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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KHADIJAH GHAFUR,)	1:08-cv-01502-OWW-BAK-SMS HC
)	
Petitioner,)	ORDER DENYING PETITIONER'S
)	MOTIONS FOR DISCOVERY AND
v.)	EVIDENTIARY HEARING
)	(Doc. 13)
K. EICHENBERGER,)	
)	
Respondent.)	

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On November 13, 2008, the Court ordered Respondent to file a response to the petition. (Doc. 10). On November 21, 2008, Petitioner filed the instant motion that requests an evidentiary hearing and also seeks discovery of unspecified documents. (Doc. 13).¹ On January 13, 2009, Respondent filed the answer. (Doc. 20). On February 17, 2009, Petitioner filed his traverse. (Doc. 23). The case is now fully briefed and awaiting a decision on the merits.

A. Motion for Discovery.

The writ of habeas corpus is not a proceeding in the original criminal prosecution but an

¹The motion itself does not refer to any discovery request and is limited to requesting an evidentiary hearing. However, in a handwritten note appended to the motion, Petitioner refers to bankruptcy proceedings against an organization from which Petitioner apparently was found guilty of embezzling funds. Presumably, Petitioner wishes this Court to permit discovery of unspecified documents related to that organization's bankruptcy.

1 independent civil suit.” Riddle v. Dyche, 262 U.S. 333, 335-336, 43 S.Ct. 555, 555 (1923); *See, e.g.*
2 Keeney v. Tamayo-Reyes, 504 U.S. 1, 14, 112 S.Ct. 1715, 1722 (1992) (O’Connor, J., dissenting).
3 However, modern habeas corpus procedure has the same function as an ordinary appeal. Anderson v.
4 Butler, 886 F.2d 111, 113 (5th Cir. 1989); O’Neal v. McAnnich, 513 U.S. 440, 442, 115 S.Ct. 992
5 (1995) (federal court’s function in habeas corpus proceedings is to “review errors in state criminal
6 trials” (emphasis omitted)). A habeas proceeding does not proceed to “trial” and unlike other civil
7 litigation, a habeas corpus petitioner is not entitled to broad discovery. Bracy v. Gramley, 520 U.S.
8 899, 117 S.Ct. 1793, 1796-97 (1997); Harris v. Nelson, 394 U.S. 286, 295, 89 S.Ct. 1082, 1088-89
9 (1969). Although discovery is available pursuant to Rule 6, it is only granted at the Court’s
10 discretion, and upon a showing of good cause. Bracy, 117 S.Ct. 1793, 1797; McDaniel v. United
11 States Dist. Court (Jones), 127 F.3d 886, 888 (9th Cir. 1997); Jones v. Wood, 114 F.3d 1002, 1009
12 (9th Cir. 1997); Rule 6(a) of the Rules Governing Section 2254. The Advisory Committee Notes to
13 Rule 6 of the Rules Governing Section 2254 Cases emphasize that Rule 6 was not intended to extend
14 to habeas corpus petitioners, as a matter of right, the Federal Rules of Civil Procedure’s broad
15 discovery provisions. Rule 6, Advisory Committee Notes (quoting Harris, 394 U.S. at 295, 89 S.Ct.
16 at 1089).

17 Because Petitioner states no specific documents on which he would like discovery, the
18 purpose of the instant motion and the proffered justification for permitting further discovery is
19 unclear. If the purpose of the instant motions was to ensure this court apply constitutional standards
20 to Petitioner’s petition, this court assures Petitioner that it will review the claims in his petition under
21 the provisions of the AEDPA. Van Tran v. Lindsey, 212 F.3d 1143, 1148 (9th Cir. 2000). Pursuant
22 to the AEDPA, a state court’s decision denying relief may be reversed only if that decision is
23 “contrary to, or involves an unreasonable application of, clearly established federal law as
24 determined by the Supreme Court of the United States.” Id., at 1149 (*quoting* 28 U.S.C.
25 § 2254(d)(1)).

