No. 20-6277

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: CEDRIC JONES, SR.,)
)
Petitioner.)

ORDER

Appendix "A"

Before: GILMAN, STRANCH, and NALBANDIAN, Circuit Judges.

Cedric Jones, Sr., a Tennessee state prisoner, petitions us for a writ of mandamus, asking us to: (1) stay his district court proceeding pending the outcome of this petition; (2) recuse the district court judge in the underlying habeas proceeding; and (3) reassign his case to a specific district court judge. He also moves to proceed *in forma pauperis*.

"Mandamus is a drastic remedy that should be invoked only in extraordinary cases where there is a clear and indisputable right to the relief sought." *United States v. Young*, 424 F.3d 499, 504 (6th Cir. 2005). "Traditionally, writs of mandamus [are] used only to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *In re Pros. Direct Ins. Co.*, 578 F.3d 432, 437 (6th Cir. 2009) (internal quotation marks and citation omitted).

We may consider a mandamus petition following the district court's denial of a motion to recuse. *In re Aetna Cas. & Sur. Co.*, 919 F.2d 1136, 1143 (6th Cir. 1990) (en banc). A federal judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned" or "[w]here he has a personal bias or prejudice concerning a party." 28 U.S.C. § 455(a), (b)(1). But judicial rulings which do not reflect improper favoritism or antagonism do not constitute grounds for recusal. *See Liteky v. United States*, 510 U.S. 540, 555–56 (1994). Prejudice may generally not be established by challenging the correctness of a judicial ruling.

Appendix "B"

Williams v. Anderson, 460 F.3d 789, 815 (6th Cir. 2006). Additionally, conclusory allegations of bias or prejudice are insufficient to support recusal. *See Green v. Nevers*, 111 F.3d 1295, 1304 (6th Cir. 1997) ("The conclusory and unsubstantial allegations in the motions to disqualify . . . required no action other than the response given in the orders denying these motions."). Other than mere speculation, Jones has not pointed to any antagonism supporting his claim of bias or improper motive. Jones's conclusory allegations of bias and prejudice by the district court relate to various judicial rulings by the judges in various actions in which he was a party before the court. Because his conclusory allegations do not address personal bias or prejudice by the district court judge, the district court did not abuse its discretion in denying his motion under § 455.

Jones's complaints against the district court judge for judicial misconduct are likewise not grounds for recusal here. *See Maisano v. Haynes*, 2014 WL 522588, at *2 (M.D. Tenn. Feb. 5, 2014) ("Judges need not . . . automatically disqualify[] themselves every time their names appear in a case caption or a complaint." (internal citation omitted)); *see also United States v. Martin-Trigona*, 759 F.2d 1017, 1020–21 (2d Cir. 1985) (holding that a party cannot force recusal merely by filing a complaint or lawsuit against a judge); *Houston v. United States*, 2020 WL 861799, at *2–4 (E.D. Tenn. Feb. 20, 2020). Accordingly, Jones has not shown that the extraordinary remedy of mandamus is warranted.

The mandamus petition is therefore **DENIED**. The motion to proceed *in forma pauperis* is **DENIED AS MOOT**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix "C"

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CEDRIC JONES,	)	
	)	
Petitioner,	)	
	)	**No. 3:16-cv-02631**
v.	)	
	)	
GRADY PERRY, Warden,	)	
	)	
	)	
Respondent.	)	

ORDER

Pending before the Court are the following pro se motions filed by Petitioner: Motion for Judge Barbara D Holmes to Read the Petitioner's Letter (Doc. No. 249); Amended Petition for A Writ of Mandamus (Doc. No. 250); Application for Leave to Proceed In Forma Pauperis (Doc. No. 251); Motion to Inspect the Names of the Grand Jurors who Concurred in the Indictment and to Produce the Grand Jury Minutes and Transcripts (Doc. No. 252); Amended Motion for Judge Barbara D Holmes to Read the Petitioner's Letter (Doc. No. 253); Amended Motion for Judge Barbara D Holmes to Read the Petitioner's Letter (Doc. No. 254); Petition for a Writ of Prohibition and a Motion to Stay the Proceeding of the Lower Court (Doc. No 255); Motion for the Court to Read the Petitioner's Second Letter (Doc. No. 256); Motion for the Court to Take Judicial Notice of the Testimony Testified by the Petitioner's Brother during his Sentencing Hearing (Doc. No. 257); Motion for Barbara D. Holmes to Take Judicial Notice of What the Petitioner's Former Fired Post-Conviction Attorney Did and Said (Doc. No. 258); Motion for Barbara D. Holmes to Take Judicial Notice of What the Petitioner's Trial Judge Said During Jury Selection Concerning "Elvis" (Doc. No. 259); Motion for the Court to Read Petitioner's Second Letter (Doc. No. 260); and Motion for the Court to

Appendix "C"

Take Judicial Notice of the Testimony Testified by the Petitioner's Brother During his Sentencing Hearing (Doc. No. 261).

