-CSC Flowers v. Thomas (DEATH PENALTY) Doc. 49

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

RICHARD FLOWERS,	)	
	)	
Petitioner,	)	
	)	
v.	)	CIVIL ACTION NO.2:10cv579-MEF
	)	(WO)
KIM T. THOMAS, Interim Commissioner	)	
Alabama Department of Corrections,	)	
	)	
Respondent.	)	
	)	

O R D E R

The petitioner has filed a motion for discovery in support of his claim that "Alabama's practice of lethal injection as a method of execution" (Pet'r's Br., doc. # 42, at 1) is violative of the Eighth Amendment. Unsurprisingly, the respondent opposes the motion. For the reasons which follow, the court concludes that the motion is due to be denied.

"A habeas petitioner, unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of course." *Bracy v. Gramley,* 520 U.S. 899, 904 (1997). Rather, pursuant to Rule 6 of the RULES GOVERNING SECTION 2254 CASES IN THE UNITED STATES DISTRICT COURTS, a petitioner must demonstrate "good cause" before a judge may authorize discovery. "Good cause" is shown where petitioner (1) makes credible allegations of a constitutional violation and (2) the requested discovery will enable the petitioner to investigate and prove his claims. *See, id.* at 908-909.

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Flowers' request for discovery fails to meet these requirements for the simple reason that he is not entitled to bring in a habeas action a challenge to lethal injection procedures. "A § 1983 lawsuit, not a habeas proceeding, is the proper way to challenge lethal injection procedures." *Tompkins v. Secretary, Dept. of Corrections,* 557 F.3d 1257, 1261 (11th Cir. 2009), citing *Hill v. McDonough*, 547 U.S. 573, 579-83 (2006). Thus, Flowers' motion for discovery in this habeas action must be denied. In reaching this conclusion, the court expresses no opinion concerning Flowers' entitlement to discovery in an action properly brought pursuant to 42 U.S.C. § 1983 to challenge Alabama's lethal injection procedures. *See Arthur v. Thomas*, ___ F.3d ___, 2012 WL 934385 (11th Cir. March 21, 2012) Accordingly, it is

ORDERED that Flowers' motion for discovery be and is hereby DENIED.

Done this 22nd day of March, 2012.

/s/Charles S. Coody
CHARLES S. COODY
UNITED STATES MAGISTRATE JUDGE