

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

LEE ANDREW MITCHELL-PENNINGTON,

Petitioner,

v.

CASE NO. 17-3185-SAC

SAM CLINE,

Respondent.

MEMORANDUM AND ORDER

This matter is a petition for habeas corpus filed under 28 U.S.C. § 2254. On January 31, 2018, respondent filed a motion to dismiss this action, citing actions filed by petitioner, and currently pending in the state courts, that concern the conviction petitioner challenges in this matter.

Petitioner has filed a motion for the appointment of counsel.

There is no constitutional right to the appointment of counsel in a habeas corpus application. *Coronado v. Ward*, 517 F.3d 1212, 1218 (10th Cir. 2008); *Swazo v. Wyoming Department of Corrections*, 23 F.3d 332 (10th Cir. 1994). Instead, unless an evidentiary hearing is required, the decision whether to appoint counsel lies in the discretion of the court. *Engberg v. Wyoming*, 265 F.3d 1109, 1122 (10th Cir. 2001).

The Court has considered the record and concludes the appointment of counsel is not warranted in this action. The issues presented in the motion to dismiss are not unusually complicated, and a review of the petition and amended petition filed in this matter persuades the Court that petitioner is able to respond to the motion to dismiss.

IT IS, THEREFORE, BY THE COURT petitioner's motion for the appointment of counsel (Doc. # 10) is denied.

IT IS SO ORDERED.

DATED: This 6th day of February, 2018, at Topeka, Kansas.

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