

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ALBERT L. BOSCH,

Petitioner,

v.

CASE NO. 05-3046-SAC

DAVID R. MCKUNE, et al.,

Respondents.

O R D E R

Petitioner proceeds pro se on a petition for habeas corpus filed pursuant to 28 U.S.C. 2254, to which respondents filed an answer and return. The court considers and decides the following motions.

Petitioner's motion for appointment of counsel (Doc. 39) is denied. Petitioner seeks appointment of William Rork to represent petitioner in this habeas action, or in the alternative, appointment of a federal public defender. However, there is no constitutional right to the appointment of counsel in federal habeas corpus proceedings. Pennsylvania v. Finley, 481 U.S. 551, 555 (1987). Instead, whether counsel should be appointed is left to the discretion of the court. See Swazo v. Wyoming Dept. of Corrections State Penitentiary Warden, 23 F.3d 332 (10th Cir. 1994)(no constitutional right to counsel beyond appeal of criminal conviction; appointment of counsel in habeas corpus proceeding is left to court's discretion). Having reviewed petitioner's claims, his ability to present said claims, and the complexity of the legal issues involved, Long v. Shillinger, 927 F.2d 525, 526-27 (10th Cir. 1991)(factors to be considered in deciding motion for appointment of counsel), the

court finds the appointment of counsel in this matter is not warranted.

Petitioner's motion for an evidentiary hearing (Doc. 40) is denied. Petitioner is advised that factual determinations by a state court are presumed to be correct, absent petitioner's rebuttal of that presumption by clear and convincing evidence. 28 U.S.C. 2254(e)(1). Additionally, federal habeas corpus review of a state criminal action is limited. Section 2254 does not present a forum to correct errors of fact or to re-litigate the evidence in a state criminal trial. Herrera v. Collins, 506 U.S. 390, 400-01 (1993) (citing Barefoot v. Estelle, 463 U.S. 880, 887 (1983)).

Petitioner's motion to supplement the traverse (Doc. 41) is granted.

IT IS THEREFORE ORDERED that petitioner's motion for appointment of counsel (Doc. 39) and motion for an evidentiary hearing (Doc. 40) are denied.

IT IS FURTHER ORDERED that petitioner's motion to supplement his traverse (Doc. 41) is granted.

IT IS SO ORDERED.

DATED: This 9th day of November 2005 at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge