

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JOHN A. TAYLOR,)
)
 Petitioner,)
)
 v.) Civil Action No. 03-0007-SLR
)
 THOMAS CARROLL,)
 Warden,)
)
 Respondent.)

MEMORANDUM ORDER

I. INTRODUCTION

Petitioner John A. Taylor is presently incarcerated at the Delaware Correctional Center ("D.C.C.") in Smyrna, Delaware. On January 6, 2003, petitioner filed an application for the writ of habeas corpus pursuant to 28 U.S.C. § 2254, acting pro se. (D.I. 2) In his petition and supporting memorandum, petitioner asserts numerous claims: 1) the trial court should have declared a mistrial due to an emotional outburst by a witness as she departed the witness stand; 2) the denial of a preliminary hearing and the right to counsel at the preliminary hearing; 3) the denial of an arraignment and the right to counsel at the arraignment; 4) the indictment was invalid thereby violating the Double Jeopardy Clause; 5) the petitioner was denied the right to examine prospective jurors regarding their ability to remain impartial; 6) the trial judge improperly permitted an amendment to the indictment; 7) insufficient indictment because it failed

to allege a precise place, date, and time for the charged offense; 8) the State failed to prove the elements of his crimes beyond a reasonable doubt; 9) the petitioner's trial was unfair because of prosecutorial misconduct; 10) an expert witness improperly commented on the credibility of a witness; 11) the trial judge improperly instructed the jury regarding the burden of proof and regarding the lesser included offenses of first degree unlawful sexual intercourse; 12) ineffective assistance of counsel at trial and on direct appeal; 13) judicial bias and an improper amendment to the indictment; and 14) at the time of his arrest, the petitioner was never informed of his right under the Vienna Convention on Consular Relations to contact the Jamaican consul. (D.I.s 2; 3, at 3-5, 18-93)

Presently before the court is petitioner's motion for discovery, a motion seeking representation by counsel, and a motion to enter a default judgment against respondent. (D.I. 7, 11, 22) For the following reasons, the court denies petitioner's motions.

II. DISCUSSION

A. Motion for Discovery and Evidentiary Hearing

Discovery is available in habeas corpus proceedings at the discretion of the court for "good cause" shown. See Rule 6, 28 U.S.C. foll. 28 U.S.C. § 2254. "Good cause" is demonstrated when the petitioner establishes a prima facie claim for relief, and a

petitioner's claims are specific, not merely speculative or conclusory. Murphy v. Johnson, 205 F.3d 809 (5th Cir. 2000). In order to establish "good cause," a petitioner must "point to specific evidence that might be discovered that would support a constitutional claim." Marshall v. Hendricks, 103 F.Supp.2d 749, 760 (D.N.J. 2000), rev'd in part on other grounds, 307 F.3d 36 (3d Cir. 2002) (citing Deputy v. Taylor, 19 F.3d 1485, 1493 (3d Cir. 1994)).

Petitioner asks the court to order the respondent to release "any and all records and documents in its possession" with respect to petitioner's "movements to and from the prison and all visits including, but not limited to, visits by public defenders." (D.I. 7, at 1) He asserts that the records of his movements in and out of prison, as well as any visits from the public defenders, will demonstrate that he was not represented by counsel during the first six weeks of his imprisonment. Petitioner states that without proper representation during this time period, his alleged waiver of the preliminary hearing and arraignment was unconstitutional. (D.I. 7, at 2) Moreover, petitioner asserts "the fact that neither defendant nor defense counsel was in the [C]ourt of [C]ommon [P]leas on August 24, 1994 for a preliminary hearing." (D.I. 3, at 27)

Although petitioner specifically identifies the documents requested for discovery, his reason for obtaining these documents

does not demonstrate the requisite good cause. The court has reviewed the state court record presently on file and notes that a transcript of the preliminary hearing is present. In fact, the transcript clearly indicates that petitioner was represented by counsel at the preliminary hearing. (D.I. 25, Transcript of Court Proceedings, Prelim. Hearing, ID No. 9408012457) Because the court already has the specific relevant evidence necessary to determine petitioner's constitutional claim, he has failed to demonstrate the requisite good cause for these additional documents. Accordingly, petitioner's request for the prison documents is denied.

Petitioner also asks the court to order the respondent to produce the transcripts of the grand jury minutes and voir dire. (Id. at 2,3) His reason for requesting the production of the grand jury minutes is to determine if he was indicted by twelve or more jurors. (D.I. 7 at 2) Petitioner states that the voir dire transcript is necessary to determine if he received a fair and impartial jury trial because he needs to identify unqualified jurors.

Petitioner does not present any specific evidence or allegations indicating there is a possibility that he was indicted by less than twelve jurors, or that unqualified jurors were on the jury. Rather, it appears that he is on a "fishing expedition" to comb through files to determine if he has a claim.

See Deputy v. Taylor, 1993 WL 643368, at *4 (D. Del. Aug. 17, 1993) (a fishing expedition for evidence to support claims does not constitute good cause for discovery). Further, because the state record on file does include a copy of the voir dire transcript (D.I. 25), a duplicate record is unnecessary. Accordingly, petitioner's request for the voir dire and indictment transcripts is denied.

