

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

United States of America,

Plaintiff,

v.

**Case No. 04-20132-01-JWL
07-2519-JWL**

SHAKIR ABDUSH-SHAKUR,

Defendant.

MEMORANDUM & ORDER

On October 22, 2007, Mr. Abush-Shakur filed an application for appointment of counsel. The request is denied as there is no constitutional right to appointed counsel to pursue a collateral attack on conviction, for “the right to appointed counsel extends to the first appeal of right, and no further.” *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *see also Tapia v. Lemaster*, 172 F.3d 1193, 1196 (10th Cir. 1999) (no constitutional right to counsel exists in habeas proceedings). Rather, a defendant is entitled to the appointment of counsel only when an evidentiary hearing is required on the defendant’s § 2255 petition. *See* Rule 8(c) of the Rules Governing § 2255 Proceedings (“If an evidentiary hearing is warranted, the judge must appoint an attorney to represent a moving party who qualifies to have counsel appointed under 18 U.S.C. § 3006A.”). The court will revisit his request for appointed counsel if Mr. Abdush-Shakur demonstrates in his petition the need for an evidentiary hearing.

IT IS THEREFORE ORDERED BY THE COURT THAT defendant's motion to appoint counsel (doc. 96) is denied.

IT IS SO ORDERED.

Dated this 29th day of October, 2007, at Kansas City, Kansas.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge