

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:07CV90-1-V
5:03CR4-20-V**

PHILLIP TYRONE MORRISON,)
)
 Petitioner,)
)
vs.)
)
UNITED STATES OF AMERICA,)
)
 Respondent.)
_____)

ORDER

THIS MATTER comes before the Court on Respondent’s Motion for Leave to File Response Out of Time (Doc. No. 9), filed December 4, 2007; Petitioner’s Motions for Discovery (Doc. Nos. 17, 18, and 23), filed January 7, 2008 and December 15, 2008; Petitioner’s Motions for Default Judgment (Doc. Nos. 20 and 24), filed August 15, 2008, and February 3, 2009; and Plaintiff’s Motions for Bond (Doc. Nos. 21 and 22), filed September 2, 2008, and December 12, 2008.

Petitioner filed a Motion to Vacate, Set aside, or Correct Sentence on August 3, 2007. On August 14, 2007, this Court ordered the Government to respond to Petitioner’s allegations within forty days. This deadline was reset to October 30, 2007, after it was discovered that the Government was never served with the Order. On October 30, 2007, the Government requested an extension of time in which to respond to Petitioner’s allegations. The Court granted Petitioner’s motion and reset the response deadline to November 29, 2007. On December 4, 2007, five days after the deadline, the Government filed its response. In conjunction with filing its response, the Government also filed a

Motion for Leave to File Response Out of Time (Doc. No. 9). For good cause shown, Respondent's Motion is granted.

Petitioner has filed two motions requesting that he be released on bond pending a ruling on his Motion to Vacate. In support of his motions Petitioner asserts that he has been incarcerated since 2002, has good family ties, and is not a flight risk. A prisoner "seeking interim release during pursuit of § 2255 relief faces a formidable barrier created by the fact of the conviction and the government's interest in executing the judgment." See United States v. DeTemple, 31 Fed. App'x 237 (4th Cir. 2002). Petitioner has failed to establish exceptional circumstances warranting his release and his Motions for Bond are denied.

Petitioner has also filed three motions seeking discovery in his case. In these motions Petitioner seeks to have the Government respond to various requests for admissions and interrogatories primarily concerning the superceding indictments. Rule 6 of the Rules Governing Section 2255 Proceedings for the United States District Courts sets forth that leave of court is required before a petitioner may conduct discovery. After reviewing Petitioner's discovery requests and the record, this Court concludes that such discovery is not warranted and Petitioner's motions are denied.

Finally, Petitioner has also filed two motions requesting that this Court enter a default judgment against the Government. In support of his motion Petitioner asserts that the Government failed to file a reply to his response to the Motion for Summary Judgment. The failure to file a reply brief does not constitute a basis for entering a default judgment. Petitioner also requests that a default judgment be entered against the Government because the Government has not responded to various motions that he has filed. Again,

failure to file responses to the motions referred to by Petitioner is not a basis for entering a default judgment in this case. Consequently, Petitioner's Motions for Default Judgment are denied.

THEREFORE, IT IS HEREBY ORDERED that;

1. Respondent's Motion for Leave to File Response Out of Time (Doc. No. 9) is

GRANTED;

2. Petitioner's Motions for Discovery (Doc. Nos. 17, 18, and 23) are **DENIED;**

3. Petitioner's Motions for Default Judgment (Doc. Nos. 20 and 24) are **DENIED;**

and

4. Plaintiff's Motions for Bond (Doc. Nos. 21 and 22) are **DENIED.**

Signed: February 25, 2009



Richard L. Voorhees
United States District Judge

