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Baker v. Corcoran 220 F.3d 276 (4th Cir. 2000)

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I. Facts

On June 6, 1991, Jane Tyson ("Tyson") was shot and killed in the parking lot of the Westview Mall near Baltimore, Maryland. As Tyson and her grandchildren were entering Tyson's car to return home, a man ran up to the car and shot Tyson in the head. A witness in the parking lot observed two men run from Tyson's car and enter a blue Chevrolet Blazer. The witness followed the Blazer, recorded the license number, and gave it to the police. Police stopped the Blazer a short time later. The passenger fled on foot, but the driver, Gregory Lawrence ("Lawrence"), was arrested. The passenger, Wesley Eugene Baker ("Baker"), was arrested soon thereafter. At the time of Baker's arrest, police observed what appeared to be blood on his shoe, sock, and leg. The blood was later determined to be Tyson's blood. Tyson's purse and wallet were found along the path of Baker's flight from the stopped Blazer. A search of the Blazer revealed the firearm used to shoot Tyson. Baker's fingerprints were found on the driver's side door and window of Tyson's car.[1]

Baker was charged with first-degree premeditated murder, first-degree felony murder, robbery with a deadly weapon, and the use of a handgun during the commission of a felony.[2] At trial, counsel's strategy was to concede Baker's involvement in the crime but argue that Baker was not a principal in the first degree. Counsel requested a special verdict requiring the jury to answer whether the State had proven beyond a reasonable doubt that Baker was a principal in the first degree.[3] The jury found that Baker was a principal in the first degree and Baker was convicted on all counts. Baker elected to be sentenced by the court rather than the jury. The court found that the State had proved one aggravating circumstance and rejected Baker's mitigation evidence. Baker was sentenced to death.[4]

In December of 1994, Baker filed a petition for post-conviction relief ("PCR"), alleging that trial counsel were constitutionally ineffective. The Maryland Court of Appeals denied the application for leave to appeal and

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1. Baker v. Corcoran, 220 F.3d 276, 281-82 (4th Cir. 2000).

2. *Id.* at 282.

3. *Id.*; *see* MD. CODE ANN., CRIMES & PUNISHMENT § 413(e)(1)(i) (Supp. 1999) (defining principal in the first degree).

4. *Baker*, 220 F.3d at 282. The trial court found as an aggravating circumstance that the murder was committed during the course of a robbery. *Id.*; *see* MD. CODE ANN., CRIMES & PUNISHMENTS § 413(d)(10) (Supp. 1999).

the United States Supreme Court denied certiorari.[5] The United States District Court for the District of Maryland appointed federal habeas counsel. In October of 1996, Baker moved to reopen the state post-conviction relief hearing, alleging that certain claims were not presented in the initial proceeding as a result of counsel's incompetence. The motion to reopen included claims that the trial court had issued an unconstitutional instruction regarding the meaning of reasonable doubt, that trial and appellate counsel were constitutionally ineffective for failing to object to the reasonable doubt instruction and to challenge it on appeal, and that trial counsel failed to conduct a proper investigation.[6] The state court denied the motion to reopen the PCR hearing and the Maryland Court of Appeals again denied application for leave to appeal.[7]

In March of 1997, Baker filed a federal petition for a writ of habeas corpus. The State moved to dismiss the petition, arguing that Maryland had satisfied the "opt-in" requirements of 28 U.S.C. §§ 2261(b) and (c), and that Baker's petition was barred by the 180-day limitation period imposed on capital defendants in "opt-in" states.[8] The district court conducted a hearing on the State's motion to dismiss Baker's habeas petition and denied the motion.[9] The district court denied habeas relief, but granted a certificate of appealability to the United States Court of Appeals for the Fourth Circuit on all issues raised on appeal.[10]

II. Holding

The Fourth Circuit held that Maryland had not satisfied the "opt-in" requirements of 28 U.S.C. § 2261, and that Baker's appeal was not time barred.[11] The court considered Baker's claims on the merits, held that Baker was not entitled to relief on his claims, and affirmed the ruling of the district court.[12]

III. Analysis / Application in Virginia

A. Satisfying the "Opt-in" Requirements of 28 U.S.C. § 2261

The Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA") amended Chapter 153 of Title 28, and added Chapter 154 which

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5. *Baker*, 220 F.3d at 283.
6. *Id.*
7. *Id.*
8. *Id.*; *see* 28 U.S.C. § 2261 (b)-(c) (2000).
9. *Baker*, 220 F.3d at 283-84.
10. *Id.* at 284. The Maryland state law issues involved in Baker's appeal are not discussed below due to their lack of application in Virginia.
11. *Id.*; *see* 28 U.S.C. § 2261.
12. *Baker*, 220 F.3d at 297-98.

