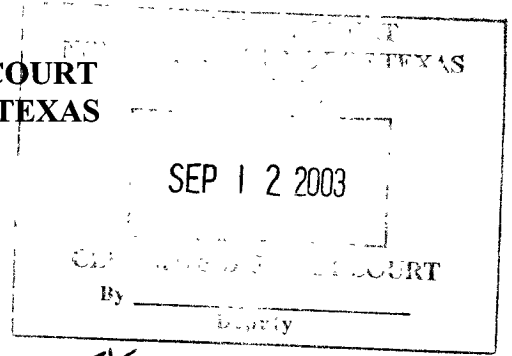


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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**



GREGORY EDWARD WRIGHT, §
PETITIONER, §

V. §

DOUGLAS DRETKE, DIRECTOR, §
TEXAS DEPARTMENT OF §
CRIMINAL JUSTICE, §
CORRECTIONAL INSTITUTIONS §
DIVISION,¹ §
RESPONDENT. §

No. 3:01-CV-0472-MK

ORDER DENYING AMENDED MOTION TO DISCLOSE INFORMATION

Petitioner is a state inmate under a sentence of death who has filed a petition for writ of habeas corpus with this Court pursuant to 28 U.S.C. § 2254. The Court has before it Petitioner's amended motion for discovery entitled "Amended Motion to Disclose Information and Memorandum" filed with the Court on November 18, 2002, as well as a response in opposition from Respondent filed on December 5, 2002. In his motion, Petitioner requests that this Court order Respondent to produce numerous documents and objects. In its response in opposition, Respondent asserts that Petitioner is not entitled to discovery because most of the claims he raises in his federal petition are procedurally barred and because all of the issues raised by Petitioner were adequately litigated at trial.

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Effective August 21, 2003, the Texas Department of Criminal Justice, Institutional Division was changed to the Correctional Institutions Division, and Douglas Dretke was named the Director. The caption is being changed pursuant to Fed. R. Civ. P. 25(d).

Under Rule 6(a) of the “Rules Governing Section 2254 Cases in the United States District Courts,” a federal habeas petitioner may invoke the discovery process “if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise.” *See* Fed. R. 6(a) Governing § 2254 Cases. Thus, a federal 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). In order to determine whether a habeas petitioner is entitled to discovery, a federal court must first identify the “essential elements” of his claims for habeas relief for which he seeks discovery. *Id.* Then, “where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is . . . entitled to relief, it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry.” *Id.* at 908-9, *citing Harris v. Nelson*, 394 U.S. 286, 300 (1969). Nevertheless, the Fifth Circuit has repeatedly stated that Rule 6 does not authorize fishing expeditions and that conclusory allegations are not enough to warrant discovery. *Rector v. Johnson*, 120 F.3d 551, 558 (5th Cir. 1997); *Perillo v. Johnson*, 79 F.3d 441, 444 (5th Cir 1996); *Ward v. Whitley*, 21 F.3d 1355, 1367 (5th Cir. 1994).

Petitioner requests that Respondent produce the following items: all jeans seized from the shack where Petitioner and his co-defendant, John Adams, kept personal items; the book-in photographs of Petitioner and Adams; the clothes worn by Petitioner and Adams at the time of their book-in; the original videotape of Adams’s interrogation; an inventory of all items found at the victim’s home; an inventory of all items found at the shack; all documents relating to witness Moseley, including any deal or offer he had in exchange for his testimony, although the State has always denied that such a deal existed; all documents relating to the location of witness McGaughey

and Causey at the time of trial, although the State has maintained that their whereabouts were unknown at that time; the original bloody fingerprint found at the crime scene; the prosecution's fingerprint expert's entire file on Petitioner's case; and the apparently missing 911 tapes and any documents related to them.


As Respondent notes, all of these requests appear to be in an effort to support claims that were not raised at the state level. Therefore, in order for these claims to be considered by this Court, Petitioner must establish either cause and prejudice for failing to raise the claims on the state level, or that a failure to consider these claims would result in a fundamental miscarriage of justice. *See Coleman v. Thompson*, 501 U.S. 722 (1991). Without such a showing, Petitioner cannot establish good cause for discovery, as he cannot show that there is reason to believe that, were the facts further developed, he would be entitled to relief. Moreover, some of the information Petitioner seeks concerns issues that were litigated at trial, including the size of jeans seized from the shack and the fingerprint found at the scene. Indeed, in affidavits presented to this Court as support for Petitioner's habeas petition, Petitioner's trial counsel note that the issues of the size of the jeans found in the shack, and its relevance to the identity of the killer, and the validity of the identification of Petitioner's bloody fingerprint at the crime scene were litigated at trial. (Petitioner's Exhibit #19, 20). And, some of the items requested by Petitioner, including the 911 tapes and any documents regarding the whereabouts of certain witnesses at the time of trial, would constitute potential material exculpatory or impeachment evidence. The prosecution is under a continuing duty under *Brady v.*

Maryland, 373 U.S. 83 (1963), to provide such information to Petitioner, and it is therefore unnecessary for this Court to order discovery of any Brady material, if such material indeed exists.²

Because of the substantial hurdle Petitioner must meet in order to have the majority of his claims considered by this Court, because it appears that much of the discovery Petitioner seeks concerns issues that were already litigated at his state trial, and because Petitioner is already entitled to any *Brady* evidence in the State's possession, Petitioner has failed to establish good cause for the broad discovery he seeks. The Court notes, however, that under Rule 7 of the federal rules governing habeas cases, a district court may order the expansion of the record by the inclusion of additional materials relevant to the determination of the merits of a petition. *See Fed. R. 7 Governing § 2254 Cases*. Accordingly, if after further review of the record and the pleadings this Court determines that additional materials need to be added to the record in order to fully address Petitioner's habeas petition, this Court will order that this be done.

Petitioner's motion is DENIED.

Signed this 12th day of September, 2003.


ED KINKEADE
UNITED STATES DISTRICT JUDGE

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Petitioner is not entitled, however, to *every* document in the State's file regarding these witnesses and the 911 tapes, as this would be the type of fishing expedition that is forbidden by Fifth Circuit precedent.