

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Freddie Owens,

PETITIONER

v.

Bryan P. Stirling, Commissioner, South  
Carolina Department of Corrections; Joseph  
McFadden, Warden, Lieber Correctional  
Institution,

RESPONDENTS

Case No. 0:16-cv-02512-TLW-PJG

**Order**

This matter is before the Court on Petitioner's objections, ECF No. 157, to the magistrate judge's order denying Petitioner's motion to conduct discovery, ECF No. 150. For the reasons set forth below, the Court overrules those objections.

Petitioner's discovery motion, ECF No. 92, sought the Court's permission to conduct discovery regarding Ground 6 of his amended habeas petition, ECF No. 117.<sup>1</sup> He sought to obtain the litigation file of the attorney who represented the estate of Christopher Lee in a lawsuit against various Greenville County entities arising out of Petitioner killing Lee while they were

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<sup>1</sup> Ground 6 reads as follows:

Trial and collateral counsel were ineffective to the prejudice of the applicant by failing to investigate, develop and present evidence of institutional negligence which would have mitigated the State's theory that the in-custody death of Mr. Lee conclusively established future dangerousness and the only sentencing option for the petitioner was death. Evidence from expert witnesses available at the time of the petitioner's sentencing trial demonstrated that institutional negligence in failing to classify, and detain the petitioner in accordance with that classification, was the proximate cause of the death of Mr. Lee.

ECF No. 117 at 6–7.

incarcerated together at the Greenville County Detention Center.<sup>2</sup> Additionally, Petitioner sought to obtain directly from Greenville County a significant amount of information regarding the detention center, its personnel, and its operations from the time period when Petitioner killed Lee. Respondents filed a response in opposition to the motion, ECF No. 99, and Petitioner filed a reply, ECF No. 114.<sup>3</sup>

Magistrate Judge Gossett denied Petitioner's motion, concluding that he failed to show good cause to permit discovery under Rule 6 of the Rules Governing § 2254 Cases. ECF No. 150. Regarding the request for the litigation file, the magistrate judge noted that "Ground Six calls upon the court to scrutinize previous counsel's investigation and presentation of evidence. Resolving this issue does not require a finding of institutional negligence or of Petitioner's future dangerousness and the court does not need to examine every piece of evidence previous counsel could have presented in order to fully consider Petitioner's claim." *Id.* at 4. Regarding the request for records from Greenville County, the magistrate judge noted that the discovery motion contained twelve requests, which were simply listed without discussion or analysis, and the court could not determine what allegations they would support or what factual issue they could resolve. *Id.* at 5.

Petitioner timely filed objections to the magistrate judge's order under Rule 72(a) of the Federal Rules of Civil Procedure. ECF No. 157. In his first objection, he argues that the magistrate judge erred in concluding that he failed to establish good cause to conduct discovery. In his second

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<sup>2</sup> A full explanation of the background of that case is set forth in the Court's order denying Petitioner's first recusal motion. ECF No. 77 at 1-2.

<sup>3</sup> This is Petitioner's second request for permission to conduct the same discovery. His prior request was denied (and his objections to that denial were overruled) primarily because he was seeking discovery prior to filing his habeas petition. See ECF Nos. 56, 76, 80.

objection, he argues that the magistrate judge applied the wrong standard and exceeded the proper scope of the analysis. In his third objection, he argues that the magistrate judge erred in ruling on matters not before her. In his fourth objection, he argues that the magistrate judge erred in not considering that the discovery evidence also applies to the motion to recuse.<sup>4</sup> In his fifth objection, he argues that the magistrate judge erred in ruling on the merits of Ground 6. Finally, in his sixth objection, he argues that the magistrate judge erred by precluding him from developing a record for appellate review. See *id.* at 3. The Court will address each of these objections in turn.

Rule 72(a) provides as follows:

When a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate judge to hear and decide, the magistrate judge must promptly conduct the required proceedings and, when appropriate, issue a written order stating the decision. . . . The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.

Review of a magistrate judge's decision on non-dispositive matters, such as discovery, is deferential, and a magistrate judge's order on such issues will be set aside only if it is "clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a); see also 28 U.S.C. § 636(b)(1)(A); *Johnson v. Riley*, No. 3:05-cv-03417-HFF, 2007 WL 954145, at \*2 (D.S.C. Mar. 26, 2007) (applying the clearly erroneous or contrary to law standard to objections to a magistrate judge's discovery order). "The Federal Rules of Civil Procedure provide magistrate judges with broad discretion in resolving discovery disputes." *Clark v. Milam*, 155 F.R.D. 546, 547 (S.D. W. Va. 1994) (internal quotation and citation omitted). A magistrate judge's decision on a nondispositive pretrial matter "is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence

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<sup>4</sup> Petitioner previously filed a motion for the undersigned to be recused from the case, which was denied. ECF Nos. 54, 77. He then filed a second motion for recusal, which was again denied. ECF Nos. 158, 172.

is left with the definite and firm conviction that a mistake has been committed.” *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948). After careful review of the record in this case, the Court concludes that the order objected to is not clearly erroneous or contrary to law. While the Court has applied the deferential standard of review as directed by Rule 72(a), even if the Court were applying a *de novo* standard, the Court would reach the same conclusion for the reasons set forth below and in the magistrate judge’s order.