I. Amended Petition for A Writ of Mandamus (Doc. No. 250); Application for Leave to Proceed In Forma Pauperis (Doc. No. 251); Petition for a Writ of Prohibition and a Motion to Stay the Proceeding of the Lower Court (Doc. No 255)

Petitioner's Amended Petition for A Writ of Mandamus (Doc. No. 250), Application for Leave to Proceed In Forma Pauperis (Doc. No. 251), and Petition for a Writ of Prohibition and a Motion to Stay the Proceeding of the Lower Court (Doc. No 255) are captioned to the United States Court of Appeals for the Sixth Circuit. It appears that Petitioner intended for these documents to be filed in that Court. Indeed, pending before the Sixth Circuit now is a previous Writ of Mandamus filed by Petitioner pertaining to the same matters raised by Petitioner in Doc. Nos. 250 and 255. See In re: Cedric Jones, Sr., No. 20-6277 (6th Cir. filed 11/20/2020).

Accordingly, the Clerk is **DIRECTED** to term Doc. Nos. 250, 251, and 255 and **FORWARD** those filings to the United States Court of Appeals for the Sixth Circuit.

II. Motion for Judge Barbara D Holmes to Read the Petitioner's Letter (Doc. No. 249); Amended Motion for Judge Barbara D Holmes to Read the Petitioner's Letter (Doc. No. 253); Amended Motion for Judge Barbara D Holmes to Read the Petitioner's Letter (Doc. No. 254); Motion for the Court to Read the Petitioner's Second Letter (Doc. No. 256); Motion for the Court to Read Petitioner's Second Letter (Doc. No. 260)

The Court previously has advised Petitioner that he cannot litigate this action or any action in this Court by way of notices or letters to the Court. Even though Petitioner is proceeding pro se and the Court will take into consideration his pro se status when evaluating pleadings and pending motions, Petitioner still is required to comply with the rules governing this case. These rules exist to ensure fairness to all parties. As Petitioner well knows, if he wishes for the Court to consider arguments and evidence, he must raise them by way of timely and properly filed motions. In filing these five motions (Doc. Nos. 249, 253, 254, 256, 260), Petitioner attempts to circumvent the Court's

rules by filing motions in which he asks the Honorable Barbara D. Holmes or the Court to read his letters.

The Honorable Barbara D. Holmes is the Magistrate Judge assigned to this case. Consequently, Judge Holmes is apprised of all filings in this case. There is no need for Petitioner to file a motion requesting that Judge Holmes read his filings in this case. Accordingly, Petitioner's motions (Doc. Nos. 249, 253, 254, 256, 260) are **DENIED**. Petitioner is again reminded that he should not attempt to communicate with Judge Holmes or any judge by way of letters and that the Court acts only on properly-filed motions.

III. Motion to Inspect the Names of the Grand Jurors who Concurred in the Indictment and to Produce the Grand Jury Minutes and Transcripts (Doc. No. 252)

Petitioner states that he filed this motion in part "because he objects to the members of the Grand Jury." (Doc. No. 252 at 1). Petitioner does not explain why he wants to inspect the names of the grand jurors, though he states that he raised his objection to the members of the grand jury in his post-conviction petition. (Id. at 1).[1]

In his post-conviction petition, Petitioner advanced one claim related to the composition of the grand jury. He alleged that juror Vanessa Hayes should have been disqualified from service because she was from Brentwood, Tennessee, which Petitioner alleged is not in Davidson County. (See Doc. No. 148, Attach. 1 at 21). The post-conviction court denied Petitioner relief on this claim, finding that "the Court has repeatedly advised the City of Brentwood straddles two counties, Davidson and Williamson. The juror referenced by the Petitioner lived within Davidson County and was eligible to sit on the jury." (Id.)

[1] Petitioner states that he raised "this issue" in his post-conviction petition and provides a citation. (Doc. No. 252 at 1). However, the citation he provides, Doc. No. 234, at PageID #4833, is to a letter from Petitioner requesting a copy of the docket sheet and is unrelated to the composition of the grand jury in his criminal case.

