

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAMES ARTHUR BIGGINS,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 99-188-GMS
)	
ROBERT W. SNYDER, Warden, and)	
ATTORNEY GENERAL OF THE STATE)	
OF DELAWARE,)	
)	
Respondents.)	
)	

MEMORANDUM AND ORDER

On February 24, 1999, James Arthur Biggins filed in this court a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (D.I. 2.) In his petition, Biggins seeks to challenge a sentence imposed by the Delaware Superior Court on August 28, 1997. The respondents filed an answer to Biggins' petition on June 25, 1999, asking the court to dismiss the petition for failure to exhaust state court remedies. (D.I. 13.) The respondents noted that Biggins' direct appeal was pending before the Delaware Supreme Court.

Subsequently, the Delaware Supreme Court affirmed Biggins' conviction and sentence. *Biggins v. State*, No. 468, 1997, 1999 WL 1192332 (Del. Nov. 24, 1999). It also appears that since that time, the Superior Court has denied Biggins' Rule 61 motion for postconviction relief, and that the Delaware Supreme Court has affirmed the denial of Rule 61 relief. *Biggins v. State*, No. 118, 2000, 2000 WL 1504868 (Del. Sept. 26, 2000).

In light of the state court proceedings that have transpired since the respondents filed their answer, it appears that dismissal without prejudice for failure to exhaust may no longer be appropriate. Accordingly, IT IS HEREBY ORDERED THAT not later than thirty (30) days following the date of this order, the respondents shall file (1) a supplemental answer comporting with the requirements of Rule 5 of the Rules Governing Section 2254 Cases, and (2) the relevant state court records and transcripts necessary for full consideration of Biggins' petition. Biggins may file a supplemental reply to the respondents' supplemental answer not later than twenty (20) days after service of the supplemental answer. Requests for extensions of time will not be favored.

Also pending in this matter is Biggins' "Motion" dated June 14, 2001. (D.I. 27.) In this motion, Biggins asks the court to (1) release him so that he can litigate this petition and other pending matters, or (2) appoint counsel to represent him in this matter. By memorandum and order issued February 8, 2001, the court denied these same requests. (D.I. 24.) The court can discern no change in circumstances that warrant any different result. Accordingly, for the reasons set forth in the court's prior memorandum and order, IT IS HEREBY ORDERED THAT Biggins' motion dated June 14, 2001 (D.I. 27) is DENIED. Upon receiving the supplemental briefing, the court will assess whether appointment of counsel is required in the interest of justice. *See* Rule 8 of the Rules Governing Section 2254 Cases.

IT IS SO ORDERED.

Dated: February 8, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE