

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TERRY G. WATSON,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 4:15CV1864 ACL
	)	
DEAN MINOR,	)	
	)	
Respondent.	)	

ORDER

This matter is before the Court on the Petition of Terry G. Watson for a writ of habeas corpus under 28 U.S.C. § 2254. Presently pending before the court are the following motions filed by Watson: (1) “Motion to Take Judicial Note [sic] and Request for Expedition” (Doc. 51); (2) Motion for Summary Judgment (Doc. 52); (3) Motion to Supplement (Doc. 55); (4) Request for Entry of Default (Doc. 56); (5) Motion for Default Judgment (Doc. 57); (6) Motion for Release (Doc. 58); (7) Motion for Costs (Doc. 59); and (8) Motion for Leave to File Recently Discovered Evidence (Doc. 60). The undersigned will discuss these motions in turn.

Motion for Judicial Notice and Expedition (Doc. 51)

Watson requests that the Court take judicial notice of the state of his health, and “current level of unconstitutionally imposed suffering at the hands of his jailers,” and expedite “the proceedings predicated upon his suffering.” (Doc. 51 at 1.)

Watson’s motion will be denied. Watson’s claims about the conditions of his confinement are not cognizable in the instant habeas action, and are instead more properly brought under 42 U.S.C. § 1983. The claims brought in the instant Petition will be resolved in due course.

Motion for Summary Judgment (Doc. 52)

A motion for summary judgment is not the proper vehicle to determine the merits of the petition. *Bauer v. Gonzales*, No. 06-1763 (JRT/FLN), 2006 WL 2735460, at *3 (D. Minn. Sept. 25, 2006). The Court will resolve Watson's claims based on the Petition and related filings, Respondent's Response to Order to Show Cause, the Traverse, and the State court record.

Watson's Motion for Summary Judgment will be denied.

Motions to Supplement (Docs. 55, 60)

Watson has filed two motions to supplement the record. In his first motion, he seeks to clarify his claim set forth in Ground 7. (Doc. 55.) His second motion seeks leave to file "recently discovered evidence" relevant to his Petition. (Doc. 60.)

Watson's motions will be granted, in that he may file the requested documents.

Motions for Default (Docs. 56, 57)

Watson has filed a Motion for Entry of Default and Motion for Default Judgment due to Respondent's failure to respond to his Motion for Summary Judgment. The Court has found that Watson's Motion for Summary Judgment is not proper in this action and has denied the motion. Watson's motions for default will therefore be denied.

Motion for Release (Doc. 58)

Watson requests that the Court release him on bond for the following reasons: he is in litigation with the Missouri Department of Corrections related to his medical care, he has presented substantial federal constitutional claims, and the State failed to respond to his Motion for Summary Judgment. Watson's motion will be denied. As previously discussed, Watson's Motion for Summary Judgment was not properly filed, and the Court will take up the claims raised in his Petition in due course.

Motion for Costs (Doc. 59)

Finally, Watson has filed a Motion for Costs, in which he requests that the Court award him \$41,000 for attorney fees and costs associated with litigating this action. Watson is not entitled to attorney fees or costs, as he is neither an attorney nor a prevailing party.

Accordingly,

IT IS HEREBY ORDERED that Watson's Motion to Supplement (Doc. 55), and Motion for Leave to File Recently Discovered Evidence (Doc. 60) are **granted**.

IT IS FURTHER ORDERED that Watson's remaining pending motions (Docs. 51, 52, 56, 57, 58, 59) are **denied**.

Dated this 4th day of December, 2017.



ABBIE CRITES-LEONI
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TERRY G. WATSON,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 4:15CV1864 ACL
	)	
DEAN MINOR,	)	
	)	
Respondent.	)	

ORDER

This matter is before the court on Petitioner's Motion to Appeal in Forma Pauperis on Interlocutory Appeal. (Doc. 63.) After considering Petitioner's financial status as shown in the records of this Court, the Court finds that Petitioner is unable to pay the appellate filing fee and will therefore grant Petitioner's Motion. *See* 28 U.S.C. § 1915(a)(1)-(2).

Accordingly,

IT IS HEREBY ORDERED that Petitioner's Motion to Appeal in Forma Pauperis (Doc. 63) is **granted**.

Dated this 21st day of December, 2017.

/s/ Abbie Crites-Leoni
ABBIE CRITES-LEONI
UNITED STATES MAGISTRATE JUDGE

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

No: 17-3735

Terry G. Watson

Petitioner - Appellant

v.

Dean Minor

Respondent - Appellee

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:15-cv-01864-ACL)

JUDGMENT

Before GRUENDER, BOWMAN and SHEPHERD, Circuit Judges.

The court has carefully reviewed the original file of the United States District Court and orders that this appeal be dismissed for lack of jurisdiction.