Defendants are "not normally entitled to the names of the members of the grand juries that indicted them." In re Grand Jury Investigation (Diloreto), 903 F.2d 180, 182 (3rd Cir. 1990) (citing United States v. McLernon, 746 F.2d 1098, 1122–23 (6th Cir.1984)); see United States v. Hansel, 70 F.3d 6, 8 (2d Cir.1995); United States v. Barnes, 313 F.2d 325, 326 (6th Cir.1963). The policy behind the secrecy of jurors' names is to protect those called for grand jury service from the intimidation or retaliation of indicted defendants. Diloreto, 903 F.2d at 182. "Only upon a showing of a 'particularized need' by a defendant, may a trial court intrude upon the secrecy of the grand jury proceedings and permit inspection of its minutes." United States v. Levinson, 405 F.2d 971, 981 (6th Cir. 1968) (citing Pittsburgh Plate Glass Co. v. United States, 360 U.S. 395 (1959)).

The only reason provided by Petitioner for wanting the names of grand jury members is to challenge a particular juror's service. But Petitioner already knows the name of that juror, as he identified her by name in his petition for post-conviction relief when he argued that she was not a resident of Davidson County. (See Doc. No. 148, Attach. 1 at 20). The post-conviction court explained that Petitioner was mistaken and the juror at issue was qualified to serve.

Petitioner has made no showing that any of the grand jurors might not have been legally qualified and has therefore not demonstrated a particularized need that would warrant disclosure of the grand jury ballot or concurrence form. Accordingly, Petitioner's motion for the disclosure of the grand jury members' names or a grand jury ballot or concurrence form is **DENIED**.

Petitioner also seeks the production of the grand jury minutes and transcript on grounds that the court and the prosecutor presented a "bad" indictment to the grand jury charging the Petitioner with raping the victim while armed with a deadly weapon. (Doc. No. 252 at 3). Petitioner maintains that he did not "[take] The Victim At Gun Point Period! nor was he ARMED with a weapon when he left his home or used a gun to rape his daughter!" (Id.) Petitioner believes that his indictment is void based on this "misunderstanding." (Id.)

The general rule of secrecy of grand jury proceedings has been held to be essential to the purpose of the grand jury process. United States v. Procter and Gamble Co., 356 U.S. 677, 681 (1958). There are few exceptions to the general rule. See Fed. R. Crim. P. 6(e)(3). Rule 6(e) provides:

> The court may authorize disclosure—at a time, in a manner, and subject to any other conditions that it directs—of a grand-jury matter:
>
> (ii) at the request of a defendant who shows that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury . . . .

Fed. R. Crim. 6(e)(3)(E)(ii). It has long been the "settled rule" of the Sixth Circuit to require the defendant to demonstrate a "particularized need" for disclosure of matters occurring before the grand jury. United States v. Tennyson, 88 F.R.D. 119, 121 (E.D. Tenn.1980) (citations omitted). The defendant's particularized need for disclosure must outweigh the interest in continued grand jury secrecy. A "generalized desire" to inspect the grand jury transcripts in the hopes that evidence beneficial to the defendant will be discovered does not satisfy the particularized need requirement. Tennyson, 88 F.R.D. at 121. Furthermore, the disclosure of grand jury proceedings is "not proper merely for discovery purposes." Id. It is within the trial judge's discretion whether to grant or deny requests for the disclosure of grand jury proceedings. United States v. Levinson, 405 F.2d 971, 981 (6th Cir.1968).

In addition, an indictment "will not be the subject of independent scrutiny and is given a presumption of regularity." United States v. Hart, 513 F. Supp. 657, 658 (E.D.Pa.1981); see also United States v. Azad, 809 F.2d 291, 295 (6th Cir.1986) ("A presumption of regularity attaches to grand jury proceedings . . . ."). The "mere speculation of irregularity is not enough to entitle the defendant to disclosure of grand jury material." Hart, 513 F. Supp. at 658 (citing United States v. Budzanoski, 513 F. Supp. 657, 658 (3d Cir.1972)). Furthermore, as a general matter, there can be no grounds warranting the dismissal of an indictment for errors in grand jury proceedings "unless such errors prejudiced the defendants." Bank of Nova Scotia v. United States, 487 U.S. 250, 254 (1988).

Petitioner raised a claim based on an alleged "bad indictment" in his petition for post-conviction relief. (Doc. No. 148, Attach. 1 at 20). According to Petitioner, "the indictment (counts 1-5) [wa]s fatally defective and . . . it was constructively amended illegally." (Id.) The post-conviction court denied Petitioner relief on this claim, finding that it was "not colorable" because "[o]bjections based on defects in the indictment must be raised prior to trial or they are waived." (Id.) The court further found that, "in the argument section of the Petitioner's briefing[,] he misstated the law as to how the State can charge multiple counts of sexual misconduct and make an election of offenses." (Id.)

