

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

WALTER JOHNSON,)	
)	
Petitioner,)	
)	
vs.)	Case No. 4:15-CV-00281 AGF
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court on Petitioner’s Motion for Discovery seeking production of the audio recordings or transcripts of communications between Petitioner and an undercover government agent during a “reverse sting operation” which led to the criminal charges against Petitioner in this matter. ECF No. 23. Petitioner claims the recordings are pertinent to his action for post-conviction relief because they were the basis for his conviction, which he claims was the result of prosecutorial misconduct and ineffective assistance of counsel.

Petitioner previously filed two similar motions to compel. ECF Nos. 6 and 12. In those motions, Petitioner admitted he received summaries of the audio recordings from the government, but believed they were unreliable because they were the “government[’s] representations of what may, or may not, have been said during these encounters.” ECF No. 6 at ¶ 3. Petitioner stated that while he had not tried to obtain the recordings from his defense counsel, he believed that any summaries obtained from defense counsel would

also be “unreliable or otherwise misleading.” ECF No. 6 at ¶ 4. Petitioner did not explain why the summaries prepared by his attorney would be unreliable or misleading.

On June 29, 2015, the Court denied without prejudice Petitioner’s motions for discovery. ECF No. 20. The Court directed Petitioner to attempt to obtain the audio recordings from his attorney in the underlying criminal proceedings. The Court held that only if Petitioner was unable to obtain discovery from his attorney may he file a new motion to obtain the discovery from the government.

On July 31, 2015, Petitioner filed the instant motion for discovery. ECF No. 23. Petitioner represented that he sent a letter to his former attorney requesting the audiotapes. On September 1, 2015, Petitioner’s former attorney sent a letter to Petitioner and has recently filed a copy with the Court. ECF No. 25. In that letter, the attorney indicated that he did not have transcripts of the audio recordings, but that he did have summaries that he used to prepare for Petitioner’s criminal matter. The attorney indicated that he had discs containing the audio recordings, but would not send those recordings without assurances that Petitioner could have them at the institution where Petitioner is being held. The attorney stated in his letter that if Petitioner could provide assurances that he could have the audio recordings, the attorney would send them. The attorney notes that he enclosed “another set of documents” related to Petitioner’s charges. Since Petitioner received the documents provided by his attorney, he has not suggested that they were insufficient.

Accordingly,

IT IS HEREBY ORDERED that Petitioner's Motion for Discovery (ECF No. 23) is **DENIED without prejudice** to refiling in the event that Petitioner can show cause why the discovery obtained to date is insufficient.



AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 26th day of May, 2017