

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

FILED  
D1147

OCT 20 1982

Richmond Division

ENJUMO ASWAD KENYATTA, )  
a/k/a/ James Ivory Henderson, )  
Petitioner, )  
)  
)  
v. )  
)  
GENE M. JOHNSON, Warden )  
)  
)  
Respondent. )

CLERK, U.S. DIST. COURT  
RICHMOND, VA.

Civil Action No. 81-1021-R

MEMORANDUM OPINION

This matter comes before the court on petitioner's appeal from a decision of a United States Magistrate dismissing petitioner's motion for a writ of habeas corpus. See 28 U.S.C. §§ 2254 and 636 (c)(4). For reasons given below, the magistrate's decision is affirmed.

I. FACTUAL BACKGROUND

Petitioner is presently incarcerated in Virginia State Prison facilities. He was convicted in the Hustings Court for the City of Richmond on June 23, 1971 after trial before a jury, and sentenced to a life term for a robbery conviction and a twenty-year term for a malicious wounding conviction.

Petitioner alleges in this motion for a writ of habeas corpus that the identification made at trial was tainted by the earlier identification at the preliminary hearing; that the

evidence was insufficient to support the conviction; that the jury was improperly charged; and that the jury instruction number six was improper because it shifted the burden of proof.

Petitioner also asserts that his attorney was ineffective because the attorney failed to object to instructions given to the jury or to request certain instructions; because he failed adequately to investigate the facts and circumstances of the petitioner's arrest; and because he failed to request certain medical reports concerning wounds received by the commonwealth's witness.

Prior to bringing this action, petitioner filed no less than twelve successive actions for habeas corpus relief in various state and federal courts. Respondents accordingly moved for dismissal of the current action because the petitioner has abused the writ. See Rule 9 of the Rules Governing 28 U.S.C. § 2254. The magistrate, by order of March 25, 1982 gave petitioner 20 days to respond to respondent's motion. Upon receipt of petitioner's response, the magistrate dismissed petitioner's case. Petitioner is now before the court appealing the magistrate's order.

## II. LEGAL ANALYSIS

On review of a magistrate's final decision disposing of a case, this court must make a de novo determination of those portions of the magistrate's findings to which objection is made. See Coolidge v. Schooner, 637 F.2d 1321, 1325-27 (9th Cir.), cert. denied 451 U.S. 1020 (1981) (de novo review of civil trial heard before magistrate); Calderon v. Waco Lighthouse for the

Blind, 630 F.2d 352, 355-56 (5th Cir. 1980)(same); Hill v. Jenkins, 603 F.2d 1256, 1258-59 (7th Cir. 1979)(same).

However, this requirement of "de novo determination" does not require this court to rehear the matter; rather, the district court judge is permitted whatever reliance he, in the exercise of sound judicial discretion, chooses to place on the magistrate's findings. See United States v. Raddatz, 447 U.S. 667, 673-676 (1980); Gioiosa v. United States, 684 F.2d 176, 179 (1st Cir. 1982).

In the present case, the magistrate concluded that the petitioner's present petition for habeas corpus fell within Rule 9 of the Rules Governing Section 2254 Cases in the United States District Courts, which provides in pertinent part:

(b) Successive Petitions. A second or successive petition may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination is on the merits, or if new and different grounds are alleged, the judge finds that the failure of the petitioner to assert those grounds in a prior petition constitutes an abuse of the writ.

The magistrate found that such grounds as were not raised in petitioner's earlier petitions "were known to the petitioner at the time he filed his earlier petitions, and that the failure to assert them in those petitions constitutes an abuse of the writ."

Upon consideration of the magistrate's order and petitioner's objection thereto, this court finds that the magistrate's order dismissing the present case was entirely appropriate. Rule 9 was designed to prevent the very sort of

repetitious application for habeas corpus relief this prisoner has made. See 28 U.S.C §2254, Rule 9 advisory committee note."Nothing in the traditions of habeas corpus requires the federal courts to tolerate needless piecemeal litigation..." Sanders v. United States, 373 U.S. 1, 18 (1963). The magistrate was justified in concluding that the petitioner's twelve earlier applications for habeas corpus relief gave petitioner ample opportunity for judicial reconsideration of nearly every aspect of petitioner's conviction. Given the petitioner's ample opportunities for collateral attack of his conviction, the magistrate was justified in concluding that the petitioner's failure to raise any of the present allegations not previously considered on the merits constituted an abuse of the writ.

Therefore, this court, upon de novo determination of the magistrate's decision, affirms the magistrate's order dismissing the petitioner's case.

DATE: OCT 20 1982

Richard I. Williams  
UNITED STATES DISTRICT JUDGE

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ORDER

This matter comes before the court on petitioner's appeal from a decision of a United States Magistrate dismissing petitioner's motion for a writ of habeas corpus. See 28 U.S.C. §§2254 and 636. For reasons given in the accompanying memorandum opinion, the magistrate's decision is AFFIRMED.

Let the Clerk send a copy of this order and accompanying memorandum opinion to petitioner and to counsel for the respondent.

DATE: OCT 20 1982

*Richard L. Wilkins*  
UNITED STATES DISTRICT JUDGE