

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

RICKY DAVIS,

Petitioner,

v.

CASE NO. 05-3442-SAC

DAVID R. MCKUNE, et al.,

Respondents.

O R D E R

Petitioner proceeds pro se on a petition filed under 28 U.S.C. 2254, and has paid the \$5.00 district court filing fee in this habeas action. Before the court is petitioner's motion for appointment of counsel and for leave to proceed in forma pauperis (Doc. 8). The court denies these requests.

Citing a Kansas statute addressing the appointment of counsel in a state habeas or post-conviction proceeding (K.S.A. 22-4506) and his lack of resources for obtaining counsel to represent him in this matter, petitioner contends he is unable to proceed without competent counsel. However, it is well established that 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 related motion for leave to proceed in forma pauperis is denied.

Also before the court is respondents' motion (Doc. 9) for an extension of time to file an answer and return. Finding good cause exists for this request, the court grants respondents' motion.

IT IS THEREFORE ORDERED that petitioner's motions for appointment of counsel (Doc. 8) and leave to proceed in forma pauperis (Doc. 8) are denied.

IT IS FURTHER ORDERED that respondents' motion for an extension of time (Doc. 9) is granted, and that respondents are granted to and including May 11, 2006, to file an answer and return.

IT IS SO ORDERED.

DATED: This 18th day of April 2006 at Topeka, Kansas.

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