

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

AMOS SINGLETON,	:	CIVIL ACTION
Petitioner	:	
v.	:	
	:	
JOSEPH J. PIAZZA, et al,	:	No. 05-CV-6685
Respondents	:	

MEMORANDUM

Baylson, J.

August 25, 2006

I. Introduction

Currently before this Court is a “Motion for Release Pending Appeal” (Doc. No. 15), filed by Petitioner Amos Singleton (“Petitioner”) on July 10, 2006. For the following reasons, the Petitioner’s Motion will be denied.

II. Facts and Procedural History

On January 7, 1999, Petitioner was arrested after attempting to rob and using mace on two women, as well as using mace on two bystanders and a police officer who attempted to stop him. Petitioner originally pled guilty on February 14, 1999 to robbery and simple assault in state court and was sentenced to an aggregate term of eight to eighteen years incarceration. After unsuccessfully pursuing a direct appeal and relief under the Pennsylvania Post Conviction Relief Act, on December 12, 2005, he filed a federal Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. On April 12, 2006, the undersigned referred the case to Magistrate Judge Arnold C. Rapoport for a Report and Recommendation on the merits. After granting an extension of time to the District Attorney for the County of Philadelphia (“Respondent”) to file a response to

the petition, Magistrate Judge Rapoport is currently waiting for the District Attorney to respond to the petition.

On July 10, 2006, Petitioner filed the instant motion (Doc. No. 15), which was answered by Respondent on July 17, 2006 (Doc. No. 16). Petitioner filed a Reply brief on August 3, 2006 (Doc. No. 18), completing the briefing in this matter.

III. Discussion

Citing 18 U.S.C. § 3143(b)-(c), Petitioner requests that this Court release him pending “appeal” on the same terms and conditions under which he was released pending trial and/or sentencing. He states he is ill, that his mother has cancer, that he is not a flight risk or a danger to the community, and that he is likely to prevail on his habeas corpus claim. (Pet.’s Br. at 4-6).

The Respondent asserts that Petitioner has shown neither the extraordinary circumstances, nor a high probability of success on the merits necessary to permit bail pending review of his petition for habeas corpus relief, that Petitioner has not alleged that his release is necessary to avoid catastrophic injury, and his alleged illness does not rise to the level of seriousness required to merit bail. The Respondent also states that although they have yet to file a response to Petitioner’s habeas claim, his petition may face a timeliness issue. Moreover, Respondent argues that given the random, violent nature of Petitioner’s assaults as well as their relative recency, Petitioner may still pose a threat to society. (Respondent’s Br. at 4-6).

As a threshold matter, although the Petitioner has filed a “Motion for Release Pending

Appeal” pursuant to 18 U.S.C. § 3143(b)-(c),¹ the appropriate motion for a state prisoner seeking federal habeas corpus review would be a motion requesting bail pending review of a petition for writ of habeas corpus. Despite this deficiency, because Petitioner is *pro se*, the Court will construe it as such.

In general, this Court has the authority to grant bail pending review of a petition for habeas corpus. See Landano v. Rafferty, 970 F.2d 1230, 1239 (3d Cir. 1992) (reversing the district court’s decision and holding that there was insufficient basis for bail pending habeas review where no extraordinary circumstances existed); Lucas v. Hadden, 790 F.2d 365, 367 (3d Cir. 1986) (reversing the district court’s decision and holding that bail pending habeas review was not appropriate because petitioner had not made a showing of extraordinary circumstances). However, “[a] preliminary grant of bail is an exceptional form of relief in a habeas corpus proceeding,” and accordingly, the Third Circuit has held that “bail pending post-conviction habeas corpus review is available only when the petitioner has raised substantial constitutional claims upon which he has a high probability of success, and also when extraordinary or exceptional circumstances exist which make the grant of bail necessary to make the habeas remedy effective.” Landano, 970 F.2d at 1239. The Landano court noted further that “very few cases have presented extraordinary circumstances,” and those cases have generally been limited to situations involving severe health problems or the impending completion of the prisoner’s sentence. Id. (citing Johnston v. Marsh, 227 F.2d 528 (3rd Cir. 1955) and Boyer v. City of Orlando, 402 F.2d 966 (5th Cir. 1968)).

¹On its face 18 U.S.C. § 3143(b)-(c) applies to *federal* prisoners seeking review of their *federal* sentences on appeal to a *federal* circuit court of appeals.