applies to habeas petitions filed by state prisoners subject to capital sentences.[13] Chapter 154 imposes stringent limitations on habeas petitions in capital cases.[14] To take advantage of the limitations imposed, a state must first satisfy the requirements of 28 U.S.C. § 2261 (b) and (c).[15] The requirements imposed by § 2261 (b) and (c) are the following: (1) the state must establish "by statute, rule of its court of last resort, or by another agency authorized by State law, a mechanism for appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State post-conviction proceedings;"[16] (2) the mechanism "must provide standards of competency" for state post-conviction counsel; and (3) the mechanism "must provide for the entry of an order by a court of record" appointing counsel or denying counsel when a petitioner is found not to be indigent.[17] A fourth requirement not addressed in *Baker* is that the state must affirmatively offer counsel to the petitioner.[18] The "opt-in" requirements operate to ensure that states seeking greater federal deference to habeas decisions in capital cases provide meaningful habeas proceedings at the state level.[19]

In *Baker*, the Fourth Circuit found that Maryland failed to satisfy the opt-in requirements of Chapter 154.[20] Specifically, the court found the following: (1) Maryland does not adequately compensate post-conviction counsel; (2) the competency standard of Maryland Regulations Code Title 14, section 06.02.05(B)(1) is inadequate and is not applied to appointed counsel; and (3) the mechanism does not provide for a court order addressing the appointment of counsel or a determination that petitioner is not indigent.[21] Accordingly, the Fourth Circuit held that Baker's petition was not time barred.[22]

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13. Anti-Terrorism and Effective Death Penalty Act, Pub. L. No. 104-132, § 107 (a), 110 Stat. 1214, 1221 (1996) (codified as amended at 28 U.S.C. § 2261 (2000)).

14. *Baker*, 220 F.3d at 284; *see* 28 U.S.C. § 2261.

15. *Baker*, 220 F.3d at 284; *see* 28 U.S.C. § 2261 (b)-(c) (2000).

16. 28 U.S.C. § 2261(b).

17. 28 U.S.C. § 2261(c).

18. Weeks v. Angelone, 4 F. Supp. 2d 497, 506 (E.D. Va. 1998).

19. *Baker*, 220 F.3d at 284 (citing Bennett v. Angelone, 92 F.3d 1336, 1342 (4th Cir. 1996)).

20. *Id.* at 287.

21. *Id.*

22. *Id.* at 286-87. The State argued that it provides adequate compensation for post-conviction counsel. *Id.* at 285. The court found that Maryland's system of compensation resulted in substantial loss to attorneys and their firms, and therefore did not adequately compensate post-conviction counsel. *Id.* at 285-86. The State contended that it is not required to promulgate competency standards for post-conviction counsel. *Id.* at 286-87. The Fourth Circuit flatly rejected this argument based upon the plain language of § 2261(b). *Id.* at 287. Finally, the State contended that literal compliance with § 2261(c) was not an essential component of "opt-in" eligibility. *Id.* Section 2261(c) requires the entering of a court order addressing the appointment, refusal, or denial of post-conviction counsel. *Id.* The Fourth

B. Federal Issues and the Exhaustion Doctrine

Baker claimed that the trial court's premeditation instruction violated the Due Process Clause.[23] The State argued that Baker's due process challenge to the premeditation instruction was defaulted because it was never presented to the state courts.[24] Under 28 U.S.C. § 2254(b)(1), a federal court may not grant a writ of habeas corpus until the petitioner has first exhausted his state remedies by presenting his claims to the highest state court.[25] Under 28 U.S.C. § 2254(c), a petitioner shall not be deemed to have exhausted state remedies "if he has the right under the law of the state to raise, by any available procedure, the question presented."[26] A claim may be treated as exhausted if it is clear that the claim would be procedurally barred under state law, even if not presented to highest state court.[27] In order to satisfy exhaustion, the petitioner need not cite "book and verse on the federal [C]onstitution," but the claim must be "fairly presented" to the state court.[28] Claims must be patently presented by setting out the facts and the controlling legal principles.[29] Most importantly, the presentation to the state court of a similar state claim does not satisfy the exhaustion requirements for the federal issue.[30] Baker only challenged the premeditation instruction as having no basis in Maryland law, but never asserted in state habeas that the instruction violated the federal Constitution.[31] Baker

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Circuit rejected this argument on its face because § 2261(c) explicitly requires the entrance of a court order. *Id.*

23. *Id.* at 288.

24. *Id.* The challenged jury instruction on premeditation read:

> Premeditated means that the Defendant thought about the killing and that there was time, even if brief, for the Defendant to form the intent to kill. The premeditated intent to kill must be formed before the killing. Premeditation requires proof that the conscious and deliberate intention to do the fatal act existed for an appreciable time before the act was done. The law does not require that the intention to kill exist for any considerable length of time before the fatal act was done; it is sufficient if there is time for the mind to think and consider the act and then determine to do it. The intensity and effect of a wound may provide adequate evidence of a premeditated and determined effort, not simply to harm, but to destroy any semblance of life remaining in Jane Tyson. If the killing stems from a choice made as the result of thought, however short the struggle between the intention and the act, it is sufficient to characterize the crime as deliberate and premeditated murder.

Id. at 288. The "intensity and effect of a wound may provide adequate evidence of a premeditated . . . effort" language was the portion of the instruction challenged by Baker. *Id.*

25. *Id.*; *see* 28 U.S.C. § 2254 (b)(1) (2000).

