

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

JEREL LAMAR WRIGHT,
Plaintiff,

vs.

JAMES MCKINNEY
Defendants.

No. 15-CV-3103-DEO

ORDER

On March 24, 2015, Mr. Jerel Wright filed a pro se Petition for habeas relief. Docket No. 1. Mr. Wright is currently serving a term of incarceration for attempted murder and voluntary manslaughter. Wright v. State, 846 N.W.2d 529 (Iowa Ct. App. 2014)

I. 28 U.S.C. SECTION 2254

Presently before the Court is Mr. Wright's pro se petition pursuant to 28 U.S.C. Section 2254. Mr. Wright previously filed a Section 2254 on May 23, 2013. See 13-CV-3026-LRR. However, that case was not decided on the merits. Rather, Judge Reade dismissed the case without prejudice for failure to pay the proper filing fee. See 28 U.S.C. § 1914(a), requiring \$350.00 filing fee for civil actions, except that on application for a writ of habeas corpus, the

filing fee is \$5.00. Accordingly, this is not a second successive petition for the purposes of 28 U.S.C. § 2244(b)(1).¹ In this case, Mr. Wright paid the \$5.00 fee. Accordingly, his case will be allowed to proceed.

II. COURT APPOINTED COUNSEL

On March 24, 2015, Mr. Wright also filed an application for court appointed counsel. Docket No. 2. 28 U.S.C. § 2254(h) states:

Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.²

¹ 28 U.S.C. § 2244(b)(1) states that, “[a] claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.”

² 18 U.S.C.A. § 3006A(a)(2) states “[w]henver the United States magistrate judge or the court determines that the interests of justice so require, representation may be provided for any financially eligible person who...is seeking relief under section 2241, 2254, or 2255 of title 28.”

The Court has considered the record in this case and determined that the appointment of counsel is appropriate.

III. CONCLUSION

For the reasons set out above, Mr. Wright's Motion to Appoint Counsel (Docket No. 2) is **GRANTED**.

The CJA Panel Administer shall appoint counsel in this case. Appointed counsel shall consult with Mr. Wright and review the pro se filing. Appointed counsel is given thirty (30) days from the date of this Order to file an amended petition, if appointed counsel considers an amended petition necessary. **After appointed counsel files an amended petition (or after thirty days from the date of this Order), the Clerk of Court shall enter the appropriate briefing schedule.**

IT IS SO ORDERED this 2nd day of April, 2015.



Donald E. O'Brien, Senior Judge
United States District Court
Northern District of Iowa