

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-201

OCTOBER TERM, 2005

Edwin A. Towne, Jr.	}	APPEALED FROM:
	}	
	}	
v.	}	Chittenden Superior Court
	}	
State of Vermont	}	DOCKET NO. S0453-05 CnC
	}	

Trial Judge: Matthew I. Katz

In the above-entitled cause, the Clerk will enter:

Petitioner appeals from the superior court=s denial of his motion seeking post-conviction relief. We affirm.

Petitioner is incarcerated based on a conviction of first-degree murder. Since his conviction, he has filed no less than seven petitions for post-conviction relief (PCR) in the superior court, in addition to numerous other requests for relief in state and federal court. On October 21, 2004, he filed in the superior court a AMOTION FOR APPROPRIATE RELIEF PURSUANT TO ANY AVAILABLE REMEDY INCLUDING VRAP RULE 21, @ alleging a violation of his constitutional rights when the State succeeded in having his federal habeas corpus action dismissed in federal court on a theory of laches. On May 6, 2005, the superior court dismissed the motion, stating that petitioner=s filing was essentially another PCR petition claiming inadequate representation by counsel in a prior PCR proceeding, and that no constitutional right to counsel, let alone effective counsel, attaches in PCR proceedings. On appeal, petitioner argues that the superior court misconstrued his motion, thereby demonstrating bias, and that his right to due process was violated when the superior court clerk misplaced his motion until the allegedly biased judge rotated back into the court in which the motion was filed.

According to petitioner, his motion did not claim ineffective assistance by his PCR counsel, but instead argued that the Attorney General violated his rights to due process and equal protection by asserting the defense of laches in federal court when state law does not recognize laches as a defense in state PCR proceedings. See In re Stewart, 140 Vt. 351, 360 (1981) (declining to apply doctrine of laches to actions brought under 13 V.S.A. ' 7131). This argument is unavailing. Petitioner=s six-page motion alleged a variety of improprieties by various persons and agencies, and thus the superior court=s interpretation of the motion is understandable. In any event, accepting petitioner=s motion for what he claims it to be affords him no relief. In dismissing petitioner=s federal request for a writ of habeas corpus, the federal court relied upon a specific federal rule of laches governing disposition of habeas petitions. We fail to see why the Attorney General of the State of Vermont should be precluded from arguing for dismissal of a federal action for a writ of habeas corpus based on a governing federal rule, even if the federal rule incorporates a doctrine that may not be applied as a defense in state PCR proceedings. In actuality, petitioner=s motion seeks to somehow circumvent the federal court=s dismissal of his habeas corpus action.

The superior court did not err in dismissing petitioner=s motion, even if it mischaracterized the motion as a successive petition for post-conviction relief. See Sorge v. State, 171 Vt. 171, 174 n.* (2000) (Supreme Court may affirm correct result in trial court for different reasons on appeal). Petitioner cites no statutory or common law cause of

action for relief in the superior court from the State=s successful litigation in federal court based on established federal authority, even if that authority differs from state law governing actions in state court. Moreover, no basis appears for extraordinary relief under V.R.A.P. 21. This Court is without authority to afford petitioner any relief from the State prevailing in federal court according to federal law. As to Rule 21(b), petitioner fails to set forth any reason why his dissatisfaction with the federal court=s decision and his constitutional claims cannot be addressed through a federal appeal. Because the superior court correctly dismissed petitioner=s motion, we need not address his allegations that the court demonstrated bias by delaying review of and eventually dismissing the motion.

Affirmed.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice