UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PRESTON PEARSON,

Petitioner,

v.

J. HOLLINGSWORTH,

Defendant.

Civil Action No. 16-879 (RDM)

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Petitioner Preston Pearson's Motion to Appoint Counsel. Dkt. 17. For the reasons explained below, the Court will **DENY** that motion without prejudice and will **ORDER** that, if Pearson wishes to proceed with this action, he shall file a response saying so on or before May 22, 2017. If the Court does not receive a response by that date, the Court may dismiss this action without prejudice for want of prosecution.

This disposition turns on the procedural history of this case. On April 4, 2016, Pearson filed his habeas petition, including with it his first request for appointment of counsel. Dkt. 1. On May 20, 2016, the Court denied that request for counsel without prejudice. Dkt. 5. On October 3, 2016, after receiving Defendant's response to Pearson's petition, the Court issued a Memorandum Opinion and Order holding that Pearson's habeas petition is properly construed as falling within 28 U.S.C. § 2254, rather than 28 U.S.C. § 2241. Dkt. 15. The Court explained to Pearson the consequences of that conclusion, and allowed Pearson to withdraw or to amend his pleading on or before November 3, 2016. *See id.* The Court later extended that deadline to January 3, 2017. *See* Dkt. 16; Minute Order of November 7, 2016.

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While the Court awaited Pearson's response, Pearson filed the pending motion to appoint counsel. Dkt. 17. In response, the Court held that it could not evaluate the motion without seeing the briefs filed in his underlying criminal appeal. *See* Minute Order of December 27, 2016. The Court, accordingly, ordered Pearson to provide the requested materials on or before January 19, 2017, and stayed Pearson's deadline to object to the Court construing his petition under § 2254 until the motion to appoint counsel was resolved. *Id.*

On February 3, 2017, Pearson sent the Court a letter requesting a two-week extension of time to respond to the Court's request for materials due to Pearson's illness. Dkt. 18. Upon consideration of that letter, the Court extended Pearson's deadline to respond to February 27, 2017. It is now April 6, 2017, and the Court has not heard from Pearson.

Given Pearson's failure to timely respond to the Court's request for the appellate briefs, the Court hereby **ORDERS** that Pearson's second motion for appointment of counsel is **DENIED** without prejudice. Should Pearson wish to renew his motion, he may do so by providing the Court with copies of the materials described in the Minute Order of December 27, 2016, *i.e.*, (1) the parties' briefs in Pearson's underlying direct appeal in the District of Columbia Court of Appeals; (2) the Motion to Recall the Mandate from that same proceeding; and (3) the Order Denying Motion to Recall Mandate also from that proceeding.

The Court **FURTHER ORDERS** that, if Pearson wishes to proceed with this action, he shall file a response saying so on or before May 22, 2017. In that response, Pearson shall (1) indicate his intent to proceed with this action in a timely fashion and (2) state whether he intends to amend or to withdraw his habeas petition before the Court construes it as a petition under 28 U.S.C. § 2254, as described in the Court's Memorandum Opinion and Order of October 3, 2016 (Dkt. 15). In the alternative, if Pearson remains ill and is therefore unable to respond to this

Order, Pearson shall so inform the Court on or before May 22, 2017. If the Court does not receive Pearson's response on or before that date, the Court may dismiss this action without prejudice for want of prosecution.

The Clerk shall mail a copy of this Memorandum Opinion and Order to Pearson at his address of record.

SO ORDERED.

/s/ Randolph D. Moss
RANDOLPH D. MOSS
United States District Judge

Date: April 6, 2017