

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

<b>FRANK NELLOM</b>	:	<b>CIVIL ACTION</b>
<b>v.</b>	:	
<b>DAVID DiGUGLIELMO, et al.</b>	:	<b>NO. 04-3399</b>

**MEMORANDUM AND ORDER**

Prisoner Frank Nellom filed his first petition in this court for Habeas Corpus relief pursuant to 28 U.S.C. §2254 on September 24, 2001. It was properly assigned Civil Action Number 01-cv-5304, and was properly placed on the undersigned district judge’s calendar. 01-cv-5304 raised three arguments which allegedly supported habeas corpus relief pursuant to 28 U.S.C. §2254:

1. False evidence allegedly manufactured and falsely planted by state actors was presented at his parole revocation hearing;
2. Evidence presented at parole revocation hearing was allegedly insufficient to support the decision; and
3. Parole Board allegedly concealed evidence at the parole revocation hearing.

All three of these arguments in 01-cv-5304 were considered and denied on the merits by the undersigned judge on October 9, 2002. This decision was affirmed by the United States Court of Appeals for the Third Circuit on February 12, 2003. (There was also a fourth claim in 01-cv-5304, which Mr. Nellom was granted permission to voluntarily withdraw before the process of merits consideration had begun).

On May 5, 2004, Mr. Nellom simultaneously filed two documents in this court: a new habeas corpus petition and a “Motion Involving a Rule 9 Issue.” These two filings were consolidated by Order of this court into a new civil action number in this court (04-cv-3399) pursuant to 28 U.S.C. §2254; the habeas petition was classified as “Document #1” in 04-cv-3399 and the “Motion Involving a Rule 9 Issue” was classified as “Document #2” in 04-cv-3399. In both Document #1 and Document #2 of 04-cv-3399, he raises one claim, this claim being that he has newly discovered evidence, that could not have previously been discovered, that supported his prior claim (claim one in 01-cv-5304) that falsely manufactured and falsely planted evidence was presented at his parole revocation hearing.

Document #2 in 04-cv-3399 is a self-styled "Motion Involving a Rule 9 Issue;" this document #2 has nothing to do with either Federal Rule of Civil Procedure 9 or Federal Rule of Criminal Procedure 9; it raises the same claim of newly discovered evidence made in Document #1 if 04-cv-3399. Whereas Document #2 in 04-cv-3399 in reality seeks habeas corpus relief, and whereas the legal arguments made in Document #2 in 04-cv-3399 are identical to those made in Document #1 in 04-cv-3399, it is hereby

**ORDERED** this                      day of                      2004, that petitioner's "Motion Involving a Rule 9 Issue (Document #2 in 04-cv-3399)" is **DISMISSED WITHOUT PREJUDICE**, and, it is further

**ORDERED** that in conformity with this court's Order of November 19, 2004, Document #1 in 04-cv-3399, the actual petition for habeas corpus relief, shall remain referred the calendar of the Honorable M. Faith Angell for purposes of a Report and Recommendation.

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**MARY A. McLAUGHLIN, J.**