

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:16-cv-31-FDW**

CHESTER LAMBERT LILLEY, JR.,)
)
 Petitioner,)
)
 vs.)
)
 CARLTON JOYNER,)
)
 Respondent.)
 _____)

ORDER

THIS MATTER is before the Court upon Chester Lambert Lilley, Jr.’s pro se Amended Petition for Writ of Habeas Corpus, filed pursuant to 28 U.S.C. § 2254 (Doc. No. 17), and Motion for Default Judgment (Doc. No. 18). Also before the Court are two motions for appointment of counsel. (Doc. Nos. 20, 22.)

Petitioner is a prisoner of the State of North Carolina, who, on April 29, 2015, pled “no contest” in Wilkes County District Court to selling marijuana, possession with intent to sell or deliver marijuana, both offenses occurring on February 12, 2015, manufacturing a Schedule VI controlled substance, selling a Schedule VI controlled substance, and possession with intent to distribute, manufacture, sell, or deliver a Schedule VI controlled substance, all three offenses occurring on April 16, 2015. (J. & Comm. Forms, Resp’t’s Ex. No. 3, Doc. No. 9-4.) Pursuant to his plea agreement with the State, eight other drug-related charges were dismissed. (Tr. of Plea 4, Resp’t’s Ex. No. 1, Doc. No. 9-2.) Judgment was consolidated under two counts, and Petitioner was sentenced to consecutive terms of 18-31 months imprisonment. (J. & Comm. Forms, Doc. No. 9-4.) Petitioner did not appeal his convictions or sentences.

Instead, Petitioner filed numerous pro se letters and motions for appropriate relief in the

District Court of Wilkes County, including a pro se pleading on or about June 26, 2015. (Resp't's Ex. No. 4 4-8, Doc. No. 9-5.) The state court treated that pleading as a motion for appropriate relief ("MAR") and denied it on September 30, 2015. (Order Den. MAR, Resp't's Ex. No. 5, Doc. No. 9-6.)

Petitioner filed a pro se Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 in this Court on February 11, 2016, when he placed it in the prison mail system. (Pet. 11, Doc. No. 1.) Respondent filed an Answer, Motion for Summary Judgment, and Supporting Brief on October 13, 2016. (Doc. Nos. 7-9.) In accordance with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Petitioner was notified of his right to respond to the summary judgment Motion. (Doc. No. 10.) In response, Petitioner sent several letters (Doc. Nos. 11-14), at least two of which (Doc. Nos. 11, 12), referred to other actions Petitioner had filed in this Court.

On December 14, 2016, the Court entered an Order granting Respondent's Motion for Summary Judgment and denying Petitioner's § 2254 Petition for Writ of Habeas Corpus. (Doc. No. 15.) Judgment was entered the same day. (Doc. No. 16.)

Petitioner filed an Amended § 2254 Petition for Writ of Habeas Corpus, Motion for Default Judgment, Notice of Appeal, and motion for appointment of counsel on January 3, 2017. (Doc. Nos. 17-20.) Because Petitioner's motions and Amended Petition were filed after Judgment was entered by this Court, they are moot and will be dismissed as such.

Petitioner's Notice of Appeal (Doc. No. 19) was transferred to the Fourth Circuit Court of Appeals on January 10, 2017. On January 23, 2017, Petitioner filed a motion for appointment of counsel in the Fourth Circuit, which deferred action on the request pending initial review of Petitioner's appeal. See Lilley v. Joiner, No. 17-6033 (4th Cir.) (Doc. Nos. 5, 7). Notwithstanding the Fourth Circuit's deferral of the issue, Petitioner filed another motion for

appointment of counsel in this Court on February 16, 2017. (Doc. No. 22.) This motion also shall be dismissed as moot.

IT IS, THEREFORE, ORDERED that:

- 1) Petitioner's Amended Petition for Writ of Habeas Corpus (Doc. No. 17) is **DISMISSED** as moot;
- 2) Petitioner's Motion for Default Judgment (Doc. No. 18) is **DISMISSED** as moot; and
- 3) Petitioner's motions for appointment of counsel (Doc. Nos. 20, 22) are **DISMISSED** as moot.

Signed: February 22,



Frank D. Whitney
Chief United States District Judge