"If a § 2254 claim is barred from review because of a violation of a state procedural rule, 'that claim is subject to procedural default and will not be reviewed by federal courts unless the petitioner demonstrates cause and prejudice for the default.'" White v. Tenn., No. 2:14-CV-116-JRG-MCLC, 2017 WL 4364073, at *7 (E.D. Tenn. Sept. 29, 2017) (quoting West v. Carpenter, 790 F.3d 693, 697 (6th Cir. 2015)). Here, the Tennessee Court of Criminal Appeals invoked a state procedural rule as the basis for declining to review Petitioner's challenges to the validity of the indictment and to the selection of the grand jury. As it appears that Petitioner has procedurally defaulted his federal claims related to those challenges, the Court finds that Petitioner has not provided grounds to support a motion to dismiss the indictment that would qualify as a particularized need for the disclosure of grand jury minutes and transcripts.

To the extent that Petitioner seeks the transcript and minutes of the grand jury to support his contention that he is actually innocent of aggravated kidnapping and aggravated rape because he was not "armed with a weapon" at the time of the crimes, the Court previously rejected Petitioner's claim of actual innocence in the context of determining whether Petitioner had established cause and prejudice to excuse his procedural default of his federal judicial bias claim. (Doc. No. at 223 at 17-20).

For the reasons discussed above, Petitioner's Motion to Inspect the Names of the Grand Jurors who Concurred in the Indictment and to Produce the Grand Jury Minutes and Transcripts (Doc. No. 252) is **DENIED**.

IV. Motions for the Court to Take Judicial Notice of the Testimony Testified by the Petitioner's Brother during his Sentencing Hearing (Doc. Nos. 257 and 261); Motion for Barbara D. Holmes to Take Judicial Notice of What the Petitioner's Former Fired Post-Conviction Attorney Did and Said (Doc. No. 258); Motion for Barbara D. Holmes to Take Judicial Notice of What the Petitioner's Trial Judge Said During Jury Selection Concerning "Elvis" (Doc. No. 259)

Petitioner asks the Court and Judge Holmes to take judicial notice of the testimony of his brother during Petitioner's sentencing hearing. (Doc. Nos. 257 and 261). Petitioner also asks Judge Holmes to take judicial notice of what Petitioner's post-conviction counsel "did and said" (Doc. No. 258) and what Petitioner's trial judge "said during jury selection concerning 'Elvis'" (Doc. No. 259).

First, Petitioner cannot choose which judge hears his case or rules on his motions. District judges are appointed by the President of the United States and confirmed by the United States Senate pursuant to Article III of the Constitution. District judges are appointed for life and cannot be removed unless impeached. The undersigned is the district judge assigned to this case. Magistrate judges are appointed by the district judges of the Court to eight-year terms. They may and often do serve more than one term. It is common for a magistrate judge to handle pre-trial matters (to supervise discovery, set schedules, and attempt to settle the case) and other parts of the case assigned to the magistrate judge by the district judge. As noted earlier, Judge Holmes is the Magistrate Judge assigned to this case.[2] However, the undersigned has not referred any pending motions to the Magistrate Judge. As such, any motions filed by Petitioner will be heard by the undersigned.

Federal Rule of Evidence 201 governs judicial notice of adjudicative facts. The Rule, in relevant part, provides that "[t]he Court may judicially notice a fact that is not subject to reasonable

[2] Prior to his retirement, the Honorable Joe B. Brown was the Magistrate Judge assigned to his case.

dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(1)-(2).

The items which Petitioner asks the Court to judicially notice—the transcript of Petitioner's sentencing hearing (Doc. No. 178, Exh. 10), the letter written by post-conviction counsel Leann Smith (Doc. No. 160, Exh. C), and a statement made by the trial judge concerning Elvis during Petitioner's criminal trial (Doc. No. 178, Attach. 7)—are all part of the existing record in this case. Therefore, it is not necessary for the Court to take judicial notice of these items.

Petitioner's commentary regarding the sentencing hearing, his jury selection procedure, and other matters does not constitute adjudicative facts of which this Court can take judicial notice. "'[A] court cannot notice pleadings or testimony as true simply because these statements are filed with the court.'" In re Omnicare, Inc. Secs. Litig., 769 F.3d 455, 468 (6th Cir. 2014) (quoting 21B Charles Alan Wright et al., Federal Practice and Procedure § 5106.4 (2d ed. 2005)). The Court will consider all of Petitioner's allegations and legal argument when ruling on his habeas petition, but the Court will not take judicial notice of such. Petitioner's motions for the Court to take judicial notice (Doc. Nos. 257, 258, 259, 261) are **DENIED**.

IT IS SO ORDERED.

Waverly D. Crenshaw, Jr.

WAVERLY D. CRENSHAW, JR.
CHIEF UNITED STATES DISTRICT JUDGE

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