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

RICHARD DWAINE MELOS,	)	
	)	
Petitioner,	)	
	)	Civil Action 7:00CV00482
v.	)	
	)	MEMORANDUM OPINION
COMMONWEALTH OF VIRGINIA,	)	
	)	By: Samuel G. Wilson
Respondent.	)	Chief United States
	)	District Judge
	)	

This is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 by Richard Dwaine Melos challenging the lawfulness of his confinement under a judgment of conviction on two counts of selling marijuana to minors. His petition is meritless, and the court dismisses it.

I.

In July 1997, a City of Lynchburg, Virginia grand jury indicted Melos, a 40-plus-year-old man for distributing marijuana to two 14 year-old girls on April 2, 1997. He pled not guilty and waived trial by jury. The Circuit Judge found him guilty and sentenced him to ten years on each count, with eight years suspended on each count.

Two 14-year-old girls testified at trial that they were familiar with marijuana because they were marijuana users. One of the girls testified that she asked Melos several days before April 2, 1997, to obtain marijuana for her. On the night of April 2, 1997, the two girls snuck out of the house through a bedroom window, called Melos who picked them up in his car, drove them to his house, and gave them marijuana which they "broke up" and smoked.

At trial, Melos' counsel sought unsuccessfully to prevent the girls from identifying the

substance Melos gave them to be marijuana because, he argued, the girls were not experts. Following his conviction, Melos petitioned the Court of Appeals of Virginia for appeal, claiming: (1) that he "was denied his right of confrontation when the trial court allowed two fourteen-year-old lay witnesses to express an opinion that a substance was marijuana," and (2) that the evidence was insufficient to convict. The Court of Appeals denied his appeal, and the Supreme Court of Virginia refused his petition for appeal.

Melos filed a habeas petition in the Supreme Court of Virginia complaining about the delay between trial and sentencing. That court dismissed the petition on the merits. Melos filed a second petition, and that court dismissed it as successive.

Melos filed his current habeas petition in this court alleging: (1) the confrontation clause claim he raised on direct appeal, (2) the sufficiency of the evidence claim he raised on direct appeal, (3) an ineffective assistance of counsel claim, (4) a claim that his conviction was obtained by coerced testimony, (5) a claim that the prosecutor suborned perjury, and (6) a claim that a prosecution witness committed perjury.

II.

Claim 1.

Essentially, Melos argues that the state trial judge made credibility determinations concerning the two girls before cross-examination when the judge permitted them to testify, based on their prior drug use, that the substance Melos gave them was marijuana. The Court of Appeals of Virginia found that Melos had a "full and fair opportunity to cross-examine" the girls. As the Court of Appeals noted, although "Melos did not *voir dire* [one of the girls] on her ability to identify marijuana before she testified, the trial judge informed [Melos] that he would consolidate [Melos's] cross-examination and *voir dire*" which he, in fact, did. In refusing Melos' petition for

appeal, the Supreme Court of Virginia no doubt determined that the Court of Appeals correctly decided the issue. That determination is binding unless it "was contrary to, or involved an unreasonable application of, clearly established Federal Law . . . ." This court has examined the state trial record and finds nothing that remotely resembles a confrontation clause violation. Clearly, the state court adjudication was neither contrary to nor involved an unreasonable application of clearly established federal law. Accordingly, the claim fails. *See* 28 U.S.C. § 2254(d).

Claim 2.

> Melos' sufficiency of the evidence claim is frivolous. In Melos' own words:
>
> > The two girls stated that I handed them marijuana but that I made no reference to the name of the alleged drug, they only said that it came from "his car." They testify that I did not smoke it with them and that I did not sell it to them. They said I made no comment while they smoked the substance. It could easily be deduced from their story that even if I had handed them a baggie of alleged marijuana that night, someone else in the car could have handed it to me, and that I was not the owner of the substance, but merely passed the substance to them, out of courtesy, that they and their friends already owned. There is no indication that I recognized the substance as an illegal drug or that I new what marijuana looked like or smelled like.

Melos' argument misses the mark. Both of the girls testified that they were familiar with marijuana because they had smoked it before and that the substance Melos gave them was marijuana. Moreover, one of the girls testified that she had asked Melos for marijuana several days before. Clearly, there was sufficient circumstantial evidence to prove that the substance was marijuana, that Melos, a man in his 40s, knew it was marijuana, and that he distributed it to two 14-year-old girls. Perhaps the state trial judge *could* have concluded as Melos suggests. But he did not. In any event, the claim fails under the strictures of 28 U.S.C. § 2254(d).

III.

Claims 3 through 6.

The Supreme Court of Virginia dismissed Melos' second state habeas petition because it was successive. Thus, claims three through six, which Melos failed to raise on direct review and in his first habeas petition, are procedurally defaulted. *See Gray v. Nederland,* 518 U.S. 152, 161-62 (1996)*; Hoke v. Netherland,* 92 F.3d 1350, 1354 n.1 (4th Cir. 1996), cert. denied, 519 U.S. 1048 (1996).

Although Melos could advance the defaulted claims if he could show cause or prejudice or a miscarriage of justice, he has shown nothing that would permit the court to review those claims.[1] Accordingly, the court dismisses them.

III.

For the reasons stated, the court dismisses Melos' petition for writ of habeas corpus. An appropriate order will be entered this day.

ENTER this February 26, 2001.

_____

CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

---

[1] Melos does offer an interesting explanation of his ineffective assistance of counsel claim: "At no time before my actual incarceration began . . . did my attorney . . . make clear to me that the charge I was accused of carried an unsuspendable two-year mandatory sentence. At one point, after my conviction but before my sentencing, [my attorney] told me that if it not been for a disparaging remark that I made to the [circuit judge's] secretary (that I thought that [the judge] should be removed from the bench) that [the judge] . . . might have suspended all but 30 days of my sentence. This statement by my privately retained attorney . . . lead me to believe that my sentence was fully suspendable. I withheld crucial evidence because I did not take the charge seriously. I considered it a minor inconvenience." (Petitioner's brief at 1). Melos stated that he "needed two years in the penitentiary like Bill Clinton needs another intern." He also stated that a complaining witness was able to extort money from him "[b]ecause [he] was within a few months of graduating from college, [and he] could not afford the inconvenience of going to jail." (Petitioner's brief at 2.)

FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

RICHARD DWAINE MELOS,	)	
	)	
Petitioner,	)	
	)	Civil Action 7:00CV00482
v.	)	
	)	FINAL ORDER
COMMONWEALTH OF VIRGINIA,	)	
	)	By: Samuel G. Wilson
Respondent.	)	Chief United States
	)	District Judge
	)	

In accordance with the written Memorandum Opinion entered this day, it is hereby ORDERED and ADJUDGED that Melos' petition under 28 U.S.C. § 2254 for writ of habeas corpus is hereby DENIED. This action will be stricken from the active docket of the court. Melos is advised that he may appeal this decision by filing a notice of appeal in this court within thirty (30) days of the date of entry of this order in accordance with Rules 3 and 4 of the Federal Rules of Appellate Procedure.

The Clerk is directed to send certified copies of this Order and the accompanying Memorandum Opinion to Melos and to counsel of record for the respondent.

ENTER this February 26, 2001.

_____
CHIEF UNITED STATES DISTRICT JUDGE