

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

UGBE OJILE,
Petitioner,

vs.

WARDEN, CORRECTIONAL
RECEPTION CENTER,
Respondent.

Case No. 1:13-cv-844

Barrett, J.
Litkovitz, M.J.

ORDER

Petitioner, an inmate in state custody at the Correctional Reception Center, in Orient, Ohio, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 1). This matter is before the Court on petitioner's motion to supplement the record (Doc. 8), respondent's response in opposition (Doc. 9), and petitioner's reply (Doc. 10).

Petitioner seeks to supplement the record to include an affidavit from Debbie Myers, Custodian of Records for Continental Airlines, in order to explain flight records introduced at trial in support of his alibi. (Doc. 8). According to petitioner, the affidavit is relevant to his sufficiency of evidence, ineffective assistance of counsel, and prosecutorial misconduct claims raised as grounds for relief in the petition.


In this case, it appears petitioner's claims were adjudicated on the merits in the Ohio courts. Although the flight records were admitted during trial, the Myers affidavit was not part of the state-court record. When the state courts have adjudicated a claim on the merits, this Court is not permitted to consider evidence outside the state-court record in assessing, under the applicable the standard of review set forth in 28 U.S.C. § 2254(d), whether the state courts' rulings were contrary to or involved an unreasonable application of clearly-established Supreme Court precedents, or were based on an unreasonable determination of the facts. *See Cullen v. Pinholster*, 131 S.Ct. 1388, 1398 (2011); *see also Keeling v. Warden, Lebanon Corr. Inst.*, 673

F.3d 452, 464 (6th Cir.), *cert. denied*, 133 S.Ct. 141 (2012); *Robinson v. Howes*, 663 F.3d 819, 823 (6th Cir. 2011); *Sheppard v. Bagley*, 657 F.3d 338, 343-44 (6th Cir. 2011). *Cf. Barton v. Warden, Southern Ohio Corr. Facility*, No. 1:09cv353, 2011 WL 2293225, at *4-5 (S.D. Ohio June 8, 2011) (Merz, M.J.) (vacating order granting an evidentiary hearing in a § 2254 habeas case in light of *Pinholster*).

Moreover, to the extent petitioner requests an evidentiary hearing on any issues that were not adjudicated on the merits and were not factually developed in the underlying state-court proceedings, he has not demonstrated that an evidentiary hearing is warranted in this case. In order to obtain an evidentiary hearing in such circumstances, petitioner must demonstrate that (1) “he attempted to develop the factual basis for his claims in state court with the requisite diligence;” or (2) he satisfied the standards set forth in 28 U.S.C. § 2254(e)(2) by showing that a new constitutional rule applies to his claims for relief or that the factual predicate of such claims was previously undiscoverable through the exercise of due diligence. *See Keeling*, 673 F.3d at 464-65 (citing *Pinholster*, 131 S.Ct. at 1398 & 1400 n.4; *Couch v. Booker*, 632 F.3d 241, 245 (6th Cir. 2011)); *see also Robinson*, 663 F.3d at 823-24. No such showing has been made in this case.

Accordingly, petitioner’s motion (Doc. 8) is **DENIED**.

Date: 8/12/14


Karen L. Litkovitz
United States Magistrate Judge