January 12, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

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

No: 17-3735

Terry G. Watson

Appellant

v.

Dean Minor

Appellee

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:15-cv-01864-ACL)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

February 12, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

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

No: 17-3735

Terry G. Watson

Appellant

v.

Dean Minor

Appellee

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:15-cv-01864-ACL)

MANDATE

In accordance with the judgment of 01/12/2018, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

February 20, 2018

Clerk, U.S. Court of Appeals, Eighth Circuit

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

No: 18-1432

In re: Terry G. Watson

Petitioner

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:15-cv-01864-ACL)

JUDGMENT

Before BOWMAN, GRUENDER and SHEPHERD, Circuit Judges.

Petition for writ of mandamus has been considered by the court and is denied.

Mandate shall issue forthwith.

March 01, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

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

No: 18-1432

In re: Terry G. Watson

Petitioner

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:15-cv-01864-ACL)

MANDATE

In accordance with the judgment of 03/01/2018, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

March 01, 2018

Clerk, U.S. Court of Appeals, Eighth Circuit

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TERRY G. WATSON,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 4:15CV1864 ACL
	)	
DEAN MINOR, ¹	)	
	)	
Respondent.	)	

ORDER

This matter is before the Court on the Petition of Terry G. Watson for a writ of habeas corpus under 28 U.S.C. § 2254. Presently pending before the court are the following motions filed by Watson: (1) a motion to appoint counsel (Doc. 2); (2) four motions for injunctive relief (Docs. 3, 11, 29, 30); (3) four motions to consider evidence (Docs. 19, 25, 28, 34); and (4) a motion asking the court to investigate unethical actions by the Missouri Attorney General's Office (Doc. 35). Respondent has filed a Response to Watson's pending motions. (Doc. 41.) The Court will address Watson's motions in turn.

I. Motion to Appoint Counsel

Habeas proceedings are civil in nature, and, thus, habeas petitioners have no Sixth Amendment right to counsel. *See Hoggard v. Purkett*, 29 F.3d 469, 471 (8th Cir. 1994); *McCall v. Benson*, 114 F.3d 754, 756 (8th Cir. 1997) ("there is neither a constitutional nor statutory right to counsel in habeas proceedings"). Section 2254, which addresses the appointment of counsel, reads:

¹Watson has been transferred to the Moberly Correctional Center in Moberly, Missouri. Dean Minor, the Warden of the Moberly Correctional Center, is substituted as the proper Respondent. *See* Rule 2(a), Rules Governing Section 2254 Cases in the United States District Courts.

(h) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

28 U.S.C. § 2254 (h). A Magistrate Judge or District Judge may appoint counsel for a habeas petitioner if “the interests of justice so require.” 18 U.S.C. § 3006A(a)(2)(B). Except when an evidentiary hearing is held, the court may use its discretion in deciding whether to appoint counsel. *See Abdullah v. Norris*, 18 F.3d 571, 573 (8th Cir.1994). To determine whether appointment of counsel is warranted, the court should examine the nature of the litigation, the litigant's ability to do research and present his claims, and the complexity of the issues. *See id.*; *McCall*, 114 F.3d at 756.

A review of the *pro se* Petition reveals that Watson raises twenty-two grounds for relief. The Court notes that none of these claims appear legally or factually complex, and that Watson has clearly presented his claims to this Court for adjudication.

After examining the record, the undersigned finds that neither the interests of justice nor due process requires the appointment of counsel at this stage of the litigation. Watson's motion will be denied without prejudice, meaning that it may be brought again at a later time if it appears that justice would require the appointment of counsel.

II. Motions for Injunctive Relief (Docs. 3, 11, 29, 30)

In Document Three, Watson requests that the Court prevent his transfer from the South Central Correctional Center (“SCCC”) in Licking, Missouri; grant him bail; and allow him to live with his wife while released on bail.

As an initial matter, Respondent notes that part of Watson's request is moot, as Watson has already been transferred from SCCC to the Moberly Correctional Center in Moberly, Missouri.

Watson's Motion will be denied. Prison officials have broad discretion to transfer prisoners in accordance with prison administration. *See Lyon v. Farrier*, 727 F.2d 766, 768 (8th Cir. 1984).

This Court has no authority to determine where Watson is housed or to release Watson on bond. The undersigned will address the merits of Watson's Petition in due course. Watson's Petition will be granted only if he demonstrates that his confinement violates clearly established federal law.

Similarly, in Document Eleven, Watson requests that the Court order that he be returned to his prior housing assignment. The prison has broad discretion to determine where Watson is housed, and this Court will not interfere with such decisions. Watson's Motion will be denied.

