

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

**3:13-cv-394-BR
(3:08-cr-93-BR-2)**

DAVID A. HAGEN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER

THIS MATTER is before the Court on Petitioner's Motion for Appointment of Counsel and Motion for Expansion of the Record. (Doc. Nos. 4, 5.)

Petitioner requests that the court appoint counsel to represent him pursuant to Rule 6(a) of the Rules Governing Section 2255 proceedings. That rule provides in relevant part that "[i]f necessary for effective discovery, the judge must appoint an attorney for a moving party who qualifies to have counsel appointed under 18 U.S.C. § 3006A." R. Governing 2255 Proceedings 6(a). At this time, i.e., prior to the Government's having filed a response to the 2255 motion, the court cannot evaluate whether discovery will even be necessary, let alone whether appointment of counsel is necessary for effective discovery, and therefore, the motion to appoint counsel is premature. The motion for appointment of counsel will be denied without prejudice.

In his other motion, Petitioner requests that the court expand the record and authorize him to conduct discovery. These requests are premature for the same reason that the request for appointment of counsel is, and accordingly, the court will deny the motion for expansion of the record without prejudice. Of course, such a ruling does not preclude either party from filing at the appropriate time affidavits or documentary evidence which that party feels are relevant to the

2255 motion. Finally, the court notes that Petitioner also requests that his Trial Guide be unsealed. The court allowed Petitioner to file this document (Doc. Nos. 117-1, 117-2) *pro se* just prior to the commencement of his jury trial. The motion will be allowed to the extent it requests that the Trial Guide be unsealed.

IT IS, THEREFORE, ORDERED that

1. Petitioner's Motion for Appointment of Counsel (Doc. No. 4) is DENIED WITHOUT PREJUDICE;
2. Petitioner's Motion for Expansion of the Record (Doc. No. 5) is ALLOWED IN PART and DENIED IN PART WITHOUT PREJUDICE; and
3. The Clerk is DIRECTED to unseal document numbers 117-1 and 117-2 in Petitioner's criminal case, 3:08-cr-93-BR-2.

This 6 August 2013.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is written over a horizontal line.

W. Earl Britt
Senior U.S. District Judge