

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW HAMPSHIRE

Christopher Fournier

v.

Civil No. 08-cv-338-JD  
Opinion No. 2010 DNH 166

Warden, Northern New Hampshire  
Correctional Facility

O R D E R

Christopher Fournier, proceeding pro se, filed a petition for habeas corpus relief, pursuant to 28 U.S.C. § 2254, from his state court conviction. As construed by the magistrate judge on preliminary review, Fournier brought three claims in support of his petition. The Warden moved for summary judgment. Because of the difficulties Fournier encountered in responding to the motion, the court appointed counsel to represent him for purposes of summary judgment. Fournier's opposition to summary judgment has been filed.

Standard of Review

Summary judgment is commonly used in habeas corpus proceedings to determine whether the issues raised may be decided based on the record, within the procedural confines of § 2254. See Fed. R. Civ. P. 81(a)(4); Rule 12, Rules Governing § 2254

Proceedings. Ordinarily, summary judgment is appropriate when "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The party seeking summary judgment must first demonstrate the absence of a genuine issue of material fact in the record. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). A party opposing a properly supported motion for summary judgment must present competent evidence of record that shows a genuine issue for trial. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986).

In reviewing a petition for a writ of habeas corpus, "the level of deference owed to a state court decision hinges on whether the state court ever adjudicated the relevant claim on the merits or not." Clements v. Clarke, 592 F.3d 45, 52 (1st Cir. 2010). If the state court did not consider the claim on the merits, the federal court reviews the claim under the de novo standard for purposes of § 2254. Id.

To challenge the legal basis of a state court's decision, the petitioner must show that "the state court's decision 'was contrary to, or involved an unreasonable application of, clearly established Federal law, as established by the Supreme Court of the United States.'" Abrante v. St. Amand, 595 F.3d 11, 15 (1st

Cir. 2010) (quoting § 2254(d)(1)). “[A] state-court decision is contrary to clearly established federal law if the state court employs a rule that contradicts an existing Supreme Court precedent or it if reaches a different result on facts materially indistinguishable from those of the controlling Supreme Court precedent.” Janosky v. St. Amand, 594 F.3d 39, 47 (1st Cir. 2010). “A state-court decision constitutes an unreasonable application of clearly established federal law if it identifies the correct rule, but applies that rule unreasonably to the facts of the case sub judice.” Id.

Challenges to the state court’s factual findings will succeed only if “the state court’s decision ‘was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding’” as shown by clear and convincing evidence. Abrante, 595 F.3d at 15 (quoting § 2254(d)(2)); see also § 2254(e)(1). If the petitioner did not develop the factual basis of the claim in state court, the federal court will not hold a hearing unless the claim is based on a new rule of constitutional law, the underlying facts could not have been discovered previously, or the underlying facts “would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the

underlying offense." § 2254(e)(2)(B); see also Forsyth v. Spencer, 595 F.3d 81, 85 (1st Cir. 2010).

#### Background

Fournier was involved in a physical altercation with his ex-girlfriend, Tammy Robinson, early in the morning of January 22, 2006. As a result, Robinson sustained injuries, including a lacerated spleen, which required surgery and a six-day stay in the hospital. Fournier was arrested the same day and charged with two counts of assault and one count of obstructing the reporting of a crime. On October 6, 2006, he was convicted on the charge of second degree assault and was acquitted of the other charges.

During the state criminal proceedings, Fournier was represented by three different attorneys from the New Hampshire Public Defender Program. Before trial, his attorneys withdrew, citing a non-disqualifying conflict of interest. Fournier then was represented by appointed counsel, Nicholas Brodich, who was not affiliated with the Public Defender Program.

Fournier and Robinson testified at trial, along with other witnesses, including police officers involved in the case, and the surgeon who treated Robinson for a lacerated spleen. The trial court ruled that the defense could not ask Robinson about

another incident for the purpose of challenging her character for truthfulness. Defense counsel did not ask for a jury instruction on self-defense.

Following his conviction, the New Hampshire Appellate Defender represented Fournier on appeal, raising a single issue that the trial court should have allowed defense counsel to cross-examine Robinson about an incident "bearing on her character for truthfulness" under New Hampshire Rules of Evidence 403 and 608. Fournier moved, pro se, to disqualify the New Hampshire Appellate Defender on the ground that the conflicts of interest that caused counsel from the New Hampshire Public Defender Program to withdraw precluded representation by the New Hampshire Appellate Defender. The New Hampshire Supreme Court denied the motion for disqualification.

Fournier also filed a pro se motion for a new trial, contending that his trial counsel was constitutionally ineffective because he failed to ask for an instruction on self-defense. The trial court denied his motion for a new trial and his motion for reconsideration. Fournier moved to have his appeal from the denial of his motion for a new trial consolidated with his direct appeal from his criminal conviction. The New Hampshire Supreme Court assigned a separate number to the appeal from the denial of his motion for a new trial and declined the

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.