

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

RONNIE ALLEN BELLAMY, JR.,

Plaintiff,

v.

CASE NO. 23-3051-JWL

STATE OF KANSAS, et al.,

Defendants.

MEMORANDUM AND ORDER

Plaintiff brings this pro se civil rights action under 42 U.S.C. § 1983. Plaintiff is incarcerated at the El Dorado Correctional Facility in El Dorado, Kansas. On May 3, 2023, the Court entered a Memorandum and Order (Doc. 27) (“M&O”) dismissing Plaintiff’s claims against the State of Kansas, the Kansas Department of Corrections (“KDOC”), and Jeff Zmuda, and dismissing Plaintiff’s claims regarding his state court sentence and conviction. On November 30, 2023, the Court entered a Memorandum and Order (Doc. 51) dismissing this case for failure to state a claim. On December 13, 2023, Plaintiff filed a motion for reconsideration and a notice of appeal. (Docs. 53, 54.) The Court denied the motion for reconsideration. (Doc. 57.)

This matter is before the Court on Plaintiff’s Motion for Leave to Appeal In Forma Pauperis (Doc. 59) and Motion for Appointment of Counsel (Doc. 60). Plaintiff’s motion for leave to appeal in forma pauperis includes the issues he intends to present on appeal and his financial information. The Court grants the motion.

Plaintiff has also filed a motion for appointment of counsel. The Tenth Circuit has characterized a motion for appointment of counsel as concerning a collateral matter properly considered by a federal district court even when filed after a notice of appeal. *West v. Ortiz*, 2007 WL 706924, *5 n.5 (10th Cir. Mar. 9, 2007) (unpublished).

Plaintiff argues that he is mentally disabled, he has been in prison for 33 years, and he has no money or contacts. (Doc. 60, at 3–4.) The Court has considered Plaintiff’s motion for appointment of counsel. There is no constitutional right to appointment of counsel in a civil case. *Durre v. Dempsey*, 869 F.2d 543, 547 (10th Cir. 1989); *Carper v. DeLand*, 54 F.3d 613, 616 (10th Cir. 1995). The decision whether to appoint counsel in a civil matter lies in the discretion of the district court. *Williams v. Meese*, 926 F.2d 994, 996 (10th Cir. 1991). “The burden is on the applicant to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel.” *Steffey v. Orman*, 461 F.3d 1218, 1223 (10th Cir. 2006) (quoting *Hill v. SmithKline Beecham Corp.*, 393 F.3d 1111, 1115 (10th Cir. 2004)). It is not enough “that having counsel appointed would have assisted [the prisoner] in presenting his strongest possible case, [as] the same could be said in any case.” *Steffey*, 461 F.3d at 1223 (quoting *Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995)).

In deciding whether to appoint counsel, courts must evaluate “the merits of a prisoner’s claims, the nature and complexity of the factual and legal issues, and the prisoner’s ability to investigate the facts and present his claims.” *Hill*, 393 F.3d at 1115 (citing *Rucks*, 57 F.3d at 979). The Court concludes in this case that (1) it is not clear at this juncture that Plaintiff has asserted a colorable claim against a named defendant; (2) the issues are not complex; and (3) Plaintiff appears capable of adequately presenting facts and arguments. The motion is denied.

Plaintiff has also submitted a document that the Court is interpreting as a supplement to his notice of appeal. *See* Doc. 61. The document includes pages that were previously filed as part of his original notice of appeal. *See id.* at 1, 9–15. The Court advises Plaintiff that it will not be taking any action on the supplement. The Court will direct the Clerk to forward the submission to the Tenth Circuit to include with the record on appeal.

IT IS THEREFORE ORDERED BY THE COURT that Plaintiff's Motion for Leave to Appeal In Forma Pauperis (Doc. 59) is **granted**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Appointment of Counsel (Doc. 60) is **denied**.

IT IS FURTHER ORDERED that the Clerk is directed to forward Doc. 61 to the Tenth Circuit Court of Appeals.

IT IS SO ORDERED.

Dated January 12, 2024, in Kansas City, Kansas.

S/ John W. Lungstrum
JOHN W. LUNGSTRUM
UNITED STATES DISTRICT JUDGE