

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARCUS HANSERD, #440115,

Petitioner,

Case No. 16-cv-11099
Hon. Matthew F. Leitman

JEFFREY WOODS,

Respondent.

_____ /

ORDER DENYING PETITIONER'S MOTIONS
FOR EVIDENTIARY HEARING AND
APPOINTMENT OF COUNSEL (ECF #16)

Michigan prisoner Marcus Hanserd (“Petitioner”) has filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his state criminal proceedings. Petitioner was convicted of first-degree murder, carjacking, felon in possession of a firearm, carrying a dangerous weapon with unlawful intent, and four counts of possession of a firearm during the commission of a felony following a jury trial in the Saginaw County Circuit Court. He was sentenced, as a second habitual offender, to life imprisonment without parole on the murder conviction, a concurrent term of 28 years 8 months to 40 years imprisonment on the carjacking conviction, concurrent terms of 3 years 11 months to 7 years 6 months on the felon in possession and dangerous weapon convictions, and concurrent terms of 2 years imprisonment

on each of the felony firearm convictions, to be served consecutively to the other sentences, in 2011.

In his initial petition, he raises claims concerning the sufficiency of the evidence, the admission of other acts evidence and expert testimony, and the effectiveness of trial counsel relative to the failure to call witnesses. In a supplemental petition, he raises a claims concerning the effectiveness of trial counsel relative to the pre-trial identification procedures. Respondent has filed an answer to the initial petition and the state court record, but has not yet filed an answer to the supplemental petition. That answer is due in July, 2017. The matter is now before the Court on Petitioner's motions for evidentiary hearing and appointment of counsel.

Given that Respondent has not yet filed an answer to the supplemental petition, Petitioner's request for an evidentiary hearing under Rule 8 or under 28 U.S.C. § 2254(e) is premature. Accordingly, the Court **DENIES WITHOUT PREJUDICE** Petitioner's motion for an evidentiary hearing. The Court will bear in mind Petitioner's request should further development of the record be necessary for the proper resolution of this matter. Petitioner need not file another motion as to this issue.

Petitioner also seeks the appointment of counsel to assist him with this case. A petitioner has no absolute right to be represented by counsel on federal habeas review. *Abdur-Rahman v. Michigan Dept. of Corr.*, 65 F.3d 489, 492 (6th Cir. 1995); *see also Wright v. West*, 505 U.S. 277, 293 (1992) (citing *Pennsylvania v. Finley*, 481 U.S. 551, 555 (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.” *Childs v. Pellegrin*, 822 F.2d 1382, 1384 (6th Cir. 1987) (quoting *United States v. Madden*, 352 F.2d 792, 793 (9th Cir. 1965)).

The Court finds that the interests of justice do not require the appointment of counsel at this time. *See* 18 U.S.C. § 3006A(a)(2)(B); Rule 6(a) and 8(c); 28 U.S.C. foll. § 2254. Accordingly, the Court **DENIES WITHOUT PREJUDICE** Petitioner’s motion for appointment of counsel. The Court will bear in mind Petitioner’s request if, following receipt of the supplemental pleadings and a more detailed review of this case, the Court finds that appointment of counsel is necessary. Petitioner need not file another motion as to this issue.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: May 22, 2017

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on May 22, 2017, by electronic means and/or ordinary mail.

s/Holly A. Monda_____

Case Manager

(313) 234-5113