

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

THOMAS BLUMENTHAL,

Petitioner,

v.

Case Number: 08-cv-14858
Honorable Victoria A. Roberts

MICHAEL CURLEY,

Respondent.

**ORDER DENYING WITHOUT PREJUDICE
PETITIONER'S MOTION TO APPOINT COUNSEL AND
DENYING PETITIONER'S MOTION TO PROCEED *IN FORMA PAUPERIS* AS MOOT**

On November 19, 2008, Petitioner Thomas Blumenthal filed a *pro se* Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, alleging that he is incarcerated in violation of his constitutional rights. Pending before the Court are Petitioner's "Motion to Appoint Counsel" [Dkt. #14], and "Motion to Proceed *In Forma Pauperis*" [Dkt. # 15].

The constitutional right to counsel in criminal proceedings provided by the Sixth Amendment does not apply to an application for writ of habeas corpus, which is a civil proceeding. *Cobas v. Burgess*, 306 F.3d 441, 444 (6th Cir. 2002), *cert. denied*, 538 U.S. 984 (2003), *reh. denied*, 539 U.S. 970 (2003). There exists no constitutional right to the appointment of counsel in habeas cases, and the Court has broad discretion in determining whether counsel should be appointed. *Childs v. Pellegrin*, 822 F.2d 1382, 1384 (6th Cir. 1987) ("[A]ppointment of counsel in a civil case is . . . a matter within the discretion of the court. It is a privilege and not a right.") (internal quotation omitted). A habeas petitioner may obtain representation at any stage of the case "[w]henver the United States magistrate or the court determines that the interests of justice so require." 18 U.S.C. § 3006A(a)(2)(B). In the instant case, the Court

determines, after careful consideration, that the interests of justice do not require appointment of counsel at this time.

Regarding Petitioner's "Motion to Proceed *In Forma Pauperis*," the Court finds that Petitioner paid the necessary filing fee when he filed his Petition [Dkt. # 1]; no other fee is required. Thus, Petitioner's Motion is denied as moot.

Accordingly, Petitioner's "Motion to Appoint Counsel" [Dkt. # 14] is **DENIED WITHOUT PREJUDICE**. The Court will reconsider Petitioner's Motion if it determines at a later date that appointment of counsel is necessary. Petitioner need not file any additional motions regarding this issue.

FURTHER ORDERED Petitioner's "Motion to Proceed *In Forma Pauperis*" is **DENIED** as moot.

ORDERED.

s/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: January 15, 2010

The undersigned certifies that a copy of this document was served on the attorneys of record AND Thomas Blumenthal by electronic means or U.S. Mail on January 15, 2010.

s/Carol A. Pinegar
Deputy Clerk