

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

RODNEY TURNER,

Petitioner,

v.

CASE NO. 11-3016-SAC

KANSAS DEPT. OF CORRECTIONS,  
et al.,

Respondents.

MEMORANDUM AND ORDER

On December 16, 2011, the court denied relief in this habeas corpus action filed pursuant to 28 U.S.C. § 2241. The matter is before the court on petitioner's notice of appeal, motion for certificate of appealability, motion to proceed in forma pauperis, and motion to appoint counsel. The court addresses these in sequence.

A certificate of appealability (COA) may be granted "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The petitioner must show "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)(internal quotation marks omitted). Petitioner's application fails to establish the required showing.

Petitioner was granted leave to proceed in forma pauperis at the commencement of this action, and the court grants his motion to continue on appeal in that status.

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 (10<sup>th</sup> 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").

The court has considered the record and concludes, for the reasons set forth in the court's Memorandum and Order dismissing this matter, that the appointment of counsel is not warranted.

IT IS, THEREFORE, BY THE COURT ORDERED petitioner's motion for a certificate of appealability (Doc. 30) is denied.

IT IS FURTHER ORDERED petitioner's motion for leave to proceed on appeal in forma pauperis (Doc. 31) is granted.

IT IS FURTHER ORDERED petitioner's motion to appoint counsel (Doc. 32) is denied.

Copies of this order shall be transmitted to the parties and to the Clerk of the U.S. Court of Appeals for the Tenth Circuit.

**IT IS SO ORDERED.**

DATED: This 24<sup>th</sup> day of February, 2012, at Topeka, Kansas.

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