with the terms of the July 22, 1994 order and set bail at $3,000,000.00. See Chadwick I, at 4. Chadwick could have been released from custody at any time either by posting bail or purging his contempt by compliance with the July 22, 1994 order to deposit $2,502,000.00 in the court's account; to date, he has done neither.

On April 7, 1995, Chadwick filed in federal court an emergency motion to quash the state court bench warrant and release him from Delaware County Prison because the contempt finding was improper under state law. This court declined to intervene in a pending state court proceeding under Younger v. Harris, 401 U.S. 37 (1971) and progeny. See Chadwick v. Delaware County Court of Common Pleas, No. 95-0103, 1995 WL 232500, at *2 (E.D. Pa. Apr. 19, 1995).

Chadwick has filed six state petitions for habeas relief; the trial court denied them all. He appealed one denial and his latest denial was subject to appeal, but before the appeals were decided, Chadwick filed a second federal habeas petition; this

court dismissed the second federal habeas petition for failure to exhaust available state remedies because the issues had not yet been presented to the Pennsylvania Supreme Court. See Chadwick v. Hill, No. 95-0103, 1995 WL 541794, at *1 (E.D. Pa. Sept. 8, 1995).

Several appeals of state trial court denials of his habeas petitions and a motion to vacate state court orders were consolidated on appeal. The Pennsylvania Superior Court, affirming the lower court decisions in August, 1996, found that he was able to comply with the July, 1994 Order. See Chadwick I. The Superior Court held that: (1) the trial court had jurisdiction to find Chadwick in contempt; (2) the procedure used by the trial court in the contempt proceedings was not improper; (3) the trial court did not err in adjudicating Chadwick in contempt; (4) state statutory provisions governing criminal contempt were inapplicable; (5) Chadwick was not illegally incarcerated; and (6) Chadwick's incarceration had not ceased to be coercive in nature. Id. Chadwick's petition for allowance of appeal to the Supreme Court of Pennsylvania was denied on April 8, 1997.

Chadwick's sixth petition for state habeas relief argued that his continued confinement deprived him of due process because it had become punitive rather than coercive; it was denied by the trial court on June 21, 1996. While appealing that

determination, Chadwick filed a third federal habeas petition on September 23, 1996. By Memorandum and Order dated January 16, 1997, this court dismissed Chadwick's third federal habeas petition for failure to exhaust available state remedies and abstained because of the pending appeal to the Superior Court. See Chadwick v. Hill, No. 96-6426, 1997 WL 22406, at *2 (E.D. Pa. Jan. 16, 1997).

The Pennsylvania Superior Court affirmed the trial court's denial of Chadwick's sixth state habeas petition by Opinion dated April 23, 1997. See Chadwick II. The court encouraged the Supreme Court of Pennsylvania to review its decision to clarify the point at which a coercive penalty for civil contempt becomes a criminal sanction requiring due process under federal and state law. See id. at 6 (it "is for our high court to make such a determination.").

Chadwick did not seek review by the Pennsylvania Supreme Court, but instead sought reconsideration of this court's January 16, 1997 decision dismissing his federal habeas petition for non-exhaustion of state remedies. This court, finding the Superior Court specifically "invited" the Pennsylvania Supreme Court to review its decision and that Chadwick had not yet presented his due process claims to the Supreme Court for review, denied Chadwick's motion for reconsideration on May 23, 1997. The court held that "the question of when civil contempt becomes punitive

is one which a federal court should abstain from considering before the state supreme court has had the opportunity." May 23, 1997 Order at ¶10.

Chadwick declined to seek Supreme Court review of the Superior Court's April 23, 1997 decision. Instead, Chadwick filed his fourth federal habeas petition on July 18, 1997. He argued his continued detention in the Delaware County Prison served only a punitive purpose so that he was no longer imprisoned for civil contempt and must be afforded the protections and procedures obligatory for criminal sanctions. That petition was dismissed for failure to exhaust available state remedies on April 30, 1998. See Chadwick v. Andrews, No. 97-4680, 1998 WL 218026 (E.D. Pa. Apr. 30, 1998).

In September, 1999, Chadwick, filing a pro se Application for Leave to File Original Process (his seventh state habeas petition) with the Supreme Court of Pennsylvania, asserted, inter alia, that he had been denied due process of law and his continued incarceration had ceased to be coercive but was punitive. This request was granted on February 8, 2000; the petition for habeas corpus was summarily denied on the same date. Chadwick had also filed a petition for release in the Delaware Court of Common Pleas on the ground that he was suffering from "major psychological depression," and unable to participate in his divorce proceedings. After a hearing, on September 22, 1999,

the state court trial judge was "convinced that Mr. Chadwick is feigning mental illness in an effort to be released from prison without returning the $2,500,000 which he transferred out of this country." Chadwick v. Chadwick, No. 92-19535, slip op. at 4 (Ct. Com. Pl., Del. Cty., Pa. Sept. 22, 1999).

On March 2, 2000, Chadwick filed this, his fifth federal habeas petition. On December 8, 2000, Judge Rapoport issued an R&R to which Chadwick filed timely objections.

On April 4, 2001, Chadwick filed his eighth state court habeas petition. A hearing on the petition was held on April 11, 2001, at the conclusion of which the petition was dismissed. Because Chadwick may now appeal that dismissal, on April 18, 2000, Ms. Chadwick filed a motion to dismiss Chadwick's fifth federal habeas petition for failure to exhaust state court remedies.

A hearing was held on April 20, 2001, at which both Chadwick and Ms. Chadwick were heard on Chadwick's fifth federal habeas petition and Ms. Chadwick's motion to dismiss. For the reasons set forth herein, the Intervenor's motion to dismiss will be denied and the petition for habeas corpus will be granted.

DISCUSSION

I. Motion to Dismiss

"An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State . . . ." 28 U.S.C.A. § 2254(b)(1)(A) (West 1994 & Supp. 2001). See also Duckworth v. Serrano, 454 U.S. 1, 3 (1981); Roberts v. LaVallee, 389 U.S. 40, 42 (1967); Codispoti v. Howard, 589 F.2d 135, 140 (3d Cir. 1978). The exhaustion requirement is not met if the petitioner "has the right under the law of the State to raise, by any available procedure, the question presented." 28 U.S.C.A. §2254(c)(West 1994 & Supp. 2001). The exhaustion requirement has been met when the petitioner has presented his claims to the highest state court; there is no requirement that the state courts consider or discuss the claims. See Swanger v. Zimmerman, 750 F.2d 291, 295 (3d Cir. 1984).

A petitioner need only seek state court review of a federal claim once, either on direct review or in a state habeas proceeding; repeated review is not necessary to satisfy the exhaustion requirement. See Duckworth v. Serrano, 454 U.S. 1, 4 n.1 (1981)("repetitious applications to state courts" not required); Codispoti v. Howard, 589 F.2d 135, 142 (3d Cir. 1978)(same).

Chadwick's seventh state habeas petition, a direct appeal to the Supreme Court of Pennsylvania, presented the following

issues: (1) Chadwick's imprisonment for failure to comply with a court order was contrary to due process because he was unable to comply with the order; (2) Chadwick was incarcerated without a jury trial or the presumption of innocence, contrary to due process; (3) the summary nature of the contempt proceedings deprived Chadwick of due process; (4) the order of imprisonment was facially invalid because it failed to specify a condition upon the fulfillment of which Chadwick's imprisonment would terminate; (5) the denial of Chadwick's right to appeal the adjudication of contempt and sanction of imprisonment violated his due process rights; (6) imprisonment for the nonpayment of money was a deprivation of due process; (7) civil confinement in excess of 50 months is a deprivation of due process; (8) imprisonment for violation of a court order issued without jurisdiction was a deprivation of due process; and (9) Chadwick's imprisonment was and still is punitive rather than coercive. These are the same issues raised in the petition presently before this court. Because the issues have now been presented to the highest state court, they have been exhausted. See Swanger, 750 F.2d at 295("[t]he exhaustion requirement . . . has been judicially interpreted to mean that claims must have been presented to the state courts; they need not have been considered or discussed by those courts."). Intervenor's motion to dismiss for failure to exhaust available state remedies will be denied.

