

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

| | | |
|--------------------------|---|------------------------------------|
| DALE W. McKENZIE, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | Case number 4:10cv1494 SNLJ |
| |) | TCM |
| TROY STEELE, |) | |
| |) | |
| Respondent. |) | |

MEMORANDUM AND ORDER

Pending in this 28 U.S.C. § 2254 action is the motion of petitioner, Dale W. McKenzie, for the appointment of counsel.

Petitioner seeks habeas relief on eleven grounds from an aggregate sentence of life imprisonment plus thirty-one years imposed after he was found guilty by a jury of three felonies. His thirty-four page petition, accompanied by sixty-nine pages of supporting documentation, is articulate and his grounds are supported by cogent legal arguments and factual summaries. Respondent has been ordered to show cause why Plaintiff should not be granted his requested relief.

There is no constitutional or statutory right to appointment of counsel in habeas corpus proceedings, see **Morris v. Dormire**, 217 F.3d 556, 558 (8th Cir. 2000); "instead, [the appointment of counsel] is committed to the discretion of the trial court," **McCall v. Benson**, 114 F.3d 754, 756 (8th Cir. 1997). In considering whether to appoint counsel, the factual and legal complexity of the case and the petitioner's ability to investigate and articulate his claims should be considered. **Morris**, 217 F.3d at 558-59; **McCall**, 114 F.3d at 756; **Nachtigall v. Class**, 48 F.3d 1076, 1081-82 (8th Cir. 1995). Counsel must be appointed, however, if an evidentiary hearing is to be held. See Rule 8(c), Rules Governing Section 2254 Cases in the

United States District Courts (mandating that counsel be appointed if an evidentiary hearing is to be held); accord Armstrong v. Kemna, 534 F.3d 857, 868 n.5 (8th Cir. 2008).

At this early stage in the proceedings, the issues articulately raised in the petition appear to be neither factually nor legally complex and to be capable of being resolved without an evidentiary hearing. Accordingly,

IT IS HEREBY ORDERED that Petitioner's motion for appointment of