

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TERRENCE GETHERS,

Petitioner,

v.

9:18-CV-1262
(BKS/DJS)

SUPERINTENDENT,

Respondent.

APPEARANCES:

OF COUNSEL:

TERRENCE GETHERS
15-A-2134
Petitioner, pro se
Five Points Correctional Facility
Caller Box 119
Romulus, NY 14541

BRENDA K. SANNES
United States District Judge

DECISION and ORDER

I. INTRODUCTION

Petitioner Terrence Gethers filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, as well as a memorandum of law in support of his petition and an application to proceed in forma pauperis ("IFP"). Dkt. No. 1, Petition ("Pet."); Dkt. No. 1-1, Pet. Memorandum of Law; Dkt. No. 2, IFP Application. On October 26, 2018, the Court administratively closed this action because petitioner had not properly commenced the case, failing to either pay the statutory filing fee or file a properly certified IFP application; however, the Court afforded petitioner another opportunity to comply with this requirement. Dkt. No. 3.

On November 16, 2018, petitioner paid the filing fee and the Court reopened the action. Dkt. Nos. 4, 5; Dkt. Entry dated 11/16/18 (indicating receipt number for paid filing fee).

II. THE PETITION

Petitioner challenges a 2015 judgment of conviction in Albany County, upon a jury verdict, of three counts of second degree criminal sale of a controlled substance. Pet. at 1-2; *see also People v. Gethers*, 151 A.D.3d 1398, 1398 (3rd Dep't 2017).¹ The New York State Supreme Court, Appellate Division, Third Department, affirmed the judgment on direct appeal, and, on October 24, 2017, the New York Court of Appeals denied leave to appeal. *Gethers*, 151 A.D.3d at 1401, *lv. denied*, 30 N.Y.3d 980 (2017).

Based upon an initial review, the Court concludes that petitioner's petition does not comply with the Habeas Rules. More specifically, Rule 2 of the Rules Governing Section 2254 Cases in the United States District Courts ("Habeas Rules") requires that a federal habeas petition brought pursuant to 28 U.S.C. § 2254 (1) "specify all the grounds for relief available to the petitioner," and (2) "state the facts supporting each ground[.]" Habeas Rule 2(c)(1)-(2). Petitioner has not stated any grounds for relief in his petition, much less any facts to support the grounds he intends to raise. See Pet. at 5-15. While petitioner did attach what appears to be the memorandum of law submitted in support of his direct appeal to the Third Department, its relevance is unclear. The Court will not speculate as to what petitioner is advancing regarding the claims being asserted, the grounds upon which his arguments are based, or the supporting facts upon which he relies.

¹ Unless otherwise noted, citations to the petition refer to the pagination generated by CM/ECF, the Court's electronic filing system.

In light of his pro se status, petitioner will be given an opportunity to amend his petition as outlined below. Petitioner will be provided a blank form petition for completing his amended petition. As set forth below, petitioner is directed to complete every part of that blank petition.

If petitioner fails to file an amended petition, this action will be dismissed without further order of the Court. Habeas Rule 4.

IV. CONCLUSION

WHEREFORE, it is

ORDERED that petitioner may file an amended petition **within thirty (30) days** of the filing date of this Decision and Order. The Clerk is directed to provide petitioner with a blank § 2254 habeas petition for this purpose. Petitioner shall complete every part of the blank petition, including the sections requiring him to state the name and location of the court that entered the judgment of conviction, the date of the judgment of conviction, the offense(s) for which he was convicted, and the length of the sentence that was imposed. Petitioner must also state the date(s) upon which he filed any state court proceedings in which he challenged his conviction and clearly set forth the grounds raised in each application and the date(s) upon which the court(s) denied each application. **Petitioner must specify all of the grounds upon which his federal petition is based, and the facts supporting each ground**, in the amended petition.

Petitioner **shall not** incorporate any portion of his original papers into his amended petition by reference. He must include all relevant information in the amended petition and

shall submit only one amended petition in accordance with the terms of this Decision and Order. Petitioner must also sign and date the petition; and it is further

ORDERED that if petitioner does not file an amended petition within thirty (30) days of the filing date of this Decision and Order, the Clerk shall enter judgment dismissing this action without further order of the Court; and it is further

ORDERED that upon the filing of any amended petition, the Clerk shall forward the file in this matter to the Court for further review; and it is further

ORDERED that the Clerk shall serve a copy of this Decision and Order on petitioner in accordance with the Court's Local Rules of Practice.

IT IS SO ORDERED.

Dated: November 20, 2018
Syracuse, NY



Brenda K. Sannes
Brenda K. Sannes
U.S. District Judge