

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ISRAEL REYNA,

Petitioner,

vs.

CIVIL ACTION
No. 10-3254-SAC

RAY ROBERTS, et al.,

Respondents.

MEMORANDUM AND ORDER

This matter comes before the court on petitioner's motion to appoint counsel (Doc. 4), his motion to grant the writ as an uncontested matter (Doc. 5), and respondents' motion for an extension of time (Doc. 13).

There is no constitutional right to the appointment of counsel in a federal habeas corpus action. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). Rather, the decision whether to appoint counsel rests in the discretion of the court. *Swazo v. Wyoming Dep't. of Corrections State Penitentiary Warden*, 23 F.3d 332, 333 (10th Cir. 1994). See also 18 U.S.C. §3006A(a)(2)(B)(the court may appoint counsel in action under § 2254 where "the interests of justice so require").

In deciding whether to appoint counsel in a civil action,

the court should consider "the litigant's claims, the nature of the factual issues raised in the claims, the litigant's ability to present his claims, and the complexity of the legal issues raised by the claims." *Long v. Shillinger*, 927 F.2d 525, 526-27 (10th Cir. 1991).

The court has considered the motion and declines to appoint counsel. Petitioner states he cannot afford counsel, but it does not appear that he has sought assistance from resources available to prisoners in Kansas custody. Nor does the court find any compelling reason to appoint counsel. It appears petitioner is able to clearly state his claims for relief, and that the legal issues are not unusually complicated.

Petitioner's motion to grant the writ as an uncontested pleading is denied. The record shows respondents have been granted additional time to respond following properly-filed motions to the court. The writ is not uncontested, nor has there been a default.

Finally, respondents seek an extension of time to and including August 19, 2011, for filing a response. The court finds good cause is shown and will grant the request.

IT IS, THEREFORE, BY THE COURT ORDERED petitioner's motion for the appointment of counsel (Doc. 4) is denied. Petitioner may renew the motion upon a showing that he has sought counsel.

IT IS FURTHER ORDERED petitioner's motion to grant the writ as an uncontested pleading (Doc. 5) is denied.

IT IS FURTHER ORDERED respondents' motion to extend the time for filing a response to and including August 19, 2011 (Doc. 13), is granted.

Copies of this order shall be transmitted to the parties.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this 19th day of July, 2011.

S/ Sam A. Crow
SAM A. CROW
United States Senior District Judge