

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Samuel Der-Yeghiayan	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	05 C 3234	DATE	8/31/2005
CASE TITLE	Raymond Burgess vs. Briley		

DOCKET ENTRY TEXT:

Status hearing set for November 22, 2005 at 9:00 a.m. For the reasons stated below, petitioner’s applications to proceed in forma pauperis [3], [9] are denied as moot. Petitioner’s motion for appointment of counsel is denied. Respondent is ordered to answer petitioner’s petition for writ of habeas corpus by September 30, 2005. Petitioner’s reply shall be filed October 31, 2005.

■ [For further details see text below.]

Docketing to mail notices.

STATEMENT

This matter is before the court on Petitioner Raymond Burgess’ (“Burgess”) motion for appointment of counsel and motion to proceed *in forma pauperis* (“IFP Motion”). For the reasons stated below, we deny both motions.

I. Appointment of Counsel

A civil litigant does not have a right to appointed counsel. *Forbes v. Edgar*, 112 F.3d 262, 264 (7th Cir. 1997). There is no right to appointed counsel even if the civil litigant has filed a petition for writ of *habeas corpus* and is seeking to overturn a criminal conviction. *Dellenbach v. Hanks*, 76 F.3d 820, 823 (7th Cir. 1996). However, a court in its discretion, can appoint counsel for indigents in a civil action pursuant to 28 U.S.C. § 1915(e)(1). The Seventh Circuit has articulated the following non-exclusive list of five factors to consider when deciding whether to appoint counsel: “(1) the merits of the indigent’s claim; (2) the ability of the indigent plaintiff to investigate crucial facts unaided by counsel; (3) whether the nature of the evidence indicates that the truth will more likely be exposed where both sides are represented by counsel; (4) the capability of the indigent to present the case; and (5) the complexity of the legal issues raised by the

STATEMENT

complaint.” *Jackson v. County of McClean*, 953 F.2d 1070, 1072 (7th Cir. 1992)(citing *Maclin v. Freake*, 650 F.2d 885, 887 (7th Cir. 1981)); *see also Farmer v. Haas*, 990 F.2d 319, 322 (7th Cir. 1993)(stating that the appointment of counsel standard can be distilled to whether there are “‘exceptional circumstances’ as determined by ‘an evaluation of both the likelihood of success on the merits and the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved.’”)(quoting *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir.1991)). The Seventh Circuit has also stated that even before we consider the five factors listed in *Jackson*, a threshold issue for the court is whether the plaintiff has made a reasonable effort to retain counsel and “was unsuccessful or . . . was effectively precluded from making such efforts.” *Jackson*, 953 F.2d at 1073.

We have considered Burgess’ petition for writ of *habeas corpus* and find that his claims do not appear meritorious. In addition, we find that this case does not involve the type of complexity that would warrant an appointment of counsel at this time. Burgess should thus be able to investigate the crucial facts of this action and articulate his claims without the aid of counsel. Therefore, we find that an appointment of counsel is not appropriate at this juncture and we deny Burgess’ motion for appointment of counsel without prejudice.

II. IFP Motion

Burgess previously filed an IFP Motion. However, the record reflects that Burgess has already paid the filing fee. Therefore, Burgess’ IFP motion is denied as moot. Respondent is ordered, pursuant to Rule 5 of the Rules Governing Habeas Corpus Cases under 28 U.S.C. § 2254, to answer Burgess’ petition for writ of *habeas corpus* by September 30, 2005. Rule 5 of the Rules Governing Habeas Corpus Cases under 28 U.S.C. § 2254. Burgess’ reply shall be due on October 31, 2005. The next status hearing is set for November 22, 2005 at 9:00 am.