

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

WILBURN L. CHILDERS,

Petitioner,

v.

CASE NO. 09-3159-SAC

STATE OF KANSAS, et al.,

Respondents.

O R D E R

Petitioner proceeds pro se and in forma pauperis on a petition for a writ of habeas corpus under 28 U.S.C. § 2241. Before the court is petitioner's motion to "alter and/or amend" the petition to remove the Sedgwick County District Attorney as a respondent in this matter. Because the court record discloses the Sedgwick County District Attorney was never named as a respondent in this matter, petitioner's motion is denied.

Also before the court is petitioner's motion for appointment of counsel, which the court denies without prejudice.

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 at this time.

IT IS THEREFORE ORDERED that petitioner's motion to amend the petition (Doc. 11) is denied.

IT IS FURTHER ORDERED that petitioner's motion for appointment of counsel (Doc. 12) is denied without prejudice.

The clerk's office is to provide petitioner with a copy of this order and a copy of the docket sheet in this case.

IT IS SO ORDERED.

DATED: This 20th day of October 2009 at Topeka, Kansas.

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