

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 18-6191

ERIC MARIO BYERS,

Petitioner,

v.

LANE,

Respondent.

Appeal from the United States District Court for the Eastern District of Virginia, at
Alexandria. Claude M. Hilton, Senior District Judge. (1:16-cv-01290-CMH-MSN)

Submitted: May 24, 2018

Decided: May 30, 2018

Before NIEMEYER, MOTZ, and FLOYD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Eric Mario Byers, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

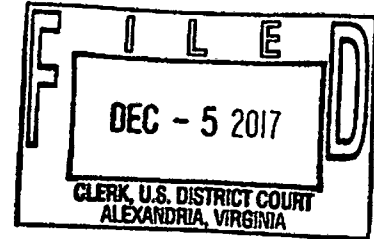
PER CURIAM:

Eric Mario Byers petitions for permission to appeal under 28 U.S.C. § 1292(b) (2012) the district court's order denying without prejudice his motion to subpoena witnesses. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2012), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2012); Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). Byers was instructed that the interlocutory order to be reviewed must be certified by the district court in accordance with 28 U.S.C. § 1292(b). Because the order has not been certified and Byers does not seek to withdraw his petition for permission to appeal, we dismiss the appeal for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

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

Alexandria Division



**Eric Byers,
Petitioner,**

v.

**Warden Lane,
Respondent.**

1:16cv1290 (CMH/MSN)

ORDER

Eric Byers, a federal inmate proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. §2241, challenging the enhancement of his sentence. The matter is now before the Court on petitioner's Motion to Subpoena Witnesses and Motion for Release, both of which must be denied, without prejudice.

In his Motion for Witnesses, petitioner requests that the Court issue subpoenas for three witnesses to appear at his "up coming hearing." At this time no hearing has been scheduled in this matter, and it is uncertain whether a hearing will be necessary. Accordingly, petitioner's Motion for Witnesses will be denied as premature, without prejudice to renewal at a later stage of the proceedings, if appropriate.

In his Motion for Release, petitioner asks the Court to order his release from custody on bail. At this juncture a request for bond remains premature. Release on bond pending a federal attack on a conviction requires a petitioner to show the existence of substantial constitutional claims on which he has a high probability of success, as well as the existence of exceptional circumstances which make the grant of bond necessary to the effectiveness of the habeas remedy.

Aronson v. May, 85 S. Ct. 3 (1964); Calley v. Callaway, 496 F.2d 701 (5th Cir. 1974).

Respondent has not yet filed his response to the petition, so it cannot be determined at this time whether the foregoing standard is met in this case. Accordingly, petitioner's Motion for Release will be denied, without prejudice to renewal at a later stage of the proceedings.

Accordingly, it is

ORDERED that petitioner's Motion to Subpoena Witnesses (Dkt. No. 8) be and is DENIED AS PREMATURE, WITHOUT PREJUDICE to renewal at a later stage of the proceedings, if appropriate; and it is further

ORDERED that petitioner's Motion for Release (Dkt. No. 13) be and is DENIED, WITHOUT PREJUDICE to renewal at a later stage of the proceedings.

The Clerk is directed to send a copy of this Order to petitioner and to the United States Attorney for the Eastern District of Virginia on behalf of respondent.

Entered this 5th day of Dec. 2017.

Claude M. Hilton
United States District Judge

Alexandria, Virginia

**Additional material
from this filing is
available in the
Clerk's Office.**