II. Chadwick's Habeas Corpus Petition

A. Standard of Review

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2254, requires a federal court considering a habeas petition to afford state court determinations great deference. Habeas petitions filed since the enactment of AEDPA require a two-step analysis. Matteo v. Superintendent, SCI Albion, 171 F.3d 877, 891 (3d Cir. 1999) (en banc), cert. denied, Matteo v. Brennan, 528 U.S. 824 (1999). First, the federal court must determine whether the state court's decision was contrary to Supreme Court precedent. Id. Second, if the state court's decision was not contrary to Supreme Court precedent, the court must determine whether the state court decision represents an unreasonable application of Supreme Court precedent. Id.

B. Chadwick's Continued Imprisonment Represents an Unreasonable Application of Supreme Court Precedent: It Has Lost Its Coercive Effect and Is Now Impermissibly Punitive

Magistrate Judge Rapoport was of the opinion that Chadwick's imprisonment (now eighty months in duration) is still not impermissibly punitive. R&R at 31. Chadwick, objecting, argues that Judge Rapoport should have relied on In re Grand Jury Investigation, 600 F.2d 420 (3d Cir. 1979) (civil contempt is

only permissible as long as it has coercive effect).

1. Civil vs. Criminal Contempt

Imprisonment until the incarcerated party performs a required act he or she has refused to perform is civil in nature; imprisonment for a definite term as punishment for doing a forbidden act is criminal in nature. Gompers v. Buck's Stove & Range Co., 221 U.S. 418, 443 (1911)(reversing contempt sanctions of incarceration ranging from six to twelve months for violating an injunction; criminal sanctions could not be imposed in a civil proceeding). See also International Union, United Mine Workers v. Bagwell, 512 U.S. 821, 826-27 (1984).

> Civil confinement
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> is ordered where the defendant has refused to do an affirmative act required by the provisions of an order which, in either form or substance, was mandatory in its character. Imprisonment in such cases is not inflicted as a punishment, but is intended to be remedial by coercing the defendant to do what he refused to do. The decree in such cases is that the defendant stand committed unless or until he performs his affirmative act required by the court's order.

Gompers, 221 U.S. at 442. See also Bagwell, 512 U.S. at 827. Civil contempt sanctions can become punitive over time, if the coercive force has been lost. See In re Grand Jury Investigation, 600 F.2d at 423.

Chadwick's argument is that the length of his imprisonment has transformed the Delaware County Court's contempt sanction from coercive to punitive; the six and a half years he has spent

in prison belie the assertion that continued incarceration will coerce him to comply with the court's order. The state courts, presented with this argument, have disagreed.

Judge Rapoport, relying on dicta in Bagwell, also disagreed. In Bagwell, contempt fines totaling over $64 million were levied against a mine workers' union for violation of an injunction. The Court determined this sanction was criminal in nature because the fines were meant to be punitive and vindicate the court's authority. Bagwell, 512 U.S. at 828, 838.

To illustrate the punitive nature of the sanction imposed on the union, the Bagwell Court contrasted it with the "paradigmatic" civil contempt sanction: incarceration of a contemnor indefinitely until affirmative compliance with a court order to pay alimony or surrender property. Id. at 828. The contempt sanction imposed on Chadwick is such a "paradigmatic" sanction for civil contempt. Chadwick's incarceration was imposed to coerce his compliance with a court order to deposit marital funds with the court. The duration of his confinement has been entirely in Chadwick's hands; complying with the court order is the key to the jailhouse door. See Gompers, 221 U.S. at 442; Bagwell, 512 U.S. at 844.

Chadwick argues that even if his incarceration were initially civil in nature, it has since become punitive. He relies on In re Grand Jury Investigation, where a prisoner,

brought before a grand jury, refused to testify. For this refusal, he was held in civil contempt. The presiding judge ordered him confined until he agreed to testify; the duration of his imprisonment was not to exceed the term of the grand jury or eighteen months. The sentence under which he had been incarcerated was suspended during that period. The contemnor, seeking release from civil confinement after only three months, argued there was no substantial likelihood he would ever testify before the grand jury; his request for an evidentiary hearing to prove this was denied.

On appeal, the court explained that "[s]ince it is impossible to succeed in coercing that which is beyond a person's power to perform, continued incarceration for civil contempt 'depends upon the ability of the contemnor to comply with the court's order.'" In re Grand Jury Investigation, 600 F.2d at 423 (quoting Maggio v. Zeitz, 333 U.S. 56, 76 (1948)). Confinement for coercive purposes becomes punitive once the coercive force is lost. Id.