26. *Baker*, 220 F.3d at 288; *see* 28 U.S.C. § 2254 (c) (2000).

27. *Baker*, 220 F.3d at 288 (citing Gray v. Netherland, 518 U.S. 152, 161 (1999)).

28. *Id.* at 289 (citing Picard v. Connor, 404 U.S. 270, 278 (1971)).

29. *Id.*

30. *Id.* (citing Duncan v. Henry, 513 U.S. 364, 366 (1995) (per curiam)).

31. *Id.* Baker also relied on *West v. Wright*, 931 F.2d 262, 266 (4th Cir. 1991), *rev'd on other grounds*, 505 U.S. 277 (1992) (holding that "[a]ny challenge to the sufficiency of the evidence to convict in a state prosecution is necessarily a due process challenge to the

contended on appeal that the constitutional components of his claim were readily apparent and thus the issue was fairly presented.[32] The Fourth Circuit found Baker's argument "flatly inconsistent" with the principles of exhaustion and held that Baker's Due Process Clause challenge to the premeditation instruction was not exhausted in state court.[33]

IV. Conclusion

Several federal courts have held that Virginia does not satisfy the "opt-in" requirements and is not entitled to the expedited review provisions of Chapter 154.[34] The United States District Court for the Eastern District of Virginia in *Weeks v. Angelone*[35] cited numerous decisions holding that Virginia may not "opt-in" under Chapter 154 because the Commonwealth does not provide a mechanism for the appointment, compensation, and payment of reasonable litigation expenses for counsel.[36] The Commonwealth's failure to establish a mechanism that provides for meaningful state

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conviction"). The Fourth Circuit in *Baker* held that *West* was inapplicable. *Baker*, 220 F.3d at 289. Baker's challenge was to the constitutionality of the permissive inference, while the challenge in *West* was to the sufficiency of the evidence under any jury instruction. *Id.*

32. *Baker*, 220 F.3d at 289. The principle of exhaustion requires that a claim is procedurally defaulted if the claim could have been raised on direct appeal but was not. The State contended that Baker's claims were not fairly presented to the state court in his motion to reopen the PCR hearing. The State argued that Baker's claims would be procedurally barred in the Maryland courts. The Fourth Circuit found that Maryland law expressly allowed the right to raise new claims in a motion to reopen a PCR proceeding. The Fourth Circuit found that (1) the state court's decision not to review Baker's new claims did not mean that the claims were unexhausted; and (2) Baker exhausted his claims in state court, notwithstanding the denial of the motion to reopen the PCR. As a result, the Fourth Circuit was able to reach the merits of Baker's claims. *Id.*

33. *Id.* Baker made no argument that cause or prejudice should have excused his default so the court did not address that issue. *Id.*

34. *See* Bennett v. Angelone, 92 F.3d 1336, 1342 (4th Cir. 1996) ("the Virginia statutes and regulations do not specifically provide for compensation or payment of litigation expenses of appointed counsel, as §§ 107 requires"); *see also* Satcher v. Netherland, 944 F. Supp. 1222, 1241-42 (E.D. Va. 1996) (discussing why Virginia fails to meet the compensation requirement); Wright v. Angelone, 944 F. Supp. 460, 464-65 (E.D. Va. 1996) (same).

35. 4 F. Supp. 2d 497 (E.D. Va. 1998).

36. Weeks v. Angelone, 4 F. Supp. 2d 497, 506-07 (E.D. Va. 1998) (holding that Virginia fails to meet the first "opt-in" requirement of a comprehensive mechanism for the appointment, compensation, and payment of reasonable litigation expenses for counsel); *see Bennett*, 92 F.3d at 1342 ("the Virginia statutes and regulations do not specifically provide for compensation or payment of litigation expenses of appointed counsel"); *see also Satcher*, 944 F. Supp at 1241-42 (holding that this requirement could only be satisfied by strict, rather than substantial, compliance and since there has been no change in Virginia law to satisfy this requirement, the Commonwealth is not entitled to the special review provisions of Chapter 154); *Wright*, 944 F. Supp. 464-65 (finding that Virginia fails to satisfy the compensation requirement).

habeas proceedings prevents the *quid pro quo* arrangement available for states that comply with Chapter 154.[37]

Baker's petition for federal habeas relief is a reminder that every death penalty case is at the same time a state case and a federal case. Defense counsel must always keep this in mind and constantly be on the alert for federal issues to preserve for appeal. In addition to recognizing the issues, counsel must raise the issues and exhaust all state remedies in order to preserve those issues for federal review. Raising a state law issue that implicates a constitutional issue without simultaneously and specifically arguing the federal issue is insufficient to preserve the issue for appeal in the federal courts.

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37. The effect in Virginia is that habeas petitioners have one year in which to file their petitions instead of the 180-day limit for petitioners in "opt-in" states. Williams v. Taylor, 189 F.3d 421, 431 (4th Cir. 1999) (citing Brown v. Angelone, 150 F.3d 370, 375 (4th Cir. 1998)).