

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

**Olin Coones,**

**Petitioner,**

**v.**

**Case No. 16-3090-JWL**

**Jay Shelton et al.,**

**Respondents.**

**MEMORANDUM & ORDER**

On October 24, 2016, the court entered a judgment in this case denying Mr. Coones' petition for writ of habeas corpus under 28 U.S.C. § 2254. Mr. Coones then filed a notice of appeal and, on the same day, a motion in this court for the appointment of counsel to assist him on appeal. Despite the fact that Mr. Coones has already filed a notice of appeal, the court can proceed to resolve the motion to appoint counsel. *United States v. Madrid*, 633 F.3d 1222, 1226 (10th Cir. 2011) (district court can proceed to resolve some matters simultaneously with the appellate court's consideration of an appeal).

The motion is denied. Mr. Coones, as a habeas petitioner, has no constitutional right to post-conviction counsel. *Banks v. Workman*, 692 F.3d 1133, 1147 (10th Cir. 2012). Thus, the decision to appoint counsel is left to the discretion of the court. *Engberg v. Wyoming*, 265 F.3d 1109, 1122 (10th Cir. 2001). As noted in the court's order denying the petition, not only did Mr. Coones fail to establish a constitutional violation in the proceedings, he failed to demonstrate that any issues were debatable among jurists, that a court could resolve the issues differently, or that the questions deserve further proceedings. Moreover, Mr. Coones had the assistance of pro

bono counsel in connection with the filing of his petition. Mr. Coones' counsel, then, had the opportunity to search the record for potential violations and to make those arguments to the court. In the end, Mr. Coones, with the assistance of counsel, was not able to demonstrate that the Kansas Supreme Court's evaluation of Mr. Coones' claims was "contrary to, or involved an unreasonable application" of clearly established Supreme Court law. There is nothing in the record before the court, then, suggesting that Mr. Coones' claims have merit such that the appointment of counsel would be justified. Finally, there is no indication that the Tenth Circuit will not be able to fully understand and consider Mr. Coones' arguments on appeal without the assistance of counsel. For the foregoing reasons, Mr. Coones' motion for the appointment of appellate counsel is denied.

**IT IS THEREFORE ORDERED BY THE COURT THAT** Mr. Coones' motion for appointment of counsel (doc. 20) is **denied**.

**IT IS SO ORDERED.**

**Dated this 16<sup>th</sup> day of November, 2016, in Kansas City, Kansas.**

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