The court held that the defiant witness' history of silence was insufficient to show that the sanction had lost its coercive force; there was still a chance he would change his mind and decide to testify before the grand jury. Id. at 428. "[T]he civil contempt power would be completely eviscerated were a defiant witness able to secure his release merely by boldly

asserting that he will never comply with the court's order." Id. at 425. His three months of confinement had not lost its coercive force and become punitive in nature. The court did not terminate his confinement.

The maximum amount of time the defiant witness in In re Grand Jury Investigation would have had to spend incarcerated for his civil contempt was only eighteen months; there was a certain end to the sanction imposed. Chadwick's incarceration is indefinite in duration. The difficulty lies in the determination when coercive imprisonment actually ceases to be coercive and becomes punitive; no clear line exists. The Supreme Court of Pennsylvania has declined to rule on this issue and the United States Supreme Court has not pronounced an exact measure.

The duration of Chadwick's incarceration has always been up to him; compliance with the state court order would guarantee his release. Chadwick disagrees; he argues: (1) he does not have the present ability to comply, so his incarceration is indefinite; and (2) even if he did have the ability to comply, the six years and four months he has spent in prison for his failure to comply strongly suggests that further incarceration will have no coercive effect. Chadwick contends the line between coercive and punitive imprisonment has been crossed.

State courts have repeatedly found that Chadwick has the present ability to comply with the order to remit marital assets

to a court escrow account for equitable distribution.[2] Under AEDPA, this court is bound by those determinations absent rebuttal of the presumption of correctness of state court findings by clear and convincing evidence. See 28 U.S.C.A. § 2254(e)(1)(West 1994 & Supp. 2001).[3] The record below clearly

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[2]Judge Joseph Battle had found on at least three occasions that Chadwick had the present ability to comply. See Chadwick v. Chadwick, No. 92-19535, slip op. at 4, 5 (Ct. Com. Pl., Del. Cty., Pa. Sept. 22, 1999)(Chadwick feigning mental illness in effort to be released without remitting the marital funds; his refusal to sign authorizations to allow third parties to trace the funds establishes he still has control over them); Chadwick v. Hill, No. 96-6154, slip op. at 3 (Ct. Com. Pl., Del. Cty., Pa. June 21, 1996)("As stated in two previous opinions . . . , this court has found [Chadwick's] testimony, that he did not have control of the disputed funds or knowledge of the whereabouts of the disputed funds, to be incredible;" he could comply and may still comply); Chadwick v. Hill, No. 95-80202, slip op. at 8 (Ct. Com. Pl., Del. Cty., Pa., Sept. 20, 1995)("It is abundantly clear that [Chadwick] still has control over the disputed marital funds and certainly has the ability to comply with [the] July 22, 1994 order.").

The Superior Court has also found that Chadwick has the ability to comply. See Chadwick v. Hill, No. 96-19535, slip op. at 6 (Pa. Super. Ct. Apr. 23, 1997)("After careful review, we would agree that the record supports the trial court's conclusion that [Chadwick] not only has the present ability to comply but also that there is a realistic possibility that he will comply with the order."); Chadwick v. Chadwick, Nos. 95-1555, 95-3612, 95-3773, 96-963, slip op. at 12 (Pa. Super. Ct. Aug. 22, 1996)("Because [Chadwick] clearly holds the keys to the jailhouse door, we find that the sanctions imposed on him have not lost their coercive effect.").

[3]This subsection of the AEDPA states: "In a proceeding instituted by 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." 28 U.S.C.A. §2254(e)(1).

demonstrates that the state court findings were not erroneous.[4] This court is convinced that Chadwick has the present ability to comply with the July 22, 1994 order.

After what is now nearly seven years' incarceration for failure to comply, there is a serious question whether confinement is still serving a coercive purpose. After this significant period of time, there exists more than Chadwick's mere assertion that further confinement will not coerce

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[4]As recently as April 11, 2001, Judge Kenneth A. Clouse suggested a compromise: former President Judge Francis J. Catania would be appointed as Chadwick's guardian to trace the assets at issue. Chadwick would cooperate with former Judge Catania by providing him with all information and materials necessary to effectuate the search. Once former Judge Catania certified that Chadwick had cooperated and he had all the information necessary to conclude the investigation, Chadwick would be released. Chadwick refused this compromise; he would not agree unless his release were contingent only upon his delivering the requested documents to former Judge Catania. See Chadwick v. Chadwick, No. 92-19535, April 11, 2001 Hearing, Tr. at 4, 8.

