

NARVIEZ V. ALEXANDER # 44839

ELY STATE PRISON

POST OFFICE BOX 1989

ELY, NEVADA 89301

Petitioner In- Proper Person

FILED ENTERED	RECEIVED SERVED ON
COUNSEL/PARTIES OF RECORD	
SEP 30 2010	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY:	DEPUTY

no copy

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Narvyez V. Alexander,

Petitioner,

Case No.: 3:10-CV-00584-

VS.

Howard Skolnik, et al.,

Respondents.

MOTION FOR LEAVE OF COURT
TO PROCEED WITH DISCOVERY

Petitioner, Narvyez V. Alexander, In-Proper Person, respectfully requests this Honorable Court grant his Motion For Leave Of Court To Proceed With Discovery pursuant to Local Rule 7-2(a) and Rule 6(a) of the Rules Governing Habeas Corpus Cases.

This motion is made and based upon the attached Points And Authorities, the attached Discovery Requests, all pleadings and papers on file before this Court, and any oral argument deemed necessary in a telephonic hearing.

Dated this 27th day of September, 2010.

By A (S)
Narvez V. Alexander # 44839
Petitioner In- Proper Person

POINTS AND AUTHORITIES

"A party shall be entitled to invoke the processes of discovery available under the Federal Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, ..." Rules Governing Habeas Corpus 6(a); Harris v. Nelson, 394 U.S. 286, 300 (1969).

In Wagner v. United States, the Ninth Circuit Court of Appeals opined that the federal District Court could permit interrogatories, provide for deposing witnesses, "and take such other pre-hearing steps as may be appropriate." Id., 418 F.2d 618, 621 (9th Cir. 1969). Such pre-hearing discovery may show an evidentiary hearing to be unnecessary, as when there are "no disputed issues of law or fact." 83 Harv. L. Rev. 1038, 1181 (1970).

In the instant case, the State Court rendered factual findings on the "disputed factual claims" set forth by the Petitioner without conducting an evidentiary hearing in violation of the precedent set forth in Townsend v. Sain, 372 U.S. 293, 313, 83 S.Ct. 745 (1963); Karp v. Ornoski, 431 F.3d 1158, 1167 (9th Cir. 2005). The Courts further failed to request the Disciplinary Hearing Transcripts, depose or interrogate; or, seek an affidavit from the Respondents to resolve any

of the Petitioner's "disputed factual allegations," through no fault of the Petitioner's. *Murray v. Carrier*, 477 U.S. 478, 106 S.Ct. 2639 (1986) (impediment external to defense). In addition, the State Courts rendered erroneous legal conclusions on improper factual findings. And while the Respondents would be more than pleased to continue to inappropriately conceal the correct factual evidence, the Petitioner asserts that "Good Cause" and the interests of justice require this Court to permit discovery.

PROPOSED DISCOVERY REQUESTS

The Petitioner submits that he intends to request pursuant to F.R.Civ.P. 34, the production of the Disciplinary Hearing Transcripts for OTC 296540 dated October 15, 2009 and November 7, 2009; a "redacted" copy of the confidential informant's statement; and, copies of all non confidential reports. The Petitioner intends to request admissions pursuant to F.R.Civ.P. 36, from the Disciplinary Hearing Officer in regards to his actions, omissions and inactions before and during the disciplinary hearing. And, finally, the Petitioner intends to propound interrogatories upon the Disciplinary Hearing Officer to inquire into his reliability findings, the conduct of the hearing, and its fairness.

Thus, the Petitioner prays this Court grant him Leave to Proceed With Discovery.


Dated this 27th day of September, 2010

By 

CERTIFICATE OF MAILING

I, Narvies V. Alexander, do hereby declare that I sent a true and correct copy of the foregoing Motion For Leave of Court To Proceed With Discovery, on the 27th day of September, 2010, by placing the same into the hands of prison officials for mailing at Ely State Prison, postage prepaid and pre-addressed to the following:

Catherine Cortez Masto Esq.
Nevada Attorney General
100 North Carson St.
Carson City, Nevada 89701

By 
Narvies V. Alexander # 44839
Petitioner In-Proper Person