For example, in Johnson, the Third Circuit granted release to a petitioner to a medical facility pending review of a habeas petition because the prisoner suffered from severe diabetes and was “under conditions of confinement, rapidly progressing toward total blindness.” Johnson, 227 F.2d at 529. Similarly, in Boyer, the Fifth Circuit found extraordinary circumstances and granted bail to a petitioner whose sentence was only 120 days because his sentence was likely to expire before the habeas petition could be decided. Boyer, 402 F.2d at 968. It is with this high burden in mind that we analyze Petitioner’s request for bail.

A. Petitioner Has Not Shown Extraordinary Circumstances.

Here, Petitioner has not convinced the Court that “extraordinary circumstances” exist that would warrant his release on bail pending review of his habeas petition. Petitioner states bail is appropriate and exceptional circumstances exist because of his health problems: he states he has a “need for future surgery to remove possible cancerous pulps on his vocal chords and thyroid glands” and that he has bronchiectasis.² (Pet.’s Br. at 4). However, Petitioner’s vague allegations of possible poor health simply do not rise to the level of immediate and impending catastrophic illness discussed by the Third Circuit in Lucas, Landano, and Johnson. Critically, Petitioner has not provided the Court with medical records documenting a diagnosis of cancer (Petitioner himself admits they are merely “*possible* cancerous pulps”) or in any way suggested prison medical providers are not monitoring the pulps or treating his bronchiectasis. Petitioner states that he can not obtain his medical records “without a lengthy battle with the medical department

²Bronchiectasis is an abnormal stretching and enlarging of the respiratory passages caused by a mucus blockage. The severity of symptoms varies widely from patient to patient but may include coughing, shortness of breath, weakness, weight loss and fatigue. American Lung Association, Bronchiectasis Fact Sheet (2005), *available at* <http://lungusa.org/site/pp.asp?c=dvLUK9O0E&b=35009>.

and funds for the cost of retrieval and copies,” (Pet.’s Reply at 3) and the Court recognizes the difficulty prisoners may have in obtaining medical records from prison authorities. Rohrbaugh v. York County Prison, 2005 WL 1458763, *3 (M.D. Pa. June 20, 2005) (in refusing to dismiss a prisoner’s §1983 action for failure to file a certificate of merit, noting the “Court is mindful that prisoners have a difficulty in obtaining medical records from prison authorities”). However, speculation of poor health is simply not sufficient to support Petitioner’s claim. Moreover, Petitioner has not so much as alleged — much less documented — an illness which “under prison conditions of confinement [is] rapidly progressing.” Johnson, 227 F.2d at. 529. Simply stated, his alleged medical needs do not come close to rising to the level of extraordinary circumstances.³ See, e.g., Chadwick v. Andrews, 1997 WL 792884, *7 (E.D. Pa. Dec. 23, 1997) (holding that lymphoma in remission was not an “extraordinary circumstance”).

Moreover, it is important to note that even if Petitioner had health problems that amounted to “extraordinary circumstances” justifying bail, these health issues would likely only merit release to a medical facility for treatment, not unconditional release as Petitioner requests. Additionally, Petitioner states that his mother has cancer and he would be her primary caretaker if released on bail. (Pet.’s Br. at 4). This situation, while very unfortunate, is also not an “extraordinary circumstance” contemplated by the Third Circuit that could justify bail.

B. Petitioner Has Not Demonstrated a High Probability of Success on the Merits.

Even if Petitioner could show extraordinary circumstances, his request for bail still fails because he has not shown a high probability of success on the merits of his habeas corpus claim.

³If Petitioner obtains medical documentation of a grave and rapidly progressing illness, he is free to re-petition this Court for relief.

In his brief, Petitioner list six issues, seemingly his claims raised on habeas, which he says will result in reversal of his conviction and/or a new trial. (Pet.'s Br. at 7, Pet.'s Reply at 2).

However, Petitioner's bare assertion is not enough to convince this Court that his habeas petition will succeed. We note that habeas corpus relief is a rare remedy, and the strict procedural requirements of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2241 *et seq.*, have meant that district courts rarely reach the merits of habeas claims, which are often barred on timeliness or other procedural grounds. Although the Respondent has yet to file a response to the habeas petition, it did note that Petitioner's habeas claims may face a timeliness problem. (Respondent's Br. at 6). Here, the Petitioner bears the burden of showing that his habeas claim has a high probability of success and his motion, standing alone, has not convinced the Court of such a high probability.

IV. Conclusion

As the Petitioner has failed to show both extraordinary circumstances justifying his release and a high probability of success on the merits in his habeas claim, his motion will be denied.

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ORDER

AND NOW, this day of August 2006, based on the foregoing memorandum, it is hereby ORDERED that “Motion for Release Pending Appeal” (Doc. No. 15) is DENIED.

BY THE COURT:

/s/ Michael M. Baylson_____

MICHAEL M. BAYLSON, U.S.D.J.