

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>ANTONAUS WEBB,</b>	)	
	)	
<b>Petitioner,</b>	)	<b>Civil Action No. 7:00CV00343</b>
	)	
<b>v.</b>	)	<b><u>MEMORANDUM OPINION</u></b>
	)	
<b>DAVID ROBINSON, WARDEN,</b>	)	<b>By: Samuel G. Wilson</b>
	)	<b>Chief United States District Judge</b>
<b>Respondent.</b>	)	

This is the petition by Antonaus Maurice Webb for writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his conviction for possession with intent to distribute cocaine base and related convictions in the Circuit Court for the City of Lynchburg, Virginia. The court denies Webb’s petition.

**I.**

Lynchburg police officers were conducting an investigation unrelated to Webb in the 1700 block of Grace Street in the City of Lynchburg when one of the officers saw Webb drive by and noted to the other officers that the Lynchburg Police Department “had a warrant for Mr. Webb.” (May 15, 1998, Tr. at 20.) One of the officers immediately called the dispatch center to confirm whether there was a warrant on file, and another officer pursued and stopped Webb. According to the officer who stopped Webb, Webb attempted to elude him, and Webb resisted. The officer, with the help of two other officers, subdued Webb, placed him under arrest, and searched him. They found a cell phone, \$257 in cash, and two plastic bags, one containing marijuana and the

other containing crack cocaine. At the time the officer stopped Webb's motor vehicle, the dispatch center had responded that there were "possible" warrants. The dispatch center had not yet definitely confirmed that there was a warrant on file.

Webb was charged with possession of marijuana, possession of crack cocaine with the intent to distribute, and obstruction. Webb moved to suppress the evidence as the product of an unlawful arrest, search, and seizure. He contended that the officers arrested him based only on a possible warrant, and that they, therefore, lacked probable cause. One officer testified that there are in fact warrants 90 percent of the time when the dispatch center responds that there are "possible" warrants. Under the totality of the circumstances, the trial judge found probable cause for the arrest, search, and seizure.

Webb pled not guilty and waived trial by jury. The judge found him guilty of possession of marijuana, obstruction, and possession of crack cocaine with intent to distribute, and sentenced Webb thirty days for possession of marijuana, 12 months for obstruction, and 10 years on the cocaine charge.

Webb appealed to the Court of Appeals of Virginia on three pertinent grounds. First, he contended that the trial judge erroneously concluded that the officers had probable cause to arrest and search him; second, he contended there was insufficient evidence to convict him of possession with intent to distribute; and third, the trial judge permitted expert testimony on the ultimate issue when he permitted a police officer to testify about personal use quantities of cocaine. The Court of Appeals of Virginia denied Webb's appeal, and the Supreme Court of Virginia refused Webb's petition for appeal.

Webb filed his current petition for writ of habeas corpus in this court claiming four

grounds for relief: (1) he was denied effective assistance of counsel because his attorney failed to object at sentencing “to charges submitted by the Commonwealth” for which Webb had not “yet” been sentenced; (2) he was denied effective assistance of counsel because his attorney failed to object at sentencing to admitting “violation of probation as a felony;” (3) his convictions were obtained by the use of evidence acquired from an unlawful arrest; and (4) the evidence was insufficient to support his conviction of possession with intent to distribute cocaine and was obtained with the admission of improper opinion evidence.

Respondent moved to dismiss Webb’s petition as a mixed petition because it contains exhausted and unexhausted claims: Webb has presented claims 3 and 4 but not 1 and 2 to the Supreme Court of Virginia. This court informed Webb that it would have to dismiss his petition unless he could demonstrate that he had exhausted claims 1 and 2. Webb responded that he wished “to withdraw all non-exhausted claims,” unless the court could find “cause and prejudice.”

## **II.**

### **Claims 1 and 2.**

Webb has asked the court to permit him to withdraw claims 1 and 2 unless the court were able to find “cause and prejudice.” Webb has suggested no reason why he did not present these claims to the Supreme Court of Virginia in a state habeas petition. The court finds no excuse for the default and, accordingly, will grant Webb’s motion to withdraw them.

### **Claim 3.**

Webb’s third claim, that his conviction was obtained by the use of evidence acquired from an unlawful arrest, is procedurally barred. The court cannot hear a Fourth Amendment claim when the state has provided petitioner with a full and fair opportunity to litigate that claim. See

Stone v. Powell, 428 U.S. 465 (1976). The state trial and appellate records clearly disclose that Webb had a full and fair opportunity to litigate his Fourth Amendment claim. Therefore, the court cannot review it here.

#### **Claim 4.**

Testimony at trial established that the cocaine had a street value of \$2224.50, that Webb possessed \$257 in cash in denominations consistent with street sales of cocaine, and that Webb did not possess any device to smoke or ingest cocaine. The Court of Appeals of Virginia found the evidence sufficient to support the trial judge's conclusion that Webb possessed the cocaine with intent to distribute it, and the Supreme Court of Virginia refused Webb's petition for appeal. A federal court cannot grant a writ of habeas corpus on a state conviction based on a claim that was adjudicated on the merits, unless that adjudication resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the United States Supreme Court, or was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. See 28 U.S.C. § 2254 (d)(1), (2). Webb cannot meet either of these conditions for habeas review. Accordingly, this court's review of this aspect of Webb's fourth claim is necessarily at an end.

The court finds no constitutional component to Webb's challenge to the trial judge's evidentiary rulings. This court does not sit as an appellate court to review error. Accordingly, the court reviews this aspect of claim 4 no further.

### **III.**

For the reasons stated, the court will deny Webb's petition for writ of habeas corpus. An

appropriate order will be entered this day.

**ENTER** this 9th day of March, 2001.

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CHIEF UNITED STATES DISTRICT JUDGE IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

ANTONAUS WEBB,	)	
	)	
Petitioner,	)	Civil Action No. 7:00CV00343
	)	
v.	)	<u>FINAL ORDER</u>
	)	
DAVID ROBINSON, WARDEN,	)	By: Samuel G. Wilson
	)	Chief United States District Judge
Respondent.	)	

In accordance with the Memorandum Opinion entered this day, it is **ORDERED and ADJUDGED** that Webb's petition for writ of habeas corpus is **DENIED**.

It is further **ORDERED** that this case be stricken from the docket of the court.

**ENTER** this 9th day of March, 2001.

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CHIEF UNITED STATES DISTRICT JUDGE