In Watson's last two motions for injunctive relief (Docs. 29, 30), he complains about being housed in administrative segregation. Respondent states that the Department of Corrections placed Watson in protective custody/administrative segregation due to concerns for his safety, but, after a few weeks, the Department of Corrections released him back to general population (Doc. 41 at 53.) Thus, Watson's Motions complaining about the conditions of administrative segregation (Docs. 29, 30) will be denied as moot.

III. Motions to Consider Evidence (Docs. 19, 25, 28, 34)

Watson first requests that this Court consider a decision of the Missouri Commission on Retirement, Removal and Discipline of Judges as evidence of exhaustion of state remedies. (Doc. 19.) Respondent states that he does not object to the Court's consideration of this evidence, but it does not affect the analysis of Watson's procedural default of his claims. (Doc. 41 at 52.)

The Court will grant Watson's request to consider this evidence.

Watson next requests that the Court consider that he is being threatened by a prison gang. (Doc. 25.) As previously noted, Watson was subsequently placed in protective custody/admini-

strative segregation so that the Department of Corrections could investigate these alleged threats. Watson was released back to general population after it was determined he was no longer in danger. This issue does not pertain to Watson's Petition, and Watson does not request any relief. As such, this Motion will be denied.

Approximately one week later, Watson filed a Motion requesting that the Court accept as evidence the fact that he had been placed in administrative segregation, and that he may have difficulty preparing a Traverse. (Doc. 28.) Watson has since been released from administrative segregation, and has filed a Traverse (Doc. 43.) Thus, this Motion will be denied as moot.

Finally, Watson requests that the Court accept his attached medical records as evidence in his habeas proceedings. (Doc. 34.) Watson claims that the records demonstrate that he was disabled during the period in which the underlying crimes occurred. Respondent states that he has no objection to the Court's consideration of these records, but argues that his disability does not show his innocence of the crimes for which he was convicted. (Doc. 41 at 55-56.)

The Court will grant Watson's Motion and will allow Watson to submit the medical records attached to Document Number Thirty-Four.

IV. Motion to Investigate

Watson requests that the Court investigate "unethical actions by the Missouri Attorney General's Office." (Doc. 35.) Watson claims that the Attorney General Office's "dilatatory tactics of extensions appear to be predicated on protecting the attorney Travis D. Partney, who prosecuted Petitioner in the trial in the Jefferson County Court." *Id.* at 1.

Watson's Motion is completely without merit and will be denied.

Accordingly,

IT IS HEREBY ORDERED that Watson's Motion to
denied without prejudice.

IT IS FURTHER ORDERED that Watson's Motions to
34) be **granted.**

IT IS FURTHER ORDERED that Watson's remaining pending motions (Docs. 3, 1,
28, 29, 30, 35) be **denied.**

/s/ Abbie Crites-Leoni

ABBIE CRITES-LEONI

UNITED STATES MAGISTRATE JUDGE

Dated this 22nd day of September, 2016.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TERRY G. WATSON,

Petitioner,

vs.

DEAN MINOR,

Respondent.

Case No. 4:15CV1864 ACL

ORDER

This matter is before the Court on the Petition of Terry G. Watson for a writ of habeas corpus under 28 U.S.C. § 2254. Presently pending before the court is Petitioner's *pro se* "Motion of Newly Discovered Evidence." (Doc. 48.)

In his Motion, Petitioner requests that the Court consider "recently discovered evidence" that is relevant to his actual innocence claim. The Court will allow Petitioner to file this evidence in support of his Petition.

Accordingly,

IT IS HEREBY ORDERED that Petitioner's Motion of Newly Discovered Evidence (Doc. 48) is **granted**, in that Petitioner is granted leave to file evidence in support of his Petition.

Dated this 5th day of April, 2017.



ABBIE CRITES-LEONI
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TERRY G. WATSON,

Petitioner,

vs.

DEAN MINOR,

Respondent.

Case No. 4:15CV1864 ACL

ORDER

This matter is before the Court on the Petition of Terry G. Watson for a writ of habeas corpus under 28 U.S.C. § 2254. Presently pending before the court is Petitioner's *pro se* "Motion for Discovery Evidence." (Doc. 45.)

In his Motion, Petitioner states that he recently discovered evidence of bias of the trial judge and prosecutor in the underlying criminal case at issue. He requests leave to file his sworn declaration, in which he sets out the basis of these allegations of bias. The Court will allow Petitioner to file this evidence in support of his Petition.

Accordingly,

IT IS HEREBY ORDERED that Petitioner's Motion for Discovery Evidence (Doc. 45) is **granted**, in that Petitioner is granted leave to file the Declaration of Terry G. Watson.

Dated this 26th day of January, 2017.



ABBIE CRITES-LEONI
UNITED STATES MAGISTRATE JUDGE

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