

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

BEFORE THE COURT is Defendant's *pro se* "Motion for Discovery for Post Conviction Relief" (ECF No. 77) filed on July 15, 2016. Defendant seeks discovery to use in support of a motion pursuant to 28 U.S.C. § 2255, but the instant Motion is not a § 2255 petition. Defendant states that he has requested documents from his trial counsel, the Federal Defenders of Eastern Washington and Idaho, but has not received the requested documents. Defendant states that he is "preparing to file a Petition for Habeas Corpus under 28 U.S.C. § 2255", but the Motion gives no indication of the asserted basis for relief under § 2255.

1 law.” The court cannot make the “good cause” evaluation where Defendant has not  
2 asserted any basis for his anticipated § 2255 petition.

3 The Ninth Circuit Court of Appeals has stated, in evaluating a § 2254 petition, that  
4 “pre-petition discovery is impermissible”. *Calderon v. U.S. Dist. Court*, 98 F.3d 1102,  
5 1106 (9<sup>th</sup> Cir. 1996). The court explained: “a prisoner must outline factual allegations in  
6 a petition before the district court will be able to determine the propriety of discovery.”  
7 *Id.* The same is true in a § 2255 proceeding, as Rule 6 of both the Rules Governing 2255  
8 proceedings and Rules Governing 2254 proceedings are nearly identical and employ a  
9 “good cause” standard. The Court of Appeals further instructed that trial courts “should  
10 not allow prisoners to use federal discovery for fishing expeditions to investigate mere  
11 speculation.” *Id.*

12 **IT IS HEREBY ORDERED:**

13 1. Defendant’s Motion for Discovery (ECF No. 77) is **DENIED**.

14 2. If Defendant chooses to file a § 2255 Petition, he may renew his request for  
15 discovery at that time.

16 **IT IS SO ORDERED.** The Clerk shall enter this Order and furnish copies to  
17 counsel and to Mr. McQueen.

18 Dated this 4th day of August, 2016.

19 s/ Justin L. Quackenbush  
20 JUSTIN L. QUACKENBUSH  
21 SENIOR UNITED STATES DISTRICT JUDGE  
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