

Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

LUIS MELENDEZ,) **S. Ct. Civ. No. 2014-0002**
Appellant/Petitioner,) Re: Super. Ct. Civ. No. 14/2013 (STX)
)
v.)
)
PEOPLE OF THE VIRGIN ISLANDS,)
Appellee/Respondent.)
)
_____)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Hon. Harold W.L. Willocks

Considered and Filed: June 30, 2014

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and
IVE ARLINGTON SWAN, Associate Justice.

APPEARANCES:

Luis Melendez
Big Stone Gap, Virginia
Pro se,

Kimberly L. Salisbury, Esq.
Assistant Attorney General
St. Thomas, U.S.V.I.
Attorney for Appellee.

OPINION OF THE COURT

PER CURIAM.

This matter comes before the Court pursuant to Luis Melendez’s appeal of the Superior Court’s November 15, 2013 Order—apparently not mailed to Melendez until November 23, 2013—in which the Superior Court adopted an August 29, 2013 Recommendation issued by a Magistrate. In the August 29, 2013 Recommendation, the Magistrate recommended that the Superior Court deny Melendez’s request for court-appointed counsel, and dismiss the underlying

matter with prejudice. In the November 15, 2013 Order, the Superior Court stated that it fully agreed with the Magistrate’s findings, and dismissed the matter, albeit without prejudice.

Pursuant to this Court’s Internal Operating Procedures, this Court may, on motion of a party or *sua sponte*, summarily reverse a decision of the Superior Court without full briefing by the parties “if it clearly appears that no substantial question is presented or that subsequent precedent or a change in circumstances warrants such action.” *See* V.I.S.CT. I.O.P. 9.4. In a January 23, 2014 Order, this Court directed the parties to address whether this Court should take summary action with respect to this appeal. Specifically, this Court noted that neither the November 15, 2013 Order nor the August 29, 2013 Recommendation explained why the denial of Melendez’s request for court-appointed counsel necessitates the complete denial—with or without prejudice—of the underlying habeas corpus petition, given that the United States Constitution enshrines the right of a litigant to represent himself in court without the assistance of an attorney. *See Iannaccone v. Law*, 142 F.3d 553, 556 (2d Cir. 1998) (“The framers of our Constitution thought self-representation in civil suits was a basic right that belongs to a free people.”) (citing *Faretta v. California*, 422 U.S. 806, 812-13 (1975)). Now that the parties have submitted their briefs, this matter is ripe for decision.

In its November 15, 2013 Order, the Superior Court agreed with the Magistrate’s finding that Melendez “did not allege any specific need, other than indigence, for court-appointed counsel,” and essentially treated his motion as a free-standing motion for appointment of counsel. But even the most cursory review of Melendez’s motion reveals that he did not simply allege a naked claim of indigence, but also claimed that

[t]he prison law library at this prison does not have the necessary forms, Rules of Court, or laws that I need to properly prepare and submit a petition for a writ of

habeas corpus to this Honorable court. This violates my fundamental right of access to the courts under the United States Constitution.

(Mot. 2.) Significantly, it has previously been held in this jurisdiction that

the inaccessibility of legal resources implicates the prisoners' fundamental right to meaningful access to the courts. *E.g.*, *Bounds v. Smith*, 430 U.S. 817, 821 (1976); *Younger v. Gilmore*, 404 U.S. 15 (1971), *affirming Gilmore v. Lynch*, 319 F. Supp. 105 (N.D. Cal. 1970); *Ex parte Hull*, 312 U.S. 546, 548–49 (1941). Indeed, the governing rule is that:

“. . . the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.”

Bounds, 430 U.S. at 828. . . . [T]his obligation may be fulfilled in a number of ways, of which actually providing research materials is but one. [*Id.*] at 828; *Gilmore v. Lynch*, [319 F. Supp.] at 110–111.

For example, access may be effectuated by expanding the duties of the local public defender to include researching the claims of prisoners. *See, e.g.*, *Gilmore v. Lynch*, [319 F. Supp.] at 110–11. *Accord Spates v. Manson*, 619 F.2d 204, 210 (2d Cir. 1980). Private counsel could then be appointed to pursue the meritorious ones.

Benjamin v. Potter, 635 F. Supp. 243, 245 (D.V.I. 1986), *aff'd*, 838 F.2d 1205 (3d Cir. 1988); *see also Carty v. Farrelly*, 957 F. Supp. 727, 741-42 (D.V.I. 1997) (“Prison officials must provide inmates with meaningful access to courts to enable inmates to challenge their criminal charge, conviction, or conditions of confinement. Meaningful access includes adequate law libraries and sufficient time to consult legal sources.”). Consequently, even assuming—without deciding—that the Superior Court correctly held that indigence, without more, does not justify appointment of counsel in a habeas corpus case,¹ there can be no justification for dismissing,

¹ In its November 15, 2013 Order, the Superior Court stated that “[a]lthough a petition for writ of habeas corpus is a hybrid action of a civil challenge to a criminal conviction, the Virgin Islands Supreme Court held that there is not [a] constitutional right to appointed counsel.” But while the United States Constitution may not mandate appointment of counsel to indigent habeas corpus petitioners, we note that, pursuant to Virgin Islands statutory law, the Office of the Territorial Public Defender may represent an indigent prisoner in a habeas corpus proceeding if doing so would

without any investigation or analysis, Melendez's claim that his prison does not provide him with sufficient resources to prosecute a *pro se* habeas corpus petition. Accordingly, we summarily reverse the November 15, 2013 Order, and remand the matter to the Superior Court for further consideration of Melendez's claims.

Dated this 30th day of June, 2014.

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court