

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JULIAN L. RUSSELL,

Petitioner,

vs.

CIVIL ACTION
No. 11-3056-SAC

STATE OF KANSAS, et al.,

Respondents.

MEMORANDUM AND ORDER

This matter is a petition for habeas corpus filed pursuant to 28 U.S.C. § 2254. By its Memorandum and Order of April 20, 2011, the court directed petitioner to show cause why this matter should not be dismissed due to his apparent failure to commence this action within the one year limitation period under 28 U.S.C. § 2244(d).

Petitioner filed a timely response (Doc. 5). Although he provides little detail, petitioner complains of the effect of his placement on lifetime parole, and he states that he "just tried to fix this on state level." (*Id.*, p. 2.) Because it is not clear when petitioner pursued such relief, the court will direct him to explain when and where he sought relief in the state courts and the results of any such action.

Also before the court is petitioner's motion to appoint counsel (Doc. 3). 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). Having considered the record, the court denies the request. It does not appear, at this point, that petitioner has exhausted state court remedies or that he has timely commenced the present action, and the court finds no basis for the appointment of counsel.

IT IS, THEREFORE, BY THE COURT ORDERED petitioner is granted to and including August 30, 2011, to supplement the record with an explanation of his efforts to obtain relief in the state courts. The failure to file a timely response may result in the dismissal of this matter without additional prior notice to the petitioner.

IT IS FURTHER ORDERED petitioner's motion to appoint counsel (Doc. 3) is denied.

IT IS FURTHER ORDERED that the time in which petitioner may submit a financial statement in support of his request for leave to proceed in forma pauperis is extended to and including August

29, 2011.

A copy of this order shall be transmitted to the petitioner.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this 16th day of August, 2011.

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