

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

MICHAEL HAZEL,

Petitioner,

: Case No. 3:13-cv-332

- vs -

District Judge Timothy S. Black
Magistrate Judge Michael R. Merz

WARDEN, Chillicothe
Correctional Institution,

:

Respondent.

DECISION AND ORDER

This habeas corpus case is before the Court on Petitioner's Motion to Expand the Record (Doc. No. 14), Petitioner's Motion to Supplement the State Court Record (Doc. No. 15), Petitioner's Motion for Notice of Filing (Doc. No. 16), Petitioner's Motion for Production of Documents (Doc. No. 18), and Petitioner's Objection to the Magistrate Judge's Decision and Order Denying a second motion to extend time to file a reply (Doc. No. 20).

The Decision and Order denying the extension of time (Doc. No. 19) is VACATED and Petitioner's time to file a reply is extended to and including June 3, 2014. Hazel's Objections to the denial are therefore moot.

Petitioner's Motion to Supplement the State Court Record provides an improvised list of what Petitioner believes are/will be the PageID numbers of the exhibits he has tendered with his Motion for Notice of Filing. The Motion to Supplement is DENIED because the PageID numbers provided are inaccurate; the actual PageID numbers were added to those documents when the Motion for Notice of Filing was filed with the Clerk. In any future filings, Hazel may

refer to the documents attached to his Notice of Filing by citing their exhibit number as he has numbered them himself. In responding to any such citation, the Warden shall use both the exhibit number of the relevant PageID number as those numbers no appear on the docketed copy of the Notice of Filing.

Petitioner's Motion to Expand the Record (Doc. No. 14) is GRANTED without suggesting any ruling on whether these documents are in fact relevant to this case and without prejudice to any argument the Warden may have that reliance on these documents is barred by *Cullen v. Pinholster*, 563 U.S. ___, 131 S.Ct. 1388 (2011).

Petitioner's Motion for Notice of Filing (Doc. No. 16) is GRANTED IN PART AND DENIED IN PART. As with the documents attached to Petitioner's Motion to Supplement the State Court Record (Doc. No. 15), the documents now filed with Doc. No. 16 will be considered by the Court as appropriate in deciding the case, again without prejudice to any reliance by the Warden on *Pinholster* and without deciding relevance at this time. Hazels' request that the Court order the Clerk "to send Mr. Hazel a piece of paper that will reveal what the proper PageID's are, starting from (Doc. No. 1) to the last Document that has been filed" is DENIED. Under policy of the Judicial Conference of the United States, the Clerk is required to charge a fee of \$.50 per page for producing copies of documents on file and the Court does not have sufficient clerical assistance to have a Deputy Clerk compile the list Hazel requests. For those documents for which he does not have PageID numbers, he may refer to them in future filings by their title and page number.

Petitioner's Motion for Production of Documents (Doc. No. 18) is DENIED. Fed. R. Civ. P. 34 on which Petitioner relies does not govern discovery in habeas corpus cases. 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*, 520 U.S. at 904, citing *United States v. Armstrong*, 517 U.S. 456, 468 (1996). The burden of demonstrating the materiality of the information requested is on the moving party. *Stanford v. Parker*, 266 F.3d 442, 460 (6th Cir. 2001), cert. denied, 537 U.S. 831 (2002), citing *Murphy v. Johnson*, 205 F.3d 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, 512 (6th Cir. 2003), cert. denied, 543 U.S. 842 (2004), quoting *Stanford*, 266 F.3d at 460. Petitioner may renew his motion for discovery by filing in compliance with Habeas Rule 6.

March 31, 2013.

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