Petitioner's final request is for an evidentiary hearing. (D.I. 7, at 3) The AEDPA grants district courts the discretion to conduct evidentiary hearings on habeas review in limited circumstances. See 28 U.S.C. § 2254(e); Campbell v. Vaughn, 209 F.3d 280, 286-87 (3d Cir. 2001). The court may, for example, conduct an evidentiary hearing if the petitioner "has diligently sought to develop the factual basis of a claim for habeas relief, but has been denied the opportunity to do so by the state court." Campbell, 208 F.3d at 287 (quoting Cardwell v. Greene, 152 F.3d 331, 337 (4th Cir. 1998)). In exercising its discretion, the court should focus "on whether a new evidentiary hearing would be meaningful, in that a new hearing would have the potential to advance the petitioner's claim." Id. at 287. A court properly refuses a request to conduct an evidentiary hearing where the petitioner fails "'to forecast any evidence beyond that already contained in the record' that would otherwise help his cause, 'or otherwise explain how his claim would be advanced by an

evidentiary hearing.'" Campbell, 208 F.3d at 287 (quoting Cardwell, 152 F.3d at 338).

As previously discussed, petitioner's specific discovery requests do not demonstrate good cause for granting his motion. Similarly, with respect to his request for an evidentiary hearing, petitioner has failed to indicate any evidence other than that already contained in the record that would help his cause. He also fails to state how an evidentiary hearing will help to advance his claims. Accordingly, the court denies petitioner's request for an evidentiary hearing.

B. Motion Seeking Representation by Counsel

It is well established that there is no automatic constitutional right to counsel for a pro se litigant in a federal habeas proceeding. See Coleman v. Thompson, 501 U.S. 722, 752 (1991); Reese v. Fulcomer, 946 F.2d 247, 263 (3d Cir. 1991); United States v. Roberson, 194 F.3d 408, 415 n.5 (3d Cir. 1999). It is well within the court's discretion, however, to seek representation by counsel for a petitioner, but this effort is made only "upon a showing of special circumstances indicating the likelihood of substantial prejudice to [petitioner] resulting . . . from [petitioner's] probable inability without such assistance to present the facts and legal issues to the court in a complex but arguably meritorious case." Tabron v. Grace, 6 F.3d 147, 154 (3d Cir. 1993) (citing Smith-Bey v. Petsock, 741

F.2d 22, 26 (3d Cir. 1984); 18 U.S.C. § 3006A (a) (2) (B) (West 2003) (representation by counsel may be provided when a court determines that the "interests of justice so require").

Petitioner is seeking representation by counsel because he is indigent, and to help in the "effective utilization of discovery." (D.I. 11) For the reasons previously discussed, the court has denied his motion for discovery for lack of good cause. Thus, petitioner's request for representation by counsel to help him "effectively utilize discovery" is now moot.

Even if petitioner is seeking representation by counsel for more than to "effectively utilize" discovery, the court denies this request. Having reviewed petitioner's record and state filings, the court concludes that he is capable of formulating issues and preparing court filings. Moreover, petitioner's allegations are not of such a complex nature that representation by counsel is warranted at this time.

Nevertheless, as the case proceeds, the complexity of the factual issues or the need for additional legal briefing may require representation by counsel at a later date. See Tabron, 6 F.3d at 156 (recognizing that, under § 1915, the court may sua sponte seek representation for a litigant at "any point in the litigation"). The court is willing to revisit this issue either sua sponte or upon proper motion should it subsequently appear that petitioner's claims are meritorious and that representation

by counsel is necessary to afford the petitioner a full and fair opportunity to litigate his case.

In short, the court concludes that representation by counsel is not appropriate at this time. Accordingly, petitioner's motions seeking representation by counsel are denied without prejudice to renew. (D.I. 8, 18)

C. Motion for Default Judgment

Pursuant to Federal Rule of Civil Procedure 55, petitioner asks the court to enter a default judgment in his favor based on respondent's alleged failure to file a timely answer. (D.I. 22) Initially, whether a default judgment is even available in a habeas corpus proceeding is subject to debate. See Lemons v. O'Sullivan, 54 F.3d 357, 365 (7th Cir. 1995) ("Default judgment is an extreme sanction that is disfavored in habeas corpus cases"); Gordon v. Duran, 895 F.2d 610, 612 (9th Cir. 1990) ("The failure to respond to claims in a petition for habeas corpus does not entitle the petitioner to a default judgment"); Aziz v. Leferve, 830 F.2d 184, 187 (11th Cir. 1987) ("a default judgment is not contemplated in habeas corpus cases"); Allen v. Perini, 424 F.2d 134, 138 (6th Cir. 1970) ("Rule 55(a) has no application in habeas corpus cases"). Regardless, petitioner is not entitled to a default judgment because respondent has not "failed to plead or otherwise defend" in this action. Fed. R. Civ. P. 55(a).

Counsel for respondent received petitioner's § 2254 petition

on April 17, 2003. (D.I.s 14, 15) The answer was due forty-five days later on June 2, 2003.¹ (D.I. 15) On June 2, 2003, respondent filed a motion to extend the due date until June 16, 2003, which the court granted. (D.I. 16) Respondent then filed the answer in a timely manner on June 16, 2003. (D.I. 18) Accordingly, the court denies petitioner's request for a default judgment.

III. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. Petitioner John A. Taylor's motion for discovery and an evidentiary hearing (D.I. 7) is DENIED.

2. Petitioner John A. Taylor's motion seeking representation by counsel (D.I. 11) is DENIED without prejudice to renew.

3. Petitioner John A. Taylor's motion for default judgment (D.I. 22) is DENIED.

Dated: August 29, 2003

Sue L. Robinson
UNITED STATES DISTRICT JUDGE

¹Because May 26, 2003 was a legal holiday, the period of time was extended to June 2, 2003 rather than June 1, 2003. See Fed.R.Civ.P. 6(a).