

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

United States of America,

Plaintiff,

v.

**Case No. 11-20020-02-JWL
20-cv-2097-JWL**

Mark R. Davis,

Defendant.

MEMORANDUM & ORDER

On May 7, 2020, this court dismissed petitioner Mark R. Davis's § 2255 motion to vacate his conviction as an unauthorized successive petition. One week later, the court received a letter from Mr. Davis in which he explains that he was unable to reply to the government's response to his motion because the correctional facility in which he is housed was on lock down in light of COVID-19. He urges that he needs a lawyer to assist him in replying to the government's response. The court construes the letter as a motion to appoint counsel (doc. 288) and denies that motion.

As an initial matter, the motion is moot because the court has already resolved Mr. Davis's § 2255 motion, after waiting the requisite period for Mr. Davis to file a reply. In any event, the court considered the merits of his request for counsel in connection with his § 2255 motion because he asked for counsel at that time as well. The court denied Mr. Davis's request because there is no constitutional right to counsel beyond the direct appeal of a conviction. *Swazo v. Wyo. Dep't of Corrs.*, 23 F.3d 332, 333 (10th Cir. 1994); *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). The court notes, however, that there is no assistance that any lawyer could have provided

to Mr. Davis that would have salvaged his motion before this court in light of Mr. Davis's failure to obtain authorization from the Circuit to file the motion in the first instance.

IT IS THEREFORE ORDERED BY THE COURT THAT Mr. Davis's motion to appoint counsel (doc. 288) is denied.

IT IS SO ORDERED.

Dated this 18th day of May, 2020, at Kansas City, Kansas.

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