

UNPUBLISHED

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

No. 20-1458

In re: KEVEN A. MORGAN,

Petitioner.

On Petition for Writ of Mandamus. (5:19-hc-02153-M)

Submitted: July 23, 2020

Decided: July 27, 2020

Before WILKINSON, MOTZ, and RICHARDSON, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Keven A. Morgan, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Keven A. Morgan petitions for a writ of mandamus, alleging that the district court has unduly delayed in ruling on his 28 U.S.C. § 2254 (2018) petition.* He seeks an order from this court directing the district court to decide his case and to order the Attorney General of North Carolina to produce documents relating to a 2014 wiretapping order. The present record does not reveal undue delay in the district court or any other reason for this court to intervene in the proceedings. Accordingly, we deny the mandamus petition. 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.

PETITION DENIED

* In his mandamus petition, Morgan also appears to allege that the district court has unduly delayed in acting on his October 23, 2019, motion to dismiss and vacate his charges and conviction. However, the district court interpreted the October 23, 2019, pleading as a motion to amend Morgan's § 2254 petition and granted the motion on November 26, 2019.

FILED: September 1, 2020

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Petitioner

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge Motz, and Judge Richardson.

For the Court

/s/ Patricia S. Connor, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:19-HC-2153-FL

KEVEN A. MORGAN,

Petitioner,

v.

STATE OF NORTH CAROLINA,

Respondent.

ORDER

Petitioner, a state inmate proceeding pro se, petitions this court for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter is now before the court for an initial review of the petition pursuant to Rule 4 of the Rules Governing § 2254 cases in the United States District Courts, and on petitioner's motions to notice the North Carolina Department of Public Safety for release pending a habeas corpus action pursuant to Federal Rule of Appellate Procedure 23 (DE 10-11, 14), for copies (DE 12), and "to dismiss, vacate charges and conviction" (DE 16).

Beginning with petitioner's "motion to dismiss, vacate charges and conviction," the motion appears to supplement petitioner's petition for a writ of habeas corpus. Thus, to the extent petitioner seeks to amend his petition, the motion is GRANTED.

As for petitioner's motions to notice the North Carolina Department of Public Safety for release pending a habeas corpus action pursuant to Federal Rule of Appellate Procedure 23, Rule 23 applies when a decision denying habeas petition is under federal appellate review. Fed. R. App. P. 23. Petitioner is not appealing a denial of habeas corpus relief. Thus, Rule 23 is inapplicable and petitioner's motions are DENIED.


1/6/20

As for petitioner's motion for copies from Pitt County Superior Court, petitioner requests "true copies of dismissal notice of reinstatement forms of all related cases for offenses date December 16, 2014, December 29, 2014, March 25, 2015 and April 10, 2015." The court construes this as a motion to compel discovery. "A habeas petitioner, unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course." Bracy v. Gramley, 520 U.S. 899, 904 (1997). Rule 6(a) of the Rules Governing § 2254 Cases states "[a] judge may, for good cause, authorize a party to conduct discovery under the Federal Rules of Civil Procedure and may limit the extent of discovery." As this time, petitioner fails to establish good cause to invoke the process of discovery. Thus, petitioner's motion is DENIED.

The court now turns to the initial review of the petition. ~~It does not clearly appear from the face of the petition that petitioner is not entitled to relief, thus, the matter is allowed to proceed.~~

In sum, the court GRANTS petitioner's motion to amend his petition (DE 16) and DENIES petitioner's motions to notice the North Carolina Department of Public Safety for release (DE 10-11, 14) and for copies (DE 12). The clerk is DIRECTED to maintain management of the matter.

SO ORDERED, this the 26th day of November, 2019.


LOUISE W. FLANAGAN
United States District Judge