

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

MARK D. MORGAN,

Petitioner,

vs.

DANIEL CRAIG,

Respondent.

No. C09-1042-LRR

ORDER

This matter is before the court on the petitioner's application to proceed in forma pauperis, application for a writ of habeas corpus and application for appointment of counsel. The petitioner filed his applications on October 19, 2009.

With respect to the application to proceed in forma pauperis, the petitioner submitted an application that meets the requirements of 28 U.S.C. § 1915(a). Accordingly, in forma pauperis status is granted. The clerk's office is directed to file the application for a writ of habeas corpus without the prepayment of fees and costs. Rule 3(a), Rules Governing Section 2254 Cases; 28 U.S.C. § 1915.

Concerning the petitioner's application for appointment of counsel, the court does not believe the assistance of counsel is warranted at this time. Appointment of counsel is based on multiple factors, including the complexity of the case, and, although the court does appoint attorneys in actions that arise under 28 U.S.C. § 2254, it is not required to appoint an attorney. *See Davis v. Scott*, 94 F.3d 444, 447 (8th Cir. 1996) (setting forth factors to be considered for appointment of counsel in civil case); *Abdullah v. Gunter*, 949 F.2d 1032, 1035 (8th Cir. 1991) (same); *Wiggins v. Sargent*, 753 F.2d 663, 668 (8th Cir. 1985) (stating an indigent litigant enjoys neither a statutory nor a constitutional right to have counsel appointed in a civil case); *Day v. United States*, 428 F.2d 1193, 1195 (8th

Cir. 1970) (“The Sixth Amendment does not extend to persons seeking post conviction relief.” (citing *Baker v. United States*, 334 F.2d 444, 447 (8th Cir. 1964))). Given the record in the instant action and the record in the petitioner’s previous action under 28 U.S.C. § 2254, it is very likely that many, if not all, of the petitioner’s claims are procedurally barred or without merit. Accordingly, the petitioner’s application for appointment of counsel is denied.

The Clerk of Court is directed to send a copy of the application for a writ of habeas corpus by certified mail to the respondent and the Iowa Attorney General in accordance with Rule 4, Rules Governing Section 2254 Cases. The respondent is directed to file an answer to the application for a writ of habeas corpus in accordance with Rule 5, Rules Governing Section 2254 Cases, by no later than November 30, 2009.

IT IS SO ORDERED.

DATED this 28th day of October, 2009.



JON STUART SCOLES
Magistrate Judge
UNITED STATES DISTRICT COURT