EXHIBIT 4

U.S. Department of Justice

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December 13, 2013

via electronic mail
Hon. Joel A. Pisano, U.S.D.J.
United States District Court
District of New Jersey
Clarkson S. Fisher Federal Building and U.S. Courthouse
402 East State Street
Trenton, New Jersey 08608

Re: Baskerville v. United States
Civil No. 13-5881 (JAP)

Dear Judge Pisano:

On December 2, 2013, Defendant William Baskerville filed a *pro se* motion for discovery in support of his pending motion under 28 U.S.C. § 2255. See ECF No. 5. That same day, this Court entered a notation on the docket stating that it would decide the discovery motion on the papers on January 6, 2014. For the reasons set forth herein, the Government respectfully submits that this Court should rule on the discovery motion after the Government files its opposition to Baskerville's § 2255 motion. Given the length of the trial and the number of claims Baskerville has raised, the Government requests permission to file its opposition on March 21, 2014.

Rule 6(a) of the Rules Governing Section 2255 proceedings provides that 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" (emphasis added). The "good cause" standard in Rule 6(a) derives from Harris v. Nelson, 394 U.S. 286, 300 (1969), in which the Court said that "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 court to

provide the necessary facilities and procedures for an adequate inquiry." "Habeas Corpus Rule 6 is meant to be 'consistent' with Harris." Bracy v. Gramley, 520 U.S. 899, 909 (1997) (quoting Advisory Committee's Note on Habeas Corpus Rule 6, 28 U.S.C., p. 479).

A movant's entitlement to discovery ultimately turns on the merits of the claims raised in his *habeas* motion. See Bracy, 520 U.S. at 904 ("Before addressing whether petitioner is entitled to discovery under this Rule to support his judicial-bias claim, we must first identify the 'essential elements" of that claim.'"). Here, Baskerville's § 2255 motion contains three claims: (1) ineffective assistance of trial and appellate counsel; (2) "newly-discovered evidence," which is not a cognizable basis for § 2255 relief; and (3) prosecutorial misconduct as supposedly revealed by the newly discovered evidence Baskerville cites in his second claim. The third claim essentially posits that, because various witnesses who testified at the Baskerville trial allegedly testified differently at the trial of Paul Bergrin (D.N.J. Crim. No. 09-369), the Government supposedly sponsored testimony at the Baskerville trial that the Government knew or should have known was false. Baskerville's discovery motion apparently is directed exclusively at his second and third claims, as it seeks a host of items (testimony, recordings, or other discovery) from the Bergrin trial. See ECF No. 5 at 1-4, ¶¶ 1-6.

Initially, given the specificity of Baskerville's claims, including citations to the relevant trial transcripts in his Affidavit, see ECF 1-1, it is difficult to understand how Baskerville could have prepared his § 2255 motion and the accompanying Affidavit if he did not already possess much of the material that he now seeks. At any rate, the Government's response to the § 2255 motion will demonstrate that each of Baskerville's claims is meritless.[1] That being so, this Court can and should wait until it receives the Government's opposition papers to rule on the discovery motion. At that time, this Court can exercise its discretion to deny the discovery motion – either because the record will be

[1] Merely by way of example, Baskerville claims that defense counsel performed deficiently by not seeking to sever the drug charges from the murder charges. ECF No. 1 at 9, ¶ S. Given that the informant's role in the drug sales provided the motive for his murder, no reasonable defense counsel would have filed a motion that this Court would have denied summarily. Also baseless is Baskerville's claim that the Government sponsored false testimony at his trial merely because witnesses at Bergrin's trial testified to matters that at times varied from their testimony at Baskerville's trial. That claim improperly equates an inconsistency or mis-recollection with a lie, ignores that over eight years elapsed between the McCray murder and the second Bergrin trial, and fails to acknowledge that Bergrin exposed those supposed inconsistencies in his own trial but was convicted of the McCray murder nonetheless.

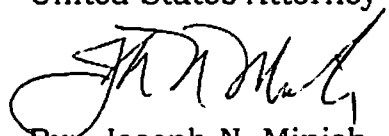
sufficiently developed for this Court to adjudicate the § 2255 motion, or because the claims in the § 2255 motion fail as a matter of law, or both. See Feagins v. Ricci, Civil No. 06-5300, 2007 WL 2473835, at *6 n. 4 (D.N.J. Aug. 27, 2007) ("As this Court is dismissing Ground One because it presents a question of state law and does not rise to the level of a due process violation, this Court will deny both motions as moot."); see also United States v. Brown, Crim. No. 02-146, 2013 WL 6182032, at *9 n.6 (M.D. Pa. Nov. 25, 2013) (denying discovery motion as moot where the court concluded "that the motion and record are more than sufficient for the court to" resolve the merits of defendant's claim); Brown v. United States, Civil No. 10-666, 2013 WL 4482488, at *12 (N.D. Ga. June 06, 2013) ("Defendant's Motion for Leave to Conduct Discovery Pursuant to 28 U.S.C. § 2255, Rule 6" [Doc. No. 191] is DENIED as MOOT.").

Further, Baskerville's discovery motion does not articulate how the material he seeks would support the specific claims he has raised. Baskerville is not entitled to discovery simply because he believes or hopes that the material sought will provide grounds for relief. See Charles v. Artuz, 21 F. Supp. 2d 168, 169 (E.D.N.Y. 1998) ("In the Court's view, the petitioner's motion does not establish 'good cause' for the desired documents. In fact, his stated purpose is merely to determine whether the requested items contain any grounds that might support his petition, and not because the documents actually advance his claims of error. In sum, his motion amounts to a 'fishing expedition' which he hopes will yield a document providing ground for a writ."); see also Armatullo v. Taylor, Civil No. 04-5357, 2005 WL 2386093, at *21 (S.D.N.Y. Sept. 28, 2005) (concluding that petitioner's "personal belief that further discovery will yield evidence helpful to him is not enough to establish 'good cause' for granting his requests" under Bracy); Quinones v. Miller, 01-10752, 2005 WL 730171, at *5 n.5 (S.D.N.Y. Mar. 31, 2005) (rejecting targeted discovery request because "Petitioner's subjective belief that this evidence will establish an actual conflict of interest is speculative and does not constitute 'good cause' for ordering discovery" under Bracy).

For the foregoing reasons, the Government respectfully requests that this Court not adjudicate Baskerville's discovery motion until after the Government has filed its opposition to Baskerville's § 2255 motion.

Respectfully submitted,

Paul J. Fishman
United States Attorney



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