

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES GREEN : CIVIL ACTION
 :
v. :
 :
DONALD VAUGHN, et al. : No. 03-1052

MEMORANDUM AND ORDER

Before the court is a counseled Motion for Leave to Take Limited Discovery filed by Petitioner, James Green (“Petitioner”), who argues that the Commonwealth withheld evidence regarding a witness, Calvin Davis (“Davis”), which could have been used for impeachment purposes at Petitioner’s trial.¹ See Pet.’s Mot. for Leave to Take Limited Disc., at 2. Petitioner seeks production of the following: 1) a complete and un-redacted copy of Davis’ federal pre-sentence investigation (“PSI”) report in U.S. v. Calvin Leon Davis, Jr., CR 489-006, U.S.D.C. Southern District of Georgia, Savannah Division, held before the Honorable B. Avant Edenfield; and 2) the complete four (4) page F.B.I. abstract related to Davis. Id. at 1-2.

In Petitioner’s habeas petition, he alleges, *inter alia*, that the Commonwealth violated the due process standards set forth in Brady v. Maryland, 373 U.S. 83, 87 (1963), by failing to disclose evidence that could have been used to impeach Davis’ testimony. Petitioner also argues that the Commonwealth misled the jury regarding inferences drawn

¹In August 1989, Petitioner was convicted of murder in the first degree, aggravated assault, recklessly endangering another person, and possession of an instrument of crime. He was subsequently sentenced to life imprisonment.

from Davis' testimony. See Ptr's Br. at 23-30. Specifically, Petitioner argues that on October 25, 1999, the PCRA Court ordered the Commonwealth to produce the PSI report of Calvin Davis. (N.T. 10/25/99, 9). However, the Commonwealth apparently produced only one (1) page of the report, which contained Davis' conviction record. Moreover, the parties disagree as to whether the FBI abstract was turned over by the Commonwealth.²

Petitioner argues that the two (2) requested documents, had they been produced to Petitioner prior to trial, "would have completely discredited Davis' testimony about his limited role and lack of guilt pertaining to the forged Treasury check."³ Petitioner also argues that the withheld material would have shown that Davis was under investigation, that he had been indicted for this crime, and that he was a government informant at the time that he gave his police statement implicating Petitioner. As a result, Petitioner argues that the material "would have been admissible and highly credible impeachment evidence."⁴ See Ptr's Mot. at 2.

A "habeas petitioner . . . is not entitled to discovery as a matter of ordinary course."

²The Court notes that the PCRA Court put on the record that the Commonwealth agreed to turn over the four (4) page FBI abstract of Davis. (N.T. 10/25/99, 6).

³Davis testified at trial regarding a forgery conviction.

⁴Respondents argue that Petitioner is not entitled to discovery at this time because when Petitioner was provided with only the record portion of Davis' PSI report, Petitioner's counsel did not object or "seek production of production of any other portions of the privileged PSI report." See Answer at 2. Respondents also argues that it is not necessary for Petitioner to have the material because Petitioner can find the information he seeks in other documents. For the reasons discussed herein, I disagree. Moreover, insofar as Respondents argue that Petitioner should not be entitled to an evidentiary hearing, see Answer at 7-11, the Court notes that Petitioner has not requested a hearing.

Bracy v. Gramley, 520 U.S. 899, 904, 117 S.Ct. 1793, 138 L.Ed.2d 97 (1997). A habeas petitioner may obtain discovery only pursuant to Rule 6(a) of the Rules Governing § 2254 Cases, which states:

A party shall be entitled to invoke the processes of discovery available under the Federal Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise.

28 U.S.C. § 2254 Rule 6(a). “[W]here specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is . . . entitled to relief, it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry.” Bracy, 520 U.S. at 908-909 (quoting Harris v. Nelson, 394 U.S. 286, 300 (1969)). A petitioner may not engage in a "fishing expedition," and "bald assertions and conclusory allegations do not provide sufficient ground to warrant requiring the state to respond to discovery." Deputy v. Taylor, 19 F.3d 1485, 1493 (3d Cir. 1994); Zettlemyer v. Fulcomer, 923 F.2d 284, 301 (3d Cir. 1991). Once good cause has been shown, the scope and extent of discovery is left to the District Court's discretion. Bracy, 520 U.S. at 909.

I find that Petitioner has established that the requested discovery would assist this court in the disposition of his habeas claims. The record reveals that on October 25, 1999, the PCRA Court ordered the Commonwealth to produce the PSI report of Calvin Davis. (N.T. 10/25/99, 9). In response, the Commonwealth apparently produced only one (1) page of the report. Although Petitioner’s counsel did not object to this partial

production at the time, I am disinclined to countenance the Commonwealth's apparent failure to abide by the order of the PCRA Court. Therefore, I order that the entire PSI report of Davis be turned over to Petitioner. Similarly, although the parties disagree as to whether the Commonwealth produced the FBI abstract to Petitioner, Petitioner's present counsel does not have a copy of the FBI abstract, and I see no reason why the Commonwealth cannot simply produce another copy.

For the foregoing reasons, I find that Petitioner has shown "good cause" for the allowance of limited discovery. Accordingly, his motion for additional discovery is granted.

An appropriate order follows.

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ORDER

AND NOW, this day of April, 2005, upon consideration of Petitioner's Motion for Leave to Take Limited Discovery, IT IS HEREBY ORDERED that the Motion is GRANTED.

IT IS FURTHER ORDERED that, within ten (10) days of the date of this Order, Respondents must produce to Petitioner complete and un-redacted copies of:

- 1) Calvin Davis' federal pre-sentence investigation report in U.S. v. Calvin Leon Davis, Jr., CR 489-006, U.S.D.C. Southern District of Georgia, Savannah Division, held before the Honorable B. Avant Edenfield; and
- 2) the complete four (4) page F.B.I. abstract related to Calvin Davis.

IT IS FURTHER ORDERED that Petitioner may supplement his claims pertaining to Calvin Davis, if necessary, within twenty (20) days after receipt of these documents.

BY THE COURT:

s/ Peter B. Scuderi

PETER B. SCUDERI
UNITED STATES MAGISTRATE JUDGE