

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA

V.

CRIMINAL CASE NO. 3:07CR192-B-A

DAVID ZACHARY SCRUGGS,

ORDER

Came on to be considered this day: (1) the motion of the petitioner David Zachary Scruggs, moving the court to reconsider the court's order of February 16, 2011, which denied petitioner's motion for general discovery, and (2) the motion of the petitioner for the court to allow depositions. Upon due consideration of the petitioner's motions and the government's response thereto, the court is ready to rule on the motions.

Shortly before petitioner was to stand trial, he announced to the court through his attorneys that he was satisfied with the discovery received from the government and was ready to defend against all charges in the Indictment. The petitioner now contends that additional discovery is warranted in this matter because of new issues not known at the time of his guilty plea that were discovered through a book written about this case by one of the prosecutors and by affidavits pertaining to a claim by the petitioner of ineffective assistance of counsel. Since the book and affidavits were published after petitioner's guilty plea, petitioner did not conduct discovery on the issues raised by those publications since the issues were unknown to him at the time of his plea.¹

As the petitioner acknowledges, leave of court is required for discovery under Rule 6 of

¹The alleged "new" evidence did "exist" at the time of the guilty plea. Otherwise it would not be relevant in attempts to set aside the guilty plea. The evidence simply was not known by petitioner at that time.

the Rules Governing Section 2255 Proceedings for the United States District Courts, and the decision to grant said leave is entirely within the discretion of the court. Rule 6(a) provides: “A judge may, for good cause, authorize a party to conduct discovery under the Federal Rules of Criminal Procedure or Civil Procedure, or in accordance with the practices and principles of law.” The petitioner cites to the court the case of *Bracy v. Gramley*, 520 U.S. 899, 908-09 (1997), which states “it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry.”

The court is providing petitioner the necessary facilities and procedures for an adequate inquiry into the issues he raises by setting a hearing on his section 2255 motion to vacate for April 25, 2011, where evidence will be received in a United States District Court and where testimony will be given by live witnesses who have personal knowledge of the facts on the issues raised. The petitioner has presented affidavits on these issues. The petitioner has quoted from a book written on these issues. The petitioner has requested that he be allowed to take depositions on these issues. In resolving the issues raised by the petitioner, the court is going to consider evidence in open court from live witnesses in accordance with the Rules of Evidence. The petitioner has presented to the court the names of witnesses he wants to depose, and the government has responded as to why some of the potential witnesses are not relevant to issues in the upcoming hearing. The court will not pre-judge what testimony potential witnesses may give and therefore will not disallow the petitioner to call some witnesses and allow him to call other witnesses; but the court will take up any objections made to questions of witnesses as they may come up from either party in open court based on the Federal Rules of Evidence.

The petitioner, in his motion for depositions, argues that several persons from whom deposition testimony is sought are outside the subpoena power of this court and that depositions

are “the only practicable way to get [their] testimony before this Court.” This statement is inaccurate in this section 2255 quasi-criminal proceeding. Rule 12 of the Rules Governing Section 2255 Proceedings for the United States District Courts states that the Federal Rules of Civil Procedure and Criminal Procedure may be applied to this proceeding to the extent that they are not inconsistent with any statutory provisions or by the section 2255 rules themselves. Federal Rule of Criminal Procedure 17(e) states: “A subpoena requiring a witness to attend a hearing or trial may be served at any place within the United States.” The court records reflect at this time that no requests for subpoenas have been made.

The petitioner has pointed to no information to be gained through discovery that he will not have the opportunity to pursue at the evidentiary hearing in open court from live witnesses. Therefore the motions to take pre-hearing depositions and for reconsideration of other discovery requests, including requests for the government to make admissions and to turn over work files, etc., are hereby **DENIED**.

SO ORDERED AND ADJUDGED this the 16th day of March, 2011.

/s/ Neal Biggers

NEAL B. BIGGERS, JR.
SENIOR U.S. DISTRICT JUDGE