

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JUANE T. KENNEL,

Petitioner,

v.

DAVE DORMIRE,

Defendant.

Case No. 4:09-CV-407 AGF

PETITIONER'S MOTION TO AUTHORIZE DISCOVERY

COMES NOW petitioner, Juane T. Kennell, by and through counsel, and moves the Court, pursuant to Rule 6 pertaining to cases filed under 28 U.S.C. § 2254 and *Bracy v. Gramley*, 520 U.S. 899 (1997), to authorize petitioner to conduct discovery in this habeas corpus case. For his motion, petitioner states the following grounds:

1. Petitioner has submitted herein a factually detailed petition for relief under 28 U.S.C. § 2254. Petitioner has set forth therein a prima facie case for relief from his conviction and sentence.
2. Under Claim 1 of his habeas petition, petitioner has made allegations, supported by independent sources which, if true, establish that his due process rights guaranteed by the Fourteenth Amendment were violated by the state's nondisclosure of material impeachment evidence regarding the credibility of prosecution witnesses

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A- 157

Jeffrey Shockley and Robert Stewart. In particular, as set forth in the petition, traverse, and supporting exhibits, both Shockley and Stewart were arrested on drug and weapons charges in the time period surrounding the homicide for which petitioner was convicted and before they gave subsequent testimony against petitioner. (See Exh's 1, 2). Based upon information currently before the Court, Shockley was arrested twice on drug and weapons charges and Stewart once. (*Id.*). Furthermore, evidence is currently before the Court that Shockley was formally charged with two felonies in the City of St. Louis in Cause No. 021-00715 and received a suspended imposition of sentence on those charges just a week after petitioner was convicted. (See Exh. 1). Internal public defender documents show that a "deal" was worked out between Shockley and the state in exchange for his testimony against petitioner and his co-defendant Christopher White. (See Exh. 4, p.3). Counsel for petitioner, therefore, has a good faith basis to believe that there is additional relevant evidence to support petitioner's claim for relief under *Brady v. Maryland*, 373 U.S. 83 (1963), in prosecution files, police files, court files, and public defender files to which petitioner does not have access without court-ordered discovery. (See Exh. 4).

3. In order to fully and fairly litigate this constitutional claim, it is necessary that petitioner be permitted to conduct discovery. Petitioner has clearly

presented sufficient factual and legal allegations to establish "good cause" to authorize discovery in this case. As the Supreme Court has pointed out: "Where 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, it is the duty of the courts to provide the necessary facilities and procedures for an adequate inquiry." *Bracy v. Gramley*, 520 U.S. at 909, quoting *Harris v. Nelson*, 394 U.S. 286, 299 (1969). In *Banks v. Dretke*, 540 U.S. 668 (2004), the petitioner was granted discovery by the district court to obtain the prosecution's files, which revealed impeaching information regarding a state's witness that later resulted in relief being granted to petitioner in that case. *Id.* at 683-687. The same situation is presented here. Court-ordered discovery is the only avenue by which petitioner can obtain access to closed court files, police files, the prosecutor's files, and public defender files that undoubtedly contain additional evidence supporting petitioner's claim for relief under *Brady*. The disclosure of this information is, therefore, essential to the fair and accurate resolution of petitioner's *Brady* claim that is currently pending before this Court.

4. Specifically, petitioner requests leave to discover, by way of court order, subpoena, production of documents, depositions, and requests for admissions and/or interrogatories the following information:

(a) Any and all existing reports or other documentation contained in the city of St. Louis police files regarding the February 18, 2002 arrest of Jeffrey Shockley at 4931 Arlington in St. Louis City on gun and drug charges.

(b) Any and all reports and other documents in the possession of the St. Louis City Police Department regarding the January 1, 2002 arrest of Shockley and Stewart at 4709 North 20th Street, St. Louis, Missouri.

(c) Any and all files in the possession of the St. Louis City Prosecutor's Office in the underlying criminal case against petitioner and co-defendant Christopher White in No.'s 021-2340 and 021-2368, and in the case of *State of Missouri v. Jeffrey Shockley*, No. 021-00715.¹

(d) Any other prosecution files or documents pertaining to any other criminal prosecutions or decisions to decline or drop charges in any other criminal case involving the arrest of Shockley or Stewart between 2002 and 2004.

(e) Any and all files and documents in the possession of the St. Louis City Public Defender's Office pertaining to *State v. Shockley*, No. 021-00715 and any

¹ Since Shockley's case number is significantly lower than petitioner's, it must have been filed before the Freddie Chew homicide. This fact effectively rebuts respondent's argument that Shockley had no incentive to wrongly identify Kennell. (Resp. 5).

or all files and documents in their possession regarding any other prosecutions brought against Shockley or Stewart between 2002 and 2004.

(f) Petitioner also seeks a court order requiring the Clerk of the St. Louis City Circuit Court to turn over all documents contained in the criminal case file of *State v. Shockley*, No. 021-00715. Petitioner further requests a court order requiring the Clerk to produce any other closed criminal case files on any charges filed against Shockley or Stewart between 2002 and 2004.

(g) After these files and/or documents are produced, petitioner further requests leave of the Court to take necessary depositions of material witnesses in this case and, in the event an evidentiary hearing is granted, to issue subpoenas to all material witnesses necessary to present the documentary evidence produced during discovery.

5. Counsel for petitioner expresses to the Court a good faith belief that the discovery requested by petitioner is likely to produce relevant evidence or will lead to the discovery of relevant and admissible evidence. Further, counsel firmly believes that granting leave to conduct the requested discovery will assist the Court in arriving at a just and reliable resolution of the constitutional claims presently before it. In such circumstances, a district court is authorized to permit a prisoner to use suitable discovery procedures to help the Court "to dispose of the matter as law and justice

require.” *Harris v. Nelson*, 394 U.S. at 290. *See also Toney v. Gammon*, 79 F.3d 693, 700 (8th Cir. 1996).

WHEREFORE, petitioner moves this Court to grant him leave to conduct the discovery requested herein, and order the Clerk of the Court to provide petitioner’s counsel with a sufficient number of subpoenas duces tecum necessary to obtain the necessary records and reports, or issue orders directing the agencies and individuals in possession of these records and reports to promptly provide these records to counsel for petitioner, or grant such other and further relief that the Court deems fair and just.

Respectfully Submitted,

/s/ Kent E. Gipson

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of April, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all counsel of record.

/s/ Kent E. Gipson

Kent E. Gipson