

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

RICHARD T. POWELL,

Petitioner,

v.

CASE NO. 12-3119-SAC

JAMES HEIMGARTNER, et al.,

Respondents.

MEMORANDUM AND ORDER

This matter is a petition for habeas corpus filed pursuant to 28 U.S.C. § 2254. Respondents have filed a motion to dismiss (Doc. 12). Also pending before the court are two motions filed by the petitioner seeking the appointment of counsel (Docs. 2 and 13) and his motion for an extension of time to file a response (Doc. 14).

There is no constitutional right to the appointment of counsel in a federal petition for habeas corpus. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). Instead, the decision to appoint counsel lies 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) (a habeas court may appoint counsel in an action brought under § 2254 "where the interests of justice so require").

In ruling on a petitioner's request for counsel, 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 (10<sup>th</sup> Cir. 1991).

In this matter, petitioner challenges his convictions of capital

murder and criminal possession of a firearm. Respondents assert the petition is not timely, and petitioner, in a motion prepared with the assistance of another prisoner, asserts that he requires the appointment of counsel because he is mentally retarded.

Having considered these circumstances, the court finds the appointment of counsel is appropriate and appoints Jean Gilles Phillips, Alice Craig, and Elizabeth Cateforis to represent petitioner in this matter. These attorneys' business address is: The University of Kansas School of Law, Paul E. Wilson Project for Innocence and Post-Conviction Remedies, 1535 W. 15<sup>th</sup> St., Suite #409, Lawrence, KS, 66045, and the telephone number for that office is (785) 864-5571. The court requests that counsel file a formal entry of appearance in this matter within ten (10) days.

IT IS, THEREFORE, BY THE COURT ORDERED petitioner's motions for the appointment of counsel (Docs. 2 and 13) are granted. Petitioner's motion for evidentiary hearing, incorporated in Doc. 13, is denied.

IT IS FURTHER ORDERED the respondents shall cause to be forwarded to the clerk of the court the records and transcripts of the criminal proceedings challenged by the petitioner, including appellate and post-conviction records.

IT IS FURTHER ORDERED that petitioner's motion for an extension of time (Doc. 14) is granted. Counsel for petitioner is granted to and including May 6, 2013, to file a response to the motion to dismiss.

Copies of this order shall be transmitted to the parties.

**IT IS SO ORDERED.**

DATED: This 6<sup>th</sup> day of March, 2013, at Topeka, Kansas.

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