

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

VAN JENKINS,

Petitioner,

v.

Case No. 11-10424

LINDA TRIBLEY,

Respondent.

**OPINION AND ORDER DENYING
“APPLICATION FOR APPOINTMENT OF SUBSTITUTE COUNSEL”**

On February 3, 2011, Petitioner Van Jenkins, a state inmate currently incarcerated at the Ojibway Correctional Facility in Marenisco, Michigan, filed a *pro se* petition for a writ of habeas corpus under 28 U.S.C. § 2254, alleging that he is incarcerated in violation of his constitutional rights. Pending before the court is Petitioner’s “Application for Appointment of Substitute Counsel.” For the reasons stated below, the court will deny the application.

There exists no constitutional right to appointment of counsel for habeas petitions under § 2254, and the court has broad discretion in determining whether counsel should be appointed. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Cobas v. Burgess*, 306 F. 3d 441, 444 (6th Cir. 2002). Although 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,” the decision to appoint counsel for federal habeas motion proceedings is generally within the discretion of the court. 18 U.S.C. § 3006A(a)(2)(B); *Mira v. Marshall*, 806 F.2d 636, 638 (6th Cir. 1986).

Appointment of counsel in a habeas proceeding is mandatory only where the district court determines that an evidentiary hearing is required. *Lemeshko v. Wrona*, 325 F. Supp. 2d 778, 787 (E.D. Mich. 2004); see also Rule 8(c), 28 U.S.C. foll. § 2254. If no evidentiary hearing is necessary, the appointment of counsel remains discretionary. *Lemeshko*, 325 F. Supp. 2d at 787.

In exceptional cases and in the interest of justice, counsel may still be appointed for a prisoner appearing *pro se* in a habeas proceeding. *Lemeshko*, 325 F. Supp. 2d at 788. The exceptional circumstances justifying the appointment of counsel to represent a prisoner acting *pro se* in a habeas action occur where a defendant has made a colorable claim, but lacks the means to adequately investigate, prepare, or present the claim. *Id.*; see also Rule 6(a), 28 U.S.C. foll. § 2254 (must appoint counsel if “necessary for effective discovery”). “Habeas corpus is an extraordinary remedy for unusual cases,” however, and the appointment of counsel is required only where the facts of a particular petition indicate that the defendant “could not obtain justice without an attorney, he could not obtain a lawyer on his own, and he would have a reasonable chance of winning with a lawyer at his side.” *Thirkield v. Pitcher*, 199 F. Supp. 2d 637, 653 (E.D. Mich. 2002) (internal modifications omitted) (quoting *Forbes v. Edgar*, 112 F.3d 262, 264 (7th Cir. 1997)).

In the instant case, the court determines that appointment of counsel is unnecessary at this time. Petitioner’s allegations are neither novel nor particularly complex. Additionally, the court has ordered a response to the petition, which has not yet been filed. (2/10/2011 Order.) At this time, there appears no need for discovery or an evidentiary hearing. The court may revisit its determination that appointment of

counsel is unnecessary if discovery or an evidentiary hearing are later found to be appropriate. After careful consideration, the court concludes that the interests of justice do not require appointment of counsel at this time.

IT IS ORDERED that Petitioner's "Application for Appointment of Substitute Counsel" [Dkt. # 3] is DENIED WITHOUT PREJUDICE. The court will reconsider Petitioner's motion if it determines, at a later date, that appointment of counsel would be necessary.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: March 23, 2011

I hereby certify that a copy of the foregoing document was mailed to Petitioner Van Jenkins, #172475, Ojibway Correctional Facility, N5705 Ojibway Rd., Marenisco, MI 49947, on this date, March 23, 2011 by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522