Hoffner v. Bradshaw Doc. 106

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO

TIMOTHY HOFFNER,

CASE NO. 05-CV-00687

Petitioner,

OPINION & ORDER

vs. :

[Resolving Docs. <u>103</u>, <u>104</u>, <u>105</u>]

MARARET BRADSHAW Warden.

Respondent.

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On January 6, 2006, Petitioner Timothy Hoffner filed a petition seeking a writ of habeas corpus under 28 U.S.C. § 2554. On July 23, 2008, this Court denied Petitioner Hoffner's petition. On September 6, 2016, Petitioner moved this Court to authorize and fund Petitioner's forthcoming state court litigation attacking his conviction. Apparently, the Petitioner plans to file a motion to reopen his direct appeal under Ohio App. R. 26(B) and a successive state post-conviction petition under Ohio. Rev. Code Ann. § 2953.23.

Petitioner argues that he is entitled to federally-funded counsel under 18 U.S.C. § 3599(e) to pursue his post-conviction state court proceedings. But § 3599 "does not authorize federal funding for this type of proceeding." Where a federal habeas proceeding has concluded—as it has here—and Petitioner pursues "the commencement of new judicial proceedings," § 3599 does

¹ Doc. 29.

² Doc. 87. Defendant's appeal to the Sixth Circuit and petition for writ of certiorari to the Supreme Court were both denied. Docs. 93, 96.

³ Doc. <u>103</u>. Respondent opposed. Doc. <u>104</u>. Petitioner replied. Doc. <u>105</u>.

⁴ Doc. <u>103</u> at 3.

⁵ Irick v. Bell, 636 F.3d 289, 292 (6th Cir. 2011).

Case No. 05-cv-00687 Gwin, J.

not apply.⁶ Especially when the State of Ohio provides compensation for persons representing indigent defendants in state post-conviction proceedings.

Therefore, Petitioner's motion for authorization for habeas counsel to conduct state court litigation is **DENIED.**

IT IS SO ORDERED.

Dated: September 26, 2016 s/ James S. Gwin

JAMES S. GWIN UNITED STATES DISTRICT JUDGE

⁶ Id; see also <u>Hill v. Anderson, No. 4:96 CV 00795, 2014 WL 2882905, at *2 (N.D. Ohio June 25, 2014)</u> (denying a request for § 3599 funding where the court had "ruled on [Petitioner's habeas] claims" and the habeas "petition [was] no longer within [the] Court's jurisdiction").