

~~NOT FOR PUBLICATION~~

~~UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY~~



~~KEITH BLACK~~

~~Petitioner,~~

~~v.~~

~~Civil Action (No. 15-5547) (ES)~~

~~MEMORANDUM OPINION~~

Ground Six: Trial court error in failing to hold a *Wade* hearing after a juror began crying during distribution of pictures of the pictures of the decedent.”

Ground Seven: Ineffective assistance of trial counsel for failing to file a motion for a *Wade* hearing before the trial.

Ground Eight: Ineffective assistance of PCR counsel for failing to raise ineffective assistance of trial counsel before the PCR court.

(Pet. at 6-16). (Pet. at 6-16).

3. Following this, on October 14, 2005, Respondents filed a Response and Appendix with

the Court, ordering *inter alia* that Respondents' Claims be two; these four words seven must be

6. In order to grant Petitioner a stay, Petitioner must demonstrate that “good cause” exists for his failure to exhaust his state remedies. *Walker*, 544 U.S. at 278. However, even if such good cause exists, the Court would “abuse its discretion” if it granted a stay when the unexhausted claims are plainly meritless. *Id.* at 278. Assuming—without deciding—that good cause exists for Petitioner’s failure to exhaust state remedies, the Court determines that, in any event, Petitioner’s unexhausted claims are plainly meritless.

7. Petitioner alleges in Ground Two of his petition that his trial counsel was ineffective

9. Petitioner's Ground Four, *et. c.*, that the prosecution knowingly allowed Mr. Fuller to perjure himself, is similarly without merit. (Mot. ¶16; Pet. at 11.) (Pet. at 11). There is no evidence that Mr. Fuller testified falsely, and, if he did, certainly no evidence that the defence that the prosecution knew of and sanctioned such false testimony. Indeed, as mentioned above, the testimony about Mr. Fuller being "drugged up" in the hospital is only corroborated by the medical reports Petitioner submitted, not called into question. Thus, this ground is also denied as plainly and as plainly meritless.

10. Petitioner notes in both his petition and his motion that Ground Seven, another

v. Warren, No. 13-2794 (ES), 2015 WL 5455680, at *3 (D.N.J. Sept. 16, 2015) (noting that a habeas petition is not the appropriate forum “to pursue claims of error at the PC or at the PCRA proceeding” (quoting *Lambert v. Blackwell*, 387 F.3d 210, 247 (3d Cir. 2004))); *Id.* (Cms. Pet.). Thus, Petitioner’s Ground Eight will be denied as not cognizable under federal habeas review.

12. Therefore, because all of Petitioner’s unexhausted claims—~~Grounds One, Two, Three, Four, Seven and Eight~~—are either plainly meritless or not cognizable on federal habeas review, Petitioner’s motion for a stay is denied. Petitioner now has two options on how to proceed. See

Miller-Eli v. Cochran, 537 U.S. 322 (2003), S. 322 (2003).

14. An appropriate order follows: order follows.

Dated:

James H. ...

Esther Suss

Esther Suss

United States

United States

District Judge