

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

JOHN GATTO : CIVIL ACTION  
 :  
 v. : NO. 96-4993  
 :  
 UNITED STATES OF AMERICA : (Criminal No. 92-133-2)

MEMORANDUM ORDER

Presently before the court is petitioner's Motion to Compel Production of the Minutes of the Grand Jury Proceedings, Transcripts of Evidence Adduced Before the Grand Jury and Copies of Any Grand Jury Exhibits or Evidentiary Items presented in connection with petitioner's indictment. The government has responded that "petitioner has not made any showing that would entitle him to disclosure of matters occurring before the grand jury."

The government is correct. Petitioner's assertion that disclosure of the requested material will be helpful in pursuing a collateral attack on his guilty plea "either by indicating his innocence regarding the [21 U.S.C.] § 848 charge or by impeaching the credibility of government witnesses" does not constitute "a strong showing of particularized need" necessary to justify the disclosure of secret grand jury proceedings. See United States v. Sells Engineering, Inc., 463 U.S. 418, 443 (1983); United States v. Kim, 577 F.2d 473, 478 (9th Cir. 1978) (desire to conduct "fishing expedition" does not constitute "particularized need"); United States v. Rising, 867 F.2d 1255, 1260 (10th Cir.

1989) (general claim that disclosure of grand jury transcripts will reveal exculpatory evidence does not demonstrate particularized need); United States v. Short, 671 F.2d 178, 187 (6th Cir. 1982) (same); Thomas v. United States, 597 F.2d 656, 657-58 (8th Cir. 1979) (no particularized need shown where petitioner asserts grand jury minutes necessary to prove matters he wished to pursue in § 2255 petition and that he was "being deprived of important documents that will very well prove all [his] allegations"); United States v. Fryer, 1994 WL 494952, \*1-2 (N.D. Ill. Sept. 7, 1994) (petitioner's claim that he needed to review grand jury testimony in connection with his § 2255 petition to impeach government's evidence and show evidence was insufficient to substantiate his guilt did not demonstrate particularized need).

Moreover, the government represents that the seven codefendants whose statements could potentially be implicated by petitioner's claim "did not testify before the grand jury." Clearly, petitioner cannot get something that does not exist.

The government has submitted the grand jury testimony of George Williams for in camera review. That testimony is consistent with Mr. Williams' subsequent statements and does not remotely exculpate petitioner. It confirms that petitioner recruited Mr. Williams to manufacture pure methamphetamine for subsequent cutting and distribution, and induced him to divert precursors from Nicholas D'Amato's organization to make drugs for petitioner.

**ACCORDINGLY**, this                    day of August, 1997, **IT IS**  
**HEREBY ORDERED** that petitioner's motion to compel production of  
grand jury material is **DENIED**.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**