

PREVIEW OF FIRST THREE PAGES
OF CHAPTER FOUR

EVIDENTIARY HEARINGS [4.00.0]:

A. GENERALLY [4.10.0]:

1. State Prisoners [4.11.0]: Evidentiary hearings are expressly authorized by Rule 8 of the Rules Governing Section 2254 Cases in the United States District Courts. Typically, they are used as a means for developing the prisoner's substantive habeas claims. But they can also be used in other circumstances, such as resolving a factual issue related to an affirmative defense or determining whether the "in custody" requirement is satisfied.

Whether an evidentiary hearing on the prisoner's substantive claims is appropriate or permissible depends on the resolution of a number of issues. Initially, the district court should determine whether a factual basis for the petitioner's claim already exists in the record. Rule 8(a) of the Rules Governing Section 2254 Cases in the United States District Courts (in the event the federal petition challenging the state court judgment is not dismissed, "the judge must review the answer, any transcripts and records of state-court proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted"); *Baja v. Ducharme*, 187 F.3d 1075, 1078 (9th Cir. 1999). If a factual basis for the petitioner's claim does not already exist in the record, the district court should decide whether the prisoner "failed to develop" the factual basis of his claim in state court and, if he did, whether he satisfies one of the stated exceptions to this requirement. 28 U.S.C. § 2254(e)(2); see, *infra*, Failure To Develop Factual Basis In State Court Proceedings, page 183. In the event that the requirements of § 2254(e)(2) are met, the district court should turn to whether the petitioner can meet one of the *Townsend* factors. *Townsend v. Sain*, 372 U.S. 293 (1963); see, *infra*, Whether An Evidentiary Hearing Is Appropriate Or Requirement, page 195. If he can, the district

court should determine whether the petitioner's allegations amount to a colorable claim: if the allegations were proved, the petitioner would be entitled to relief. See, *infra*, Other Limitations On Entitlement To An Evidentiary Hearing, page 198.

Of course, a federal court is not required to consider these factors in any particular order. Nor will it be necessary in every case for the court to consider each of these factors. If the petitioner, for example, failed to allege facts that, if true, would entitle him to habeas relief, a court could dispense with deciding whether § 2254(e)(2) barred an evidentiary hearing or whether any of the *Townsend* factors were met. See *Conner v. Polk*, 407 F.3d 198, 208 n.7 (4th Cir. 2005).

2. Federal Prisoners [4.12.0]: Evidentiary hearings are expressly authorized by Rule 8 of the Rules Governing Section 2255 Proceedings for the United States District Courts. Typically, they are used as a means for developing the prisoner's substantive habeas claims. But they can also be used in other circumstances, such as resolving a factual issue related to an affirmative defense or determining whether the "in custody" requirement is satisfied.

Whether an evidentiary hearing on the prisoner's substantive claims is appropriate or permissible depends on the resolution of a number of issues. Initially, the district court should determine whether a factual basis for the petitioner's claim already exists in the record. Rule 8(a) of the Rules Governing Section 2255 Proceedings for the United States District Courts (in the event the federal petition challenging a federal conviction or sentence is not dismissed, "the judge must review the answer, any transcripts and records of prior proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted"); *Baja v. Ducharme*, 187 F.3d 1075, 1078 (9th Cir. 1999) (applying § 2254).

A district court must conduct an evidentiary hearing on the petitioner's claims unless "the motion and the files and

records of the case conclusively show that the prisoner is entitled to no relief. . . .” 28 U.S.C. § 2255, ¶ 2. The court, however, may deny a § 2255 motion without an evidentiary hearing if (1) the petitioner’s allegations, accepted as true, would not entitle him to relief, or (2) the allegations cannot be accepted as true because they are contradicted by the record, inherently incredible, or allege conclusions rather than statements of fact. *See, e.g., Sanders v. United States*, 341 F.3d 720, 722 (8th Cir. 2003); *see, infra*, Other Limitations On Entitlement To An Evidentiary Hearing, page 198.

Ordinarily, a material factual dispute must be shown to warrant an evidentiary hearing. *Turner v. United States*, 183 F.3d 474, 477 (6th Cir. 1999); *United States v. Andrade-Larrios*, 39 F.3d 986, 991 (9th Cir. 1994). Where the judge considering a § 2255 motion also conducted the trial, the judge may rely on his recollections of the trial. *Blanton v. United States*, 94 F.3d 227, 235 (6th Cir. 1996); *Shah v. United States*, 878 F.2d 1156, 1160 (9th Cir. 1989). Although the petitioner’s burden for establishing entitlement to an evidentiary hearing is “relatively light,” *Smith v. United States*, 348 F.3d 545, 551 (6th Cir. 2001), the burden is not met simply by the petitioner proclaiming his innocence, *Turner v. United States*, 183 F.3d 474, 477 (6th Cir. 1999).

B. FAILURE TO DEVELOP FACTUAL BASIS IN STATE COURT PROCEEDINGS [4.20.0]: Under AEDPA, a *state* prisoner seeking to submit additional evidence to the federal court – either in support of a new claim or to buttress an existing claim – must demonstrate that neither he nor his attorney were at fault in failing to develop that evidence in state court or, if he was at fault, the conditions prescribed by 28 U.S.C. § 2254(e)(2) are met. This is required both where the petitioner seeks a federal evidentiary hearing, and where he seeks relief based on new evidence without an evidentiary hearing. *Holland v. Jackson*, 542 U.S. 649, 653 (2004); *accord Bradshaw v. Richey*, 546 U.S. 74, 79 (2005) (*per curiam*).

In pre-AEDPA cases (*see, supra*, page 94), the “failure to develop” inquiry is governed by *Townsend v. Sain*, 372 U.S. 293 (1963), as