

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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CURLIE GREEN,

Petitioner,

Case # 16-CV-349-FPG

v.

DECISION AND ORDER

PAUL CHAPPIUS, JR.,

Respondent.

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### INTRODUCTION

*Pro se* petitioner Curlie Green (“Petitioner”) seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. ECF No. 1. On July 10, 2017, Petitioner moved to appoint counsel (ECF No. 23), and on September 15, 2017, he moved for an order directing Respondent to produce various documents (ECF No. 24). For the reasons that follow, Petitioner’s Motion to Appoint Counsel (ECF No. 23) is DENIED WITHOUT PREJUDICE, and his Motion for an Order directing Respondent to produce various documents (ECF No. 24) is DENIED.

### DISCUSSION

#### I. Appointment of Counsel

Prisoners have no constitutional right to counsel when bringing collateral attacks upon their convictions. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). However, the Court may appoint counsel in the interests of justice to any person seeking relief pursuant to 28 U.S.C. § 2254 who is financially unable to obtain representation. 28 U.S.C. § 2254(h). The Court considers several factors in determining whether to assign counsel, including whether the indigent’s claims seem likely to be of substance; whether the indigent is able to investigate the facts concerning his claim; whether the legal issues are complex; and whether there are special reasons why the appointment

of counsel would be more likely to lead to a just determination. *See Hendricks v. Coughlin*, 114 F.3d 390, 392 (2d Cir. 1997); *Hodge v. Police Officers*, 802 F.2d 58 (2d Cir. 1986). The Court must consider the issue of appointment carefully because “every assignment of a volunteer lawyer to an undeserving client deprives society of a volunteer lawyer available for a deserving cause.” *Cooper v. A. Sargenti Co. Inc.*, 877 F.2d 170, 172 (2d Cir. 1989).

Petitioner has not provided the Court with any information suggesting that the interests of justice require the appointment of counsel at this time. Rather, Petitioner asserts in a conclusory fashion that his “case is one of substance and the issues have merit.” ECF No. 23 at 1. Petitioner has adequately articulated his claims to the Court throughout the various letters and motions he has filed. Accordingly, Petitioner’s Motion to Appoint Counsel (ECF No. 23) is DENIED WITHOUT PREJUDICE.

## **II. Motion to Produce Documents**

Petitioner also asks that the Court order Respondent to produce certain documents. ECF No. 24. Pursuant to the Court’s order dated March 3, 2017, Respondent was directed to “provide to the Court the transcript of [any trial, pre-trial, or post-trial evidentiary proceeding], together with any record(s) of, and documents relating to, such proceeding, and such documents will be filed in the official record of this case.” ECF No. 15 at 1-2. Petitioner asserts that the Court should direct Respondent to provide “missing exhibits” along with “suppression transcripts and all other materials.” ECF No. 24 at 1-2. Petitioner describes the “missing exhibits” as those that were attached to his motion to withdraw his plea in state court. *Id.* at 1. Specifically, he refers to Exhibits A and B, which appear to be transcripts from pre-trial conferences on August 29, September 10, and September 11, 2012. ECF No. 24 at 1; ECF No. 20 at 55.

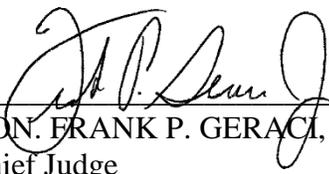
The docket indicates that the Clerk of Court received the state court records related to this matter on May 12, 2017. The Court has reviewed those records and they contain the transcripts from the pre-trial conferences mentioned above and suppression hearing materials. Accordingly, the Court already has the records that Petitioner wants Respondent to produce, and therefore his motion (ECF No. 24) is DENIED.

### **CONCLUSION**

For the reasons stated, Petitioner's Motion to Appoint Counsel (ECF No. 23) is DENIED WITHOUT PREJUDICE, and his Motion for an Order directing Respondent to produce various documents (ECF No. 24) is DENIED.

IT IS SO ORDERED.

Dated: October 5, 2017  
Rochester, New York

  
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HON. FRANK P. GERACI, JR.  
Chief Judge  
United States District Court