

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
vs.)
)
ADRIAN BROOM,)
)
)
 Defendant.)

No. 07-2762 MLV

ORDER GRANTING MOTION FOR LEAVE TO TAKE DISCOVERY

On November 28, 2007, the defendant, Adrian Broom, an inmate at the Federal Correctional Institution in Forrest City, Arkansas, filed, through counsel, a motion pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct sentence. (Doc. No. 1.) On December 12, 2007, Broom, through counsel, filed a factual affidavit and a memorandum in support of his § 2255 motion. (Doc. No. 7.) The government filed a response on February 12, 2008 (Doc. No. 11), and Broom filed a reply on March 26, 2008 (Doc. No. 15.)

On March 26, 2008, Broom also filed a motion for leave to invoke processes of discovery (Doc. No. 16), which the court denied for failing to include the proposed discovery as required by Rule 6(b) of the Rules Governing Section 2255 Proceedings for the United States District Court ("Section 2255 Rules"). On April 30, 2008, Broom filed an amended motion for leave to take discovery, this time attaching his proposed discovery requests to the motion. The

government has filed a response in opposition to the motion, and Broom has filed a reply. The motion was referred to the United States Magistrate Judge for determination. For the reasons that follow, the motion is granted.

ANALYSIS

Broom alleges in his § 2255 motion that the government breached proffer, cooperation, and plea agreements by submitting that Broom should be punished for drug amounts he revealed as part of proffer agreements and for which he was involved only because of his cooperation with the government. (Pl.'s Mem. Supp. § 2255 Mot. 3, Doc. No. 8, Dec. 12, 2007.) Broom's proposed discovery consists of four requests for production of documents seeking: (1) written proffer or cooperation agreements; (2) documents that show the existence of proffer or cooperation agreements; (3) documents that show Broom continued to cooperate with and provide information to the government, including Officer Richard Clinton, after August of 2004; and (4) recorded statements related to Broom's proffer or cooperation agreements with the government. Broom also seeks to propound fourteen (14) interrogatories concerning the terms of proffer and/or cooperation agreements with the Germantown-Collierville Police and the federal government, the government's knowledge of agreements, and Broom's performance under the agreements.

Rule 6 of the Section 2255 Rules 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." Rules Governing Section 2255 Proceedings 6(a) (2004). Pursuant to Rule 6(b) of the Section 2255 Rules, "a party requesting discovery must provide reasons for the request. The request must also include any proposed interrogatories and requests for admission, and must specify any requested documents." *Id.* at R. 6(b) . Broom has attached the requested discovery and set forth reasons for his discovery requests. Thus, the critical issue is whether Broom has shown "good cause" for discovery.

Interpreting the "good cause" standard, the United States Supreme Court has held that a court should permit discovery in habeas corpus proceedings "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." *Bracy, v. Gramley*, 520 U.S. 899, 904 (1997) quoting *Harris v. Nelson*, 394 U.S. 286, 300 (1969))(quotation marks omitted); see also *Stanford v. Parker*, 266 F.3d 442, 460 (6th Cir. 2001); *Lynott v. Story*, 929 F.2d 228, 232 (6th Cir. 1991). The Fourth Circuit has held that a habeas corpus petition must establish a prima facie case of relief before discovery is permitted. *United States v. Roane*, 378 F.3d 382, 402-03 (4th Cir. 2004).

In its response, the Government vigorously argues that Broom's petition merely contains conclusory allegations and fails to establish a prima facie case for relief. Broom's § 2255 petition raises three issues: (1) Whether Broom's attorney failed to adequately explain the waiver of appeal or collateral motion provision in the Plea Agreement, thus resulting in Broom unknowingly and unintelligently agreeing to a waiver as part of the Plea Agreement; (2) Whether the Government breach the terms of its Plea Agreement by seeking an increase in Broom's sentence based on activity it encouraged; and (3) Whether Broom's sentence should be vacated because it was based on drug quantities which were the result of Broom's activities under cooperation agreements. The government contends that Broom cannot establish that he is entitled to relief on any of these grounds primarily because the Sixth Circuit has already ruled on the appellate waiver provision in the Plea Agreement on direct appeal and that the other issues were waived for failing to raise them at sentencing and on direct appeal, and therefore, discovery is not warranted.

Broom acknowledges that he must overcome the waiver issues in order to proceed, but he points out that his discovery request is not related to the issue regarding the waiver provision in the Plea Agreement, rather only to the other two issues. As to these other two issues, Broom argues that it is undisputed that at least one proffer agreement existed because he was acting as a confidential

informant in January of 2004, and he believes it is likely to be in writing. Broom asserts that he first entered into a proffer agreement with local authorities and then the federal government entered a cooperation agreement in which they promised to abide by the terms of the local authority agreement. Broom insists that if proffer or cooperation agreements exist, it is important for him and the court to know the terms of the agreements in order to determine if the government agreed to give him immunity for relevant conduct he disclosed through the agreements.

The court finds that Broom's allegations concerning the government's breach of the Plea Agreement and the use of relevant conduct disclosed through proffer agreements to increase his sentence state a prima facie case for relief if the court determines that these issues were not waived procedurally. The court further finds that Broom has sufficiently articulated his need for discovery related to the existence and terms of proffer and cooperation agreements, and, therefore, good cause exists in this case for Broom to conduct the requested discovery.

CONCLUSION

Accordingly, Broom's amended motion for leave to invoke discovery processes is granted. Broom is directed to serve his discovery requests on the Government within eleven (11) days of the date of this order.

IT IS SO ORDERED this 28th day of July, 2008.

s/ Diane K. Vescovo
UNITED STATES MAGISTRATE JUDGE