

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RONALD LARKINS,

Petitioner,

v.

9:18-CV-1491
(DNH/DEP)

JOSEPH NOETH,

Respondent.

APPEARANCES:

OF COUNSEL:

RONALD LARKINS
Petitioner pro se
11-B-3910
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Attica, NY 14011

HON. LETITIA JAMES
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ALYSON J. GILL, ESQ.
Ass't Attorney General

DAVID E. PEEBLES
United States Magistrate Judge

DECISION and ORDER

Petitioner filed a petition seeking habeas corpus relief pursuant to 28 U.S.C. § 2254. Dkt. No. 1, Petition. On January 3, 2019, the Court directed respondent to answer the petition. Dkt. No. 4, Decision and Order dated 01/03/19. On May 20, 2019, respondent filed an answer, as well as a memorandum of law and supporting state court records. Dkt. No. 9, Answer; Dkt. No. 9-1, Memorandum of Law; Dkt. Nos. 10 & 11, State Court Records.

On May 30, 2019, the Court received petitioner's motion which requested (1) that

respondent produce unidentified transcripts, motions, and hearing records so that he could properly reply to respondent's answer and (2) an extension of time to file his reply to respondent's answer (hereinafter "traverse"). Dkt. No. 13. The next day the Court denied petitioner's motion, noting that petitioner's request was too vague and respondent had met his obligation in producing records relevant to the petition. Dkt. No. 14, Text Order dated 05/31/19. The Court's Order also provided petitioner with an additional thirty days to either reply to the answer or file a new motion specifically identifying the parts of the transcripts, motions, and hearing records which were missing and explaining why they were relevant for crafting petitioner's reply.

On June 11, 2019, petitioner renewed both his motions to produce various documents and request an extension. Dkt. No. 15. Specifically, petitioner sought (1) his written motion for reassignment of counsel, which counsel for respondent previously stated he was unable to find and produce for either party or the Court; (2) the transcript of the trial court's oral denial of that motion; (3) a jury note requesting to view an "inventory receipt"; and (4) the actual "inventory receipt." *Id.*

On June 12, 2019, the Court directed that a response be filed. Dkt. Entry dated 06/12/19. Later that day, counsel for respondent submitted said response along with courtesy copies of (1) an excerpt of the transcript from September 16, 2014, containing the relevant discussion regarding petitioner's orally renewed motion for new counsel and the trial court's subsequent denial of said motion (Dkt. No. 16-1); (2) the jury notes, as well as the verdict sheet, from petitioner's trial (Dkt. No. 16-2); and (3) the impound and inventory report for petitioner's 1998 Lexus (Dkt. No. 16-3). Dkt. No. 16 at 2. Respondent reaffirmed that petitioner's "written motion for reassignment of counsel cannot be found." *Id.* at 1. Further,

respondent did not oppose petitioner's request for an extension to file his traverse. *Id.* at 2.

In light of respondent's submission indicating that the documents petitioner sought in his motion have now been provided to him, petitioner will have thirty (30) days to either (1) withdraw his motion or (2) file a reply to respondent's submission in connection with petitioner's motion. If petitioner fails to do either, his renewed motion for production of documents will be denied as moot. At that time, petitioner's deadline to file his traverse will be set.

WHEREFORE, it is

ORDERED that petitioner's request for an extension is **GRANTED IN PART** to the extent that petitioner's deadline to file his traverse will be held in abeyance pending the outcome of the present motion; and it is further

ORDERED that petitioner has thirty (30) days from the date of this Order to either (1) withdraw his motion or (2) file a reply to respondent's submission in connection with petitioner's motion. If petitioner fails to do either his renewed motion for production of documents will be denied as moot; and it is further

ORDERED that the Clerk serve a copy of this Decision and Order upon the parties in accordance with the Local Rules.

Dated: June 14, 2019



David E. Peebles
U.S. Magistrate Judge