In Petitioner’s first objection, he asserts that the requested discovery is necessary for him to fully develop his argument on Ground 6—specifically, that trial counsel was ineffective in failing to argue at sentencing that Greenville County’s institutional negligence mitigated the State’s use of Petitioner’s murder of Lee as an aggravator. See ECF No. 157 at 4. His argument implies that there is a relevant dispute about the extent of any negligence by Greenville County. That argument is not supported by the record.

In the State’s response to Ground 6, the State asserts essentially that any institutional negligence by Greenville County was irrelevant because it did not change the ultimate fact that Petitioner murdered Lee while they were in custody together. See ECF No. 122 at 190–91. Thus, the State does not challenge Petitioner’s claim that Greenville County was negligent in housing him with Lee; rather, the State asserts that it is irrelevant. As the magistrate judge noted, there is no indication in the record that the parties dispute the facts surrounding Lee’s death, and the ultimate resolution of Ground 6 does not require the Court to find institutional negligence or review all of the evidence that trial counsel could have presented at sentencing. See ECF No. 150 at 4. The magistrate judge simply concluded that there is no relevant dispute to be resolved by an in-depth analysis of the broad array of information sought by Petitioner regarding Greenville County’s actions regarding the housing of Petitioner and Lee, and Petitioner therefore did not show

good cause to conduct the requested discovery. The Court concludes that the magistrate judge was correct.

Petitioner asserts in his second objection that the magistrate judge did not apply the correct standard and improperly analyzed the discovery motion. The Court is not persuaded. The magistrate judge dedicated a full paragraph in her order to setting out the correct standard—whether he demonstrated good cause for the requested discovery. See ECF No. 150 at 2. The mere fact that the magistrate judge later cited a Ninth Circuit decision for the proposition that a district court abuses its discretion if it denies discovery when the discovery is essential for a habeas petitioner to fully develop his claim, see *id.* at 5 (citing *Smith v. Mahoney*, 596 F.3d 1133, 1151–52 (9th Cir. 2010)), which is not inconsistent with the good cause standard, does not mean that she analyzed his motion as only permitting discovery when it is essential, rather than when he has shown good cause. Her analysis is fully consistent with the good cause standard—whether “specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is . . . entitled to relief.” *Wolfe v. Johnson*, 565 F.3d 140, 165 n.3 (4th Cir. 2009) (quoting *Bracy v. Gramley*, 520 U.S. 899, 908–09 (1997)). Her conclusion was simply that no further factual development is necessary to evaluate Ground 6, and that Petitioner therefore did not demonstrate good cause to conduct further discovery.

Petitioner’s third objection has no merit and reads more into the discovery order than what is addressed. In her order, the magistrate judge said that, “[t]o the extent Petitioner has requested an evidentiary hearing on this matter, for the reasons stated above, that request is also denied.” ECF No. 150 at 5. He reads this as saying that the order denies his request for an evidentiary hearing on the merits of Ground 6, but that does not appear to be the intent or impact of the order. It is evident to the Court that the magistrate judge included this sentence in her order out of an

abundance of caution to address any argument that a hearing was needed on the discovery motion prior to a ruling on it. The Court does not read the discovery order as denying a request for an evidentiary hearing on the merits of Ground 6. Whether an evidentiary hearing is needed to address the merits of the habeas petition can be taken up by the parties in a separate proceeding.<sup>5</sup>

There is no merit to Petitioner's fourth objection, as the Court has ruled, once again, that recusal is not required in this case. ECF No. 172.

There is also no merit to Petitioner's fifth objection, as the magistrate judge did not rule on the merits of Ground 6. As discussed in more detail above, the discovery order merely concluded that the requested discovery is not necessary for a proper evaluation of the claim and that he therefore did not demonstrate good cause. The magistrate judge's belief that the requested discovery is not needed to evaluate the merits of Ground 6 is not an indication that a decision has already been reached on that ground, particularly where briefing on the issue is not yet complete.

Finally, there is no merit to Petitioner's sixth objection, as the denial of a discovery motion does not preclude him from making a necessary record for appellate review. To the extent he argues that he has been deprived of the ability to make his record because the magistrate judge ruled on the merits of his claim, this assertion finds no support in the record for the reasons set forth above. The magistrate judge simply ruled on the discovery motion before her. A full decision on the merits will come at a later stage in the proceeding, and Petitioner will have a full opportunity to make his record.

For the reasons set forth above, the Court concludes that the magistrate judge's order is not clearly erroneous or contrary to law. Accordingly, Petitioner's objections, ECF No. 157, are **OVERRULED**.

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<sup>5</sup> In fact, Petitioner has already filed a motion for an evidentiary hearing. ECF No. 164.

**IT IS SO ORDERED.**

s/ Terry L. Wooten  
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Terry L. Wooten  
Chief United States District Judge

July 20, 2017  
Columbia, South Carolina