26 However, if the purpose of Petitioner’s motion is to force additional discovery, the motions
27 must be denied. Unlike other civil litigation, a habeas corpus petitioner is not entitled to broad
28 discovery. Bracy, 520 U.S. at 904; Harris, 394 U.S. at 295. A petitioner does not have the right to

1 inquire into all matters which are relevant to the subject matter involved in the pending action,
2 whether admissible at trial or not. Harris, 394 U.S. at 297. “Such a broad-ranging preliminary
3 inquiry is neither necessary nor appropriate in the context of a habeas corpus proceeding.” Id.
4 Elaborate discovery procedures would cause substantial delay to prisoners and place a heavy burden
5 upon courts, prison officials, prosecutors, and police. Id. Nevertheless, “where specific allegations
6 before the court show reason to believe that the petitioner may, if the facts are fully developed, be
7 able to demonstrate that he is confined illegally and is therefore entitled to relief, it is the duty of the
8 court to provide the necessary facilities and procedures for an adequate inquiry.” Id. at 300.

9 In this case, Petitioner does not specify the documents for which he would like discovery and
10 does not demonstrate good cause why the request for discovery should be granted. In his petition,
11 Petitioner is challenging, inter alia, the sufficiency of the evidence supporting his conviction. (Doc.
12 1). In addressing whether the state court’s judgment and sentence that is based upon such evidence
13 was contrary to or an unreasonable application of clearly established federal law, the Court will
14 carefully examine the state appellate record, including the trial transcript, lodged with the Court by
15 Respondent. In determining whether Petitioner’s conviction is supported by substantial evidence,
16 the Court will look at the evidence presented by the prosecution; however, it would be wholly
17 inappropriate for the Court to permit discovery of, and subsequently entertain legal arguments related
18 to, documents not introduced into evidence at Petitioner’s trial and considered by the jury in arriving
19 at a guilty verdict. Thus, in the Court’s view, further discovery of the type suggested by Petitioner in
20 the instant motion would be unnecessary and result in undue delay. In his motion, Petitioner does
21 not explain why the information is needed, nor what claims or arguments said discovery would relate
22 to, nor why said discovery is relevant to a determination of the merits of this petition. Accordingly,
23 the Court will deny the motion for discovery.

24 B. Motion for Evidentiary Hearing.

25 Rule 8(a) of the Rules Governing Section 2254 Cases provides that where a petition is not
26 dismissed at a previous stage in the proceeding, the judge, after the answer and transcripts and record
27 of the state court proceedings are filed, shall, *upon review* of those proceedings, determine whether
28 an evidentiary hearing is required. The purpose of an evidentiary hearing is to resolve the merits of a
factual dispute. An evidentiary hearing on a claim is required where it is clear from the petition that:

1 (1) the allegations, if established, would entitle the petitioner to relief; and (2) the state court trier of
2 fact has not reliably found the relevant facts. See, Hendricks v. Vasquez, 974 F.2d 1099, 1103 (9th
3 Cir.1992). As the function of an evidentiary hearing is to try issues of fact, Townsend v. Swain 372
4 U.S. 293, 309 (1963)(*overruled in part by Keeney v. Tamayo-Reyes*, 504 U.S. 1, 112 S.Ct. 1715
5 (1993)), such a hearing is unnecessary when only issues of law are raised. Id.

6 As mentioned previously, the answer and traverse have already been filed and the case is now
7 ripe for a decision on the merits. The Court, however, has not yet conducted such a review of the
8 merits, and thus, whether or not there exists a factual dispute of the type that warrants an evidentiary
9 hearing has not been made. Following a thorough review of the petition's merits, the Court will sua
10 sponte issue an order for an evidentiary hearing *should it find one necessary*. Accordingly,
11 Petitioner's Motion for an Evidentiary Hearing is DENIED.

12 ORDER

13 For the foregoing reasons, the Court HEREBY ORDERS as follows:

- 14 1. Petitioner's motion for evidentiary hearing and discovery (Doc. 13), is DENIED.

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16 IT IS SO ORDERED.

17 **Dated:** September 9, 2009

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

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