

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

ALAN BOUDREAUX (#254702)

CIVIL ACTION NO.

VERSUS

20-120-BAJ-EWD

JASON KENT, ET AL.

ORDER

Before the Court a Motion for Appointment of Counsel (“Motion”),¹ filed by Alan Boudreaux (“Petitioner”). The Motion will be denied. Appointed counsel is only required in a habeas case if an evidentiary hearing is ordered, and there has not been a determination that an evidentiary hearing is required in this case. Additionally, the interests of justice do not require appointment of counsel at this time.

It is well-settled that a petitioner has no constitutional right to appointment of counsel in a habeas proceeding.² Such a benefit is only required when the Court determines that an evidentiary hearing is to be held on a § 2254 petition.³ At this stage of the case, the Court has not determined that an evidentiary hearing is necessary. To that end, Petitioner’s request is, at best, premature.⁴ The decision of whether to hold an evidentiary hearing is governed by 28 U.S.C. § 2254(e)(2). According to § 2254(e)(2), the district court may hold an evidentiary hearing only when the petitioner has shown that either the claims raised rely on a new, retroactive rule of constitutional law that was previously unavailable⁵ or the claim relies on a factual basis that could

¹ R. Doc. 20.

² See *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); see also *Wright v. West*, 505 U.S. 277, 293 (1992) (no constitutional right to counsel in habeas corpus proceedings); *Ortloff v. Fleming*, 88 F. App’x 715, 717 (5th Cir. 2004); *Johnson v. Hargett*, 978 F.2d 855, 859 (5th Cir. 1992).

³ Rule 8(c), Rules Governing § 2254 Cases; *Urias v. Thaler*, 455 F. App’x 522, 523 (5th Cir. 2011).

⁴ If an evidentiary hearing is ordered in the case, the Court will appoint counsel for Petitioner on its own motion.

⁵ 28 U.S.C. § 2254(e)(2)(A)(I).

not have been previously discovered by an exercise of due diligence;⁶ and the facts underlying the claim show by clear and convincing evidence that, but for the constitutional error, no reasonable jury would have convicted the petitioner.⁷ An evidentiary hearing is not required “when the record is complete or the petitioner raised only legal claims that can be resolved without the taking of additional evidence.”⁸ On the record before the Court at this time, Petitioner has not established that the record will be insufficient to resolve the claims raised.⁹

The Court likewise does not find that the “interests of justice so require” the appointment of counsel at this time.¹⁰ In so finding, this Court notes that the Petition is not legally nor factually complex, and Petitioner has demonstrated through his Petition and other numerous filings,¹¹ that he understands the relevant issues and is capable of presenting his claims. Accordingly

IT IS ORDERED that Petitioner’s Motion for Appointment of Counsel¹² is **DENIED**.

Signed in Baton Rouge, Louisiana, on January 27, 2021.



ERIN WILDER-DOOMES
UNITED STATES MAGISTRATE JUDGE

⁶ 28 U.S.C. § 2254(e)(2)(A)(ii).

⁷ 28 U.S.C. § 2254(e)(2)(B).

⁸ *Ellis v. Lynaugh*, 873 F.2d 830, 840 (5th Cir.1989).

⁹ Though Petitioner has filed a request for additional discovery (R. Doc. 21), he has not demonstrated that this discovery is necessary for resolution of the claims before the Court.

¹⁰ *See* 18 U.S.C. § 3006A (“Whenever 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”).

¹¹ R. Docs. 1, 10, 13, 16, 18, & 19.

¹² R. Doc. 20.