

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus
By a Person in State Custody

Prisoner’s Name: Thaddeus Lowery
Prison Number: #296212
Docket No.: 3:20-cv-00528
Place of Confinement: Willard Cybulski, CI

THADDEUS LOWERY :
 :
 Petitioner, :
 :
 v. :
 :
 ROLLIN COOK, COMMISSIONER, :
 CONNECTICUT DEPARTMENT OF CORRECTION :
 Respondent. : Apr. 17, 2020

PETITION

INTRODUCTION

1. Petitioner seeks release or, in the alternative, less restrictive confinement, on the ground that he is in custody in violation of the Eighth Amendment to the Constitution of the United States.

2. The Connecticut Superior Court, New Haven GA 23, entered a judgment of conviction against Petitioner for violation of Conn. Gen. Stat. § 21a-278(b), Sale Of Certain Illegal Drugs, on 8/23/2018, Docket No. N23N-CR17-0180682-S, and Petitioner was sentenced on August 25, 2018, to a sentence of “six years jail, execution suspended after 30 months, probation three years.”

3. Petitioner was also convicted for violation of Conn. Gen. Stat. § 21a-278(b), Sale of Certain Illegal Drugs, on 8/23/2018, Docket No. N23N-CR17-0180684-S, and Petitioner was sentenced to “1 year jail, execution suspended, condition discharge 1 year.”

3. Petitioner plead guilty to both counts and did not testify at any pretrial hearing, trial, or post-trial hearing.

4. Petitioner did not appeal from the judgment of conviction.

5. Petitioner has not previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court.

FACTS – ABSENCE OF CORRECTIVE STATE PROCESS

6. On March 12, 2020, the Connecticut Judicial Branch announced that, under the terms of the Judicial Branch’s Continuity of Operations Plan (COOP), the courts will schedule and hear only those matters identified as “Priority 1 Business Functions” until further notice.

7. The following matters were included as Priority 1 Business Functions:

- (a) Criminal arraignments;
- (b) Juvenile Detention hearings;
- (c) Family orders of relief from abuse;
- (d) Civil orders of relief from abuse;
- (e) Civil protection orders;
- (f) Ex parte motions;
- (g) Orders of temporary custody (Juvenile Matters);
- (h) Orders to appear (Juvenile Matters);
- (i) Emergency ex parte order of temporary custody;
- (j) Juvenile detention operations for detainees held for juvenile court;
- (k) Termination of parental rights;
- (l) Domestic violence victim notification; and
- (m) Civil and family capias mittimus execution and bond review.

8. Notably absent from the list of Priority 1 Business Functions are any available State corrective processes for resolution of claims on the ground that a person is in custody in violation of the Constitution of the United States.

9. Because sentence modification motions and orders are not included on the list of Priority 1 Business Functions, Petitioner cannot file such a motion with the court where he was originally sentenced.

10. Because state habeas corpus petitions are not included on the list of Priority 1 Business Functions, Petitioner cannot file a petition for a writ of habeas corpus with the Connecticut Superior Court.

11. Connecticut General Statutes § 52-466 requires that an application for a writ of habeas corpus under state law be made to the Superior Court for the judicial district of Tolland.

12. As of the filing of this Petition, no courthouse is open in the judicial district of Tolland, even for the handling of Priority 1 Business Functions.

13. As of the filing of this Petition, no information is available on when the courthouses of the Superior Court for the judicial district of Tolland will be opened, or when state habeas corpus petitions or sentence modification motions will be handled by the courthouses that are open.

**GROUND ONE: VIOLATION OF THE EIGHTH AMENDMENT TO THE
CONSTITUTION OF THE UNITED STATES**

14. COVID-19 presents a high risk of serious illness or death to individuals with pre-existing medical conditions, especially respiratory conditions.

15. There is an increased risk of rapid spread of COVID-19 among persons who are living in congregate settings, such as prisons.

16. Willard-Cybulski CI has “dormitory-style” housing with approximately 100 men in each dormitory.

17. At least eight prisoners at Willard-Cybulski have tested positive for COVID-19.

18. Willard-Cybulski CI is failing to provide prisoners with social distance of even three feet when prisoners use the telephone.

19. Willard-Cybulski CI has returned prisoners who have high temperatures back to their dormitories if they do not have severe symptoms, even though those prisoners may be asymptomatic carriers of COVID-19. Because medical treatment is provided at Willard-Cybulski in-house, there is a higher risk of spread within the institution.

20. The inmates of Willard-Cybulski lack adequate access to hand sanitizer, cleaning supplies, and soap to protect themselves from infection with COVID-19.

21. The difficulty of preventing spread of COVID-19 in close quarters is compounded at Willard-Cybulski, which has a large population of individuals with chronic illnesses.

22. At the present time and even before the COVID-19 pandemic, Willard-Cybulski lacks adequate medical staff, personal protective equipment, and medical resources to address a pandemic outbreak within its walls.

23. Petitioner Thaddeus Lowery has asthma, and a bullet wedged in the upper right quadrant of his lung from a gunshot, and gastrointestinal issues secondary to his gunshot wound. Petitioner's underlying health issues render him particularly susceptible to infection from COVID-19.

24. Petitioner is being incarcerated in a room with eight people.

25. Although Petitioner has been approved for transitional supervision at a halfway house because he is near the "maximum release date" for his sentence, December 14, 2020, halfway houses are no longer accepting additional inmates at this time.

26. Petitioner has a solid home environment to return to in New Haven, where he has a home with his wife, and a job with his family's moving company, if he is permitted to work.

27. In the absence of state corrective process within the court system, Petitioner has repeatedly attempted to exhaust all potential available administrative remedies. Petitioner has made repeated requests for emergency consideration by the Board of Pardon and Paroles and the Department of Correction Community Release Unit, both within and outside of Willard-Cybulski CI. However, officials in neither department have responded to any of Petitioner's emergency requests.

28. Through no fault of his own, Petitioner lacks any effective means of securing his constitutional rights other than the instant petition. Petitioner's continued incarceration at Willard-Cybulski violates his right to protection from Cruel and Unusual Punishment secured by the Eighth Amendment to the United States Constitution.

29. Through no fault of his own, all grounds for relief have not been presented to the highest state court having jurisdiction. As alleged above, the courts are closed to the relief that Petitioner seeks.

30. No previous petition, application, or motion has been filed in any federal court regarding the subject matter of this Petition.

31. Petitioner has no petition or appeal now pending in any court, either state or federal, regarding the subject matter of this Petition.

32. Petitioner was represented by the New Haven Public Defender Office, GA 23, in his criminal case.

33. The one-year limitation imposed by 28 U.S.C. § 2244(d) does not apply in this case because Petitioner has been prevented from filing by State action in violation of the Constitution and laws of the United States, and the date on which the factual predicate of the

