

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00360-BNB

FREDERICK O. SOLARIN, JR.,

Applicant,

v.

SARA M. REVELL, Complex Warden, Butner, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

APR 14 2010

GREGORY C. LANGHAM
CLERK

ORDER

Applicant, Frederick O. Solarin, Jr., has filed *pro se* on April 12, 2010, an "Objection to Magistrate's Order Filed March 16, 2010." Mr. Solarin objects to the denial of his requests for appointment of counsel in Magistrate Judge Boyd N. Boland's Order Directing Applicant to File Amended Application entered in this action on March 16, 2010. For the reasons stated below, the objection will be overruled.

Pursuant to 28 U.S.C. § 636(b)(1)(A) a judge may reconsider any pretrial matter designated to a magistrate judge to hear and determine where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law. The Court has reviewed the file and finds that Magistrate Judge Boland's Order Directing Applicant to File Amended Application is not clearly erroneous or contrary to law.

Mr. Solarin is a prisoner in the custody of the United States Bureau of Prisons at the Federal Medical Center in Butner, North Carolina. Although he has a federal conviction and is incarcerated in a federal prison, Mr. Solarin seeks to challenge in this

action the validity of a State of Colorado criminal conviction and sentence in Arapahoe County District Court case number 01CR755. He is not challenging in this action the validity of his federal conviction and sentence.

Mr. Solarin initiated this action by submitting to the court a letter and two motions that were filed on February 19, 2010. The first motion was a "Motion to Appoint Counsel/Motion to Proceed In Forma Pauperis Pursuant to 28 USC § 1915 for State Habeas Corpus 28 USC § 2254." Mr. Solarin alleged in this motion that he has exhausted state remedies and that he needs counsel to help him decide what issues are cognizable, he lacks access to Colorado law while incarcerated in a federal prison in another state, and the issues he seeks to raise are complex and intertwined with his federal appeal. The other motion Mr. Solarin filed on February 19, 2010, was a "Motion for 'Stay and Abeyance' of State Habeas Corpus 28 USC § 2254 Action/Pending Resolution of 'Motion to Appoint Counsel.'"

In response to these two motions, the court entered an order on February 19, 2010, directing the clerk of the court to commence a civil action and directing Mr. Solarin to cure certain deficiencies. One of the deficiencies Mr. Solarin was ordered to cure was his failure to file an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On March 11, 2010, Mr. Solarin filed on the proper form an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. However, Mr. Solarin did not assert any claims for relief in the habeas corpus application. Instead, he alleged that he was unable to put together a meaningful and viable application and he asked again that counsel be appointed to represent him in this action. After determining that the application was deficient, Magistrate Judge Boland entered an order on March 16

directing Mr. Solarin to file an amended application in which he specifies the claims he is asserting in this action and in which he provides specific facts in support of each asserted claim. Magistrate Judge Boland also denied Mr. Solarin's requests for appointment of counsel as premature because, "[i]n most federal courts, it is the practice to appoint counsel in post-conviction proceedings only after a petition for post-conviction relief passes initial judicial evaluation and the court has determined that issues are presented calling for an evidentiary hearing." *Johnson v. Avery*, 393 U.S. 483, 487 (1969).

Mr. Solarin alleges in his objection that he does not have the ability to present a viable habeas corpus application that will survive summary dismissal and he again asks the Court to appoint counsel to represent him in this action. Mr. Solarin also reiterates that the issues he seeks to raise are complex and, because he is incarcerated in a federal prison in North Carolina, he does not have access to relevant Colorado legal materials.

The Court does not find that Magistrate Judge Boland's March 16 order denying Mr. Solarin's requests for appointment of counsel is clearly erroneous or contrary to law. Magistrate Judge Boland correctly noted that, "[i]n most federal courts, it is the practice to appoint counsel in post-conviction proceedings only after a petition for post-conviction relief passes initial judicial evaluation and the court has determined that issues are presented calling for an evidentiary hearing." *Id.* As a result, the Court cannot determine whether appointment of counsel is appropriate until Mr. Solarin specifies the claims he wishes to raise. Although Mr. Solarin asserts he is not capable of presenting a viable application, the Court notes that he has demonstrated an ability to

present clear and cogent arguments in support of his requests for appointment of counsel. Finally, because Mr. Solarin alleges that he has exhausted state remedies, it is not clear what Colorado legal materials he needs in order to present his exhausted federal constitutional claims to this Court. Therefore, Mr. Solarin's objection will be overruled. Accordingly, it is

ORDERED that Applicant's "Objection to Magistrate's Order Filed March 16, 2010" filed on April 12, 2010, is overruled. It is

FURTHER ORDERED that Applicant shall have thirty (30) days from the date of this order to file an amended application as directed if he wishes to pursue his claims in this action.

DATED at Denver, Colorado, this 13th day of April, 2010.

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge, for
ZITA LEESON WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 10-cv-00360-BNB

Frederick O. Solarin, Jr.
Reg No. 33602-013
Federal Medical Center
P.O. Box 1600
Butner, NC 27509

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 4/14/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk