

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LARRY BAILEY-BANKS,
Petitioner,

v.

W.L. MONTGOMERY,
Respondent.

1:15-cv-01839 AWI MJS HC
**ORDER DENYING, WITHOUT PREJUDICE,
MOTION REQUESTING DISCOVERY**
(Doc. 19)

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On April 14, 2016, Petitioner moved the Court for an order authorizing discovery. (ECF No. 19.) Petitioner claims that the prosecution failed to provide evidence that a co-defendant was given a favorable plea-agreement as an inducement to discourage him from testifying on Petitioner's behalf. Petitioner wishes to conduct discovery to obtain evidence supporting the allegation.

This Court, in reviewing Petitioner's claims and determining if the state court decision was reasonable, may only rely upon the record before the state court. See Cullen v. Pinholster, 131 S. Ct. 1388, 1398 (2011) ("We now hold that review under § 2254(d)(1) is limited to the record that was before the state court that adjudicated the

1 claim on the merits."). As such, further discovery is not warranted at this time as the
2 Court may not examine evidence not before the state court in its initial review of
3 Petitioner's claims. If, upon substantive review of the petition, the Court determines that
4 discovery is necessary, it will provide Petitioner the opportunity to obtain the discovery.

5 It is hereby ordered that Petitioner's motion requesting discovery be DENIED
6 without prejudice.

7

8

IT IS SO ORDERED.

9

Dated: March 6, 2017

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28