

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

ABDEL ELTAYIB,

97 CV 7543

Petitioner,

MEMORANDUM

-against-

AND
ORDER

UNITED STATES OF AMERICA,

Respondent.

-----X

ABDEL ELTAYIB
Prisoner #13882-050
FMC Lexington
Unit Cardinal
P.O. Box 14509
Lexington, KY 4512-4509
petitioner pro se

ZACHARY W. CARTER, United States Attorney
Eastern District of New York
(Jonathan Sack, of counsel)
One Pierrepont Plaza
Brooklyn, New York 11201
for respondent.

NICKERSON, District Judge:

Petitioner pro se brought this proceeding for a writ of habeas corpus pursuant to 28 U.S.C. § 2255. Petitioner now moves (1) for appointment of counsel, (2) to supplement the petition, and for an order that

clm

this motion and supplement be placed under seal and (3) for discovery.

Cooper v. A. Sargenti Co., 877 F.2d 170 (2d Cir. 1989), articulates the factors the court must consider before appointing counsel for an indigent litigant:

- (1) whether the indigent's position seems likely to be of substance,
- (2) the indigent's ability to investigate the crucial facts,
- (3) whether conflicting evidence implicating the need for cross-examination will be the major proof presented to the fact finder,
- (4) the indigent's ability to present the case or obtain private counsel,
- (5) the complexity of the legal issues,
- (6) the availability of counsel,
- (7) and special reasons why appointment of counsel would be likely to lead to a more just determination.

In Cooper, the court said that only if, after close scrutiny of the merits of the claim, the court finds it to be of substance should the other criteria be considered. 877 F.2d at 172, (quoting Hodge v. Police Officers, 802 F.2d 58) (2d Cir. 1986).

The court has reviewed petitioner's claims and finds that they are not likely to be of substance. Therefore, the court will not consider the other factors in Cooper. Petitioner's motion for appointment of counsel is denied.

Petitioner's request to supplement his petition is granted, but his request for an order that this motion and supplement be placed under seal is denied.

In petitioner's motion for discovery, he requests documents reflecting statements by prosecutors and government officials at a press conference held on July 22, 1991; the certificates of a fishing vessel showing its speed; copies of Coast Guard reports; copies of various government exhibits; and the identity and statements made by the informant in this case. Petitioner's motion for discovery is denied.

Petitioner's motion to supplement his petition is granted. All other motions are denied.

So ordered.

Dated: Brooklyn, New York
August 11, 1998

Eugene H. Nickerson
Eugene H. Nickerson, U.S.D.J.