Twice in August, 1995, Chadwick declined to provide authorization to allow third parties to investigate his assets or to allow the IRS to release his 1993 tax return. See Chadwick v. Hill, No. 95-80160, August 17, 1995 Hearing, Tr. at 74; Chadwick v. Hill, No. 95-80160, August 8, 1995 Hearing, Tr. at 22-23.

Chadwick's refusals to allow investigation of the funds without his release from custody suggests that he is concerned the assets will be found; if he is released upon signing authorizations, he could locate and secrete the assets, prevent them from being found and remitted to the court. He prefers to remain incarcerated rather than allow his former wife to receive an equitable allotment of the marital assets. This suggests that Chadwick will continue to do all in his power to keep that money hidden and beyond the jurisdiction of the Delaware County Court.

compliance. See In re Grand Jury Investigation, 600 F.2d at 425. The state courts have repeatedly determined that Chadwick's incarceration has not lost its coercive force.[5] This court must determine whether that conclusion is contrary to Supreme Court precedent, and if not, whether it is an unreasonable application of Supreme Court precedent.

If, as Chadwick contends, the confinement has lost its coercive force, it has become punitive. See In re Grand Jury Investigation, 600 F.2d at 423-24. The burden is on Chadwick to show that there is no "substantial likelihood" that compliance will be the result of continued incarceration. Id. at 425. His obstinacy during more than six and half years of imprisonment is

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[5]After Chadwick had been incarcerated for five months, Judge Joseph Battle held that the contempt sanction imposed was civil in nature; Chadwick was jailed for failure to pay a debt. See Chadwick v. Hill, No. 95-80202, slip op. At 9 (Ct. Com. Pl., Del. Cty., Pa. Sept. 20, 1995). Nine months later, Judge Battle held that "the coercive sanctions imposed may yet cause [Chadwick] to ultimately comply with [the] July 22, 1994 order and therefore, [Chadwick's] contempt is not punitive in nature . . . ." Chadwick v. Hill, No. 96-6154, slip op. At 5 (Ct. Com. Pl., Del. Cty., Pa. June 21, 1996). Two months after that, the Superior Court found that "the sanctions imposed on [Chadwick] have not lost their coercive effect." Chadwick v. Chadwick, Nos. 95-1555, 95-3612, 95-3773, 96-963, slip op. At 12 (Pa. Super. Ct. Aug. 22, 1996). After Chadwick had been incarcerated for over two years, the Superior Court still found the contempt was coercive in nature, holding that "there is a realistic possibility that [Chadwick] will comply with the order." Chadwick v. Hill, No. 96-19535, slip op. at 6 (Pa. Super. Ct. Apr. 23, 1997). The Pennsylvania Supreme Court's summary denial of Chadwick's petition for writ of habeas corpus after Chadwick had been incarcerated for almost five years implies that it, too, considered the imprisonment still coercive in nature. See Chadwick v. Goldberg, No. 99-223, Order (Pa. Feb. 9, 2000).

persuasive that Chadwick will never voluntarily deposit the disputed funds with the court; it seems clear he is willing to remain incarcerated for life rather than allow his ex-wife access to a share of the funds.

The state court conclusions on this issue on at least five occasions, from five months after his confinement until the Pennsylvania Supreme Court's summary denial after he had been imprisoned for almost five years, were not contrary to Supreme Court precedent; no bright line rule exists for making such a determination. The Pennsylvania Supreme Court's summary denial in February, 2000, implies its conclusion that the confinement had not then crossed the line from coercive to punitive, but without an explanation of the denial, this court does not know why.

Now, after nearly seven years, it is no longer reasonable to conclude Chadwick's continued confinement might still result in compliance with the July 22, 1994 order. Chadwick's continued incarceration cannot be rationalized under Gompers or Bagwell in light of Chadwick's clear and convincing proof there is no "substantial likelihood" that his remaining in custody will result in his compliance; his confinement, no longer coercive, is an unreasonable application of Supreme Court precedent.

2. Due Process

The protracted duration of his incarceration could not have been foreseen by the state court when civil confinement was imposed. The state contempt proceedings were adequate for the imposition of a civil sanction to coerce compliance. However, after such an extensive time period, Chadwick cannot remain incarcerated without the due process attendant to imposition of criminal sanctions.[6] As the Supreme Court recently held,

> The Fifth Amendment's Due Process Clause forbids the Government to 'deprive' any 'person . . . of . . . liberty . . . without due process of law.' Freedom from imprisonment -- from government custody, detention, or other forms of physical restraint -- lies at the heart of the liberty that Clause protects. And . . . government detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow non-punitive circumstances, where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint.

See Zadvydas v. Davis, 121 S.Ct. 2491, 2498-99 (2001) (holding an alien may be held pending deportation by the Immigration and Naturalization Service under 8 U.S.C. § 1231 for up to six months, but not indefinitely, without the due process of law afforded in a criminal proceeding) (internal citations omitted). There is no such special justification in this case. Nothing

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[6]The full panoply of procedural protections attendant to an allegation of criminal conduct apply. An alleged criminal contemnor is entitled to counsel and proof of contempt beyond a reasonable doubt; if the sanction involves more than six months' incarceration, the alleged contemnor has the right to trial by jury. See Bagwell, 512 U.S. at 826-27, 834.

excuses Chadwick's continued defiance of a court order, but his incarceration has crossed the line from coercive to punitive and Constitutional requirements of due process compel his release.

Although Chadwick may not remain incarcerated without due process, his intractability should not be permitted to thwart the authority of a valid court order. The Delaware County Court is not without the power to institute criminal proceedings against Chadwick (such as a perjury or criminal contempt prosecution). See In re Grand Jury Investigation, 600 F.2d at 425.

II. Remaining Grounds For Habeas Relief

The court agrees with the remainder of the R&R that Chadwick was not denied due process for any of the reasons alleged and that the state law-based claims are not subject to federal habeas review; he is not entitled to habeas relief on any of the other grounds asserted in his petition.

CONCLUSION

Intervenor's motion to dismiss for failure to exhaust available state remedies is denied. Chadwick has previously presented his current claims to the Supreme Court of Pennsylvania; the fact that he can now appeal the state court's

most recent April 11, 2001 denial of his eighth state habeas petition is not an impediment to federal habeas review.

For eighty months, Chadwick has refused to comply with a valid state court order to deposit $2,500,000.00 in marital assets with the court; this renders unreasonable the belief that continued incarceration will have a coercive effect. Chadwick has the present ability to comply, but the duration of his imprisonment has crossed the line from coercive to punitive, and requires his release. Chadwick should be afforded due process in any proceeding to impose additional criminal sanctions.

An appropriate Order follows.[7]

[7]The government does not need a certificate under 28 U.S.C. § 2253(c)(1) to appeal this decision. United States ex rel. Tillery v. Cavell, 294 F.2d 12, 15 (3d Cir. 1961) ("The requirement that a certificate issue before an appeal could be taken was plainly a device to reduce appeals from decisions in favor of states or their officers not their appeals from decisions against them.") The rationale of Tillery applies equally to Ms. Chadwick as Intervenor: since petitioner prevails, the court need not issue a § 2253(c)(1) certificate before Ms. Chadwick may take an appeal.

IN THE UNITED STATES DISTRICT COURT
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H. BEATTY CHADWICK	:	**CIVIL ACTION**
	:	
v.	:	
	:	
JAMES JANECKA	:	**NO. 00-1130**

ORDER

AND NOW, this day of January, 2002, upon careful and independent consideration of the petition for writ of habeas corpus (#1), the Report and Recommendation of United States Magistrate Judge Arnold C. Rapoport (#24), the petitioner's objections thereto (#27), Intervenor's motion to dismiss (#30), and the evidence produced at the April 20, 2001 hearing and in post-hearing submissions (#34, #35, #36), it is **ORDERED** that the Report and Recommendation is **ACCEPTED IN PART AND REJECTED IN PART** and the petitioner's objections are **SUSTAINED** for the reasons stated in the Memorandum filed this day, and it is further **ORDERED** that:

1. Intervenor's Motion to Dismiss is **DENIED**.

2. Petitioner's Petition for Habeas Corpus is **GRANTED**.

3. This order is stayed and Chadwick shall remain in state custody for thirty (30) days to allow appeal and application for further stay of this court's order to the appellate court.

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Norma L. Shapiro, S.J.