

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

KENNETH DAVID McNELLY,

Petitioner,

v.

CASE NO. 17-3141-SAC

SAM CLINE,

Respondent.

MEMORANDUM AND ORDER

This matter is before the Court on petitioner's combined motion for leave to proceed on appeal in forma pauperis and to appoint counsel (Doc. #16).

The Court has examined the certified financial statement supplied by the petitioner and grants leave to proceed in forma pauperis.

The Court denies the motion to appoint counsel. An applicant for habeas corpus relief has no constitutional right to the appointment of counsel. *See Swazo v. Wyo. Dept. of Corr.*, 23 F.3d 332, 333 (10th Cir. 1994) ("[T]here is no constitutional right to counsel beyond the appeal of a criminal conviction, and ... generally appointment of counsel in a § 2254 proceeding is left to the court's discretion."). In this case, the Court has determined the petition is not timely and has found no ground for equitable tolling. The Court therefore concludes that the appointment of counsel is not warranted.

IT IS, THEREFORE, BY THE COURT ORDERED petitioner's motion to proceed on appeal in forma pauperis is granted, and his motion for the appointment of counsel is denied.

IT IS SO ORDERED.

DATED: This 19th day of December, 2017, at Topeka, Kansas.

S/ Sam A. Crow

SAM A. CROW

U.S. Senior District Judge