IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

GEORGE SKATZES,

:

Petitioner, Case No. 3:09-cv-289

: District Judge Timothy S. Black

-vs- Magistrate Judge Michael R. Merz

KEITH SMITH, Warden,

:

Respondent.

ORDER

This capital habeas corpus case is before the Court *sua sponte* on the filing of Petitioner's Traverse (Doc. No. 42). The Traverse is 304 pages long. Its last paragraph reads: "George Skatzes is entitled to the writ for each of the reasons described in this Traverse and in his Habeas Petition. Alternatively, he should be afforded discovery and an evidentiary [?] to more fully develop his claims." (PageID 899) This is the only place in the Traverse where discovery which might occur in this case is mentioned.

In the Scheduling Order entered in this case on September 24, 2009, the Court set a cut-off date for filing discovery motions of July 15, 2010, and for filing any motion for an evidentiary hearing not later than twenty-one days after any discovery cut-off or after denial of discovery. (Doc. No. 19) The date for filing a discovery motion was later extended to September 15, 2010 (Doc. No. 27), then to October 15, 2010 (Notation Order of July 8, 2010). No motion for discovery has been filed and no further extensions were sought.

The Court does not regard the cursory request at the end of the Traverse as a proper request

for discovery in this case. A habeas petitioner is not entitled to discovery as a matter of course, but only upon a fact-specific showing of good cause and in the Court's exercise of discretion. Rule 6(a), Rules Governing §2254 Cases; *Bracy v. Gramley*, 520 U.S. 899 (1997); *Harris v. Nelson*, 394 U.S. 286 (1969); *Byrd v. Collins*, 209 F.3d 486, 515-16 (6th Cir. 2000). Before determining whether discovery is warranted, the Court must first identify the essential elements of the claim on which discovery is sought. *Bracy*, citing *United States v. Armstrong*, 517 U.S. 456, 116 S. Ct. 1480, 1488, 134 L. Ed. 2d 687 (1996). The burden of demonstrating the materiality of the information requested is on the moving party. *Stanford v. Parker*, 266 F.3d 442 (6th Cir. 2001), *citing Murphy v. Johnson*, 205 F. 3rd 809, 813-15 (5th Cir. 2000). "Even in a death penalty case, 'bald assertions and conclusory allegations do not provide sufficient ground to warrant requiring the state to respond to discovery or require an evidentiary hearing.'" *Bowling v. Parker*, 344 F.3d 487 (6th Cir. 2003)(*quoting Stanford v. Parker*, 266 F.3d 442, 460 (6th Cir. 2001).

Rule 6 does not "sanction fishing expeditions based on a petitioner's conclusory allegations." *Williams v. Bagley*, 380 F.3d 932, 974, (6th Cir. 2004), *citing Rector v. Johnson*, 120 F.3d 551, 562 (5th Cir. 1997); *see also Stanford v. Parker*, 266 F.3d 442, 460 (6th Cir. 2001). "Conclusory allegations are not enough to warrant discovery under [Rule 6]; the petitioner must set forth specific allegations of fact." *Id.*, *citing Ward v. Whitley*, 21 F.3d 1355, 1367 (5th Cir. 1994).

To the extent the last sentence of the Traverse constitutes a request for discovery, it is denied.

With respect to any possible evidentiary hearing, the request at the end of the Traverse is also insufficient to show Petitioner's entitlement to such a hearing in this Court. To the extent the last sentence of the Traverse constitutes a request for an evidentiary hearing, it is also denied.

Petitioner's counsel shall notify the Court in writing not later than January 20, 2011, whether they desire an opportunity to brief the case further on the merits. If the answer to that question is

yes, they shall consult with Respondent's counsel and propose a briefing schedule to the Court.

January 14, 2011.

s/ **Michael R. Merz**
United States Magistrate Judge