

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Richard P. Matsch**

Civil Action No. 13-cv-02375-RPM

ABRAHAM HAGOS,

Applicant,

v.

RICK RAEMISCH, Executive Director, Colorado Department of Corrections,
JAMES FALK, Warden, Sterling Correctional Facility, and
JOHN SUTHERS, Attorney General of the State of Colorado,

Respondents.

ORDER OF DISMISSAL

Habeas Applicant Abraham Hagos is currently serving a life sentence for kidnapping, the conviction he challenges in the Application before this Court. In a different case, Hagos received a sentence of life without parole for murder/retaliation that he will be required to serve consecutively to his kidnapping sentence. At the time Hagos filed his Application here, his habeas challenge to his murder/retaliation convictions was being briefed in the Tenth Circuit Court of Appeals as Hagos v. Werholtz, No 13-1124. This Court determined that a stay was warranted because even if Hagos received habeas relief here, he would still remain in prison for the rest of his life on his murder/retaliation convictions if those convictions were ultimately upheld. [Doc. 15.] Accordingly, the Court stayed this case pending the outcome of Hagos v. Werholtz. [Id.]

The Tenth Circuit denied Hagos's request for a certificate of appealability in Hagos v. Werholtz on December 9, 2013. Hagos filed a petition for certiorari in the U.S. Supreme Court. The Supreme Court denied Hagos's petition on October 6, 2014.

On October 15, 2014, Hagos filed in this Court a Motion to Reconsider Order of Stay, or in the Alternative, to Issue a Certificate of Appealability, to Appoint Counsel, and for Leave to Proceed on Appeal *In Forma Pauperis*. [Doc. 18.]

Upon review of Hagos's Motion and Respondents' Response, the Court concludes that reconsideration is unwarranted and this case should be dismissed for the reasons stated in its stay order. Granting Hagos's Application would not result in his immediate release from prison or reduce the duration of his confinement given his murder/retaliation convictions. The Court is aware that Hagos has a recently-filed motion for postconviction relief pending in Denver County District Court in which he challenges his murder/retaliation convictions on the basis of ineffective assistance of counsel. If he is granted postconviction relief in that case, he could file a new habeas Application here.

The Court will issue Hagos a certificate of appealability. "When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000). Both parts of Slack's COA standard are met here: Hagos has stated claims that satisfy the unexacting jurists-of-reason standard, and the Court's dismissal ruling is debatable.

Hagos seeks appointment of counsel pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A. [Docs. 10, 18.] In habeas proceedings, a district court may provide for the appointment of counsel if it determines “the interests of justice so require” 18 U.S.C. § 3006A(a)(2)(B). The Court determines that the interests of justice require appointing Jonathan Reppucci as Hagos’s CJA counsel. The issues raised in Hagos’s Application and this Order are too complex for Hagos to present *pro se*.

Hagos seeks leave to proceed *in forma pauperis*. [Docs. 2, 18.] The Court concludes that Hagos’s appeal is taken in good faith and that Hagos has satisfied the requirements of 28 U.S.C. § 1915. Therefore, the Court will grant Hagos’s motion.

Upon the foregoing, it is

ORDERED that Applicant Abraham Hagos’s Motion for Reconsideration [Doc. 18] is denied and this case is dismissed; and it is

FURTHER ORDERED that Hagos’s Motion for a Certificate of Appealability [Doc. 18] is granted. The clerk shall provide a copy of this Order to the United States Court of Appeals for the Tenth Circuit in conjunction with transmission of Hagos’s Notice of Appeal; and it is

FURTHER ORDERED that Hagos’s Motion to Appoint CJA Counsel [Doc. 10] is granted. Jonathan Reppucci shall be appointed Hagos’s CJA counsel; and it is

FURTHER ORDERED that Hagos’s Motion for Leave to Proceed under 28 U.S.C. § 1915 [Doc. 2] is granted.

Dated: November 10, 2014.

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior District Judge