

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

BILL CONWAY
a/k/a Bill Conroy,

Petitioner,

vs.

Case No. 16-cv-0338-DRH

KAREN JAIMET,
*Acting Warden of Pinckneyville
Correctional Center,*

Respondent.

MEMORANDUM AND ORDER

HERNDON, District Judge:

Petitioner, currently incarcerated in Pinckneyville Correctional Center, brings this habeas corpus action pursuant to 28 U.S.C. § 2254 requesting that the Court grant him relief from his unconstitutional conviction and sentence. (Doc. 16, p. 33).

Petitioner initially filed the Petition on March 28, 2016. (Doc. 1). On April 22, 2016, the Court dismissed the Petition without prejudice for failure to name the proper respondent and appointed the Federal Public Defender to represent Petitioner. (Doc. 4). The Court initially directed that an Amended Petition be filed no later than July 5, 2016, but after several extensions, the Amended Petition was due July 10, 2017. (Docs. 4, 7, 9, 12 & 15). The Amended Petition was in fact filed on July 10, 2017, along with several exhibits. (Docs. 16-19).

Rule 4 of the Rules Governing § 2254 cases in United States District Courts

provides that upon preliminary consideration by the district court judge, “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.”

The Amended Petition

On July 9, 2004, Petitioner was indicted on two counts of solicitation of murder in violation of 720 ILCS 5/8-1.1(a); two counts of solicitation of murder for hire in violation of 720 ILCS 5/8-1.2(a) and one count of attempted first degree murder in violation of 720 ILCS 5/8-4 and 720 ILCS 5/9-1. (Doc. 16, p. 1). Later that same year, a second indictment charged Petitioner with an additional 3 counts of solicitation of murder, 3 counts of solicitation of murder for hire, and 3 counts of attempted first degree murder. *Id.*

During his state court proceedings, competency hearings were held on December 8, 2005, January 4, 2006, and January 6, 2006. (Doc. 16, pp. 1-2). After hearing from two State experts and one defense expert, the court found Petitioner fit to stand trial. (Doc. 16, p. 2). Petitioner subsequently entered a negotiated plea of guilty to four of the counts; he was sentenced to 20 years’ imprisonment on each of the solicitation counts, to run concurrently and 10 years’ on the attempted murder count to run consecutively to the sentence for solicitation. *Id.*

Petitioner did not file a direct appeal. *Id.* He filed a post-conviction petition in Cook County on May 21, 2009. *Id.* The trial court dismissed the petition after declining to appoint Petitioner an attorney. (Doc. 16, p. 3). Petitioner appealed on August 12, 2009. (Doc. 16, p. 4). This time, he was given a public defender. *Id.* Regardless, the dismissal was affirmed on May 13, 2011. *Id.* Petitioner filed several other documents on February 4, 2014; these were summarily dismissed on February 11, 2014. (Doc. 16, pp. 4-5).

Petitioner argues that his attorney at trial was ineffective for failing to argue that the State's primary expert opinion on competency was premised on a standard that did not comply with the Supreme Court's competency standard, and for failing to adequately investigate and present evidence at the competency hearing regarding Petitioner's level of functioning prior to his arrest. (Doc. 16, pp. 25-26). Petitioner further argues that he was not actually competent to enter a guilty plea, making his plea involuntary. (Doc. 16, p. 26).

Further, Petitioner argues that ineffective assistance of post-conviction counsel should excuse any procedural default. (Doc. 16, pp. 14-17). He also believes that his mental condition, incompetence, and other limitations are grounds for excusing any procedural default and/or equitable tolling. (Doc. 16, pp. 17-25).

Discussion

There are some indications in the Petition that it is untimely, unexhausted, and procedurally defaulted. However, Petitioner has raised arguments as to each of these issues. For these reasons, the Court orders a Response so that it may consider the issues raised by the Petition, and any other issues Respondent would like to raise, on a more developed record.

IT IS HEREBY ORDERED that Respondent shall answer the petition or otherwise plead within thirty days of the date this order is entered. This preliminary order to respond does not, of course, preclude the State from making whatever waiver, exhaustion, or timeliness argument it may wish to present. Service upon the Illinois Attorney General, Criminal Appeals Bureau, 100 West Randolph, 12th Floor, Chicago, Illinois 60601 shall constitute sufficient service.

IT IS FURTHER ORDERED that pursuant to Local Rule 72.1(a)(2), this cause is referred to United States Magistrate Judge Clifford J. Proud for further pre-trial proceedings.

IT IS FURTHER ORDERED that this entire matter be **REFERRED** to United States Magistrate Judge Clifford J. Proud for disposition, as contemplated by Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), *should all the parties consent to such a referral.*

Petitioner is **ADVISED** of his continuing obligation to keep the Clerk (and each opposing party) informed of any change in his whereabouts during the

pendency of this action. This notification shall be done in writing and not later than seven days after a transfer or other change in address occurs.

IT IS SO ORDERED.

DATED: July 18, 2017

Digitally signed by
Judge David R.
Herndon
Date: 2017.07.18
11:58:38 -05'00'

The image shows a digital signature in blue ink that reads "David R. Herndon". To the right of the signature is a circular official seal of the United States District Court for the Southern District of Texas. The seal features an eagle with wings spread, holding an olive branch and arrows, with a shield on its chest. The text "UNITED STATES DISTRICT COURT" is at the top and "SOUTHERN DISTRICT OF TEXAS" is at the bottom of the seal. The signature and seal are positioned over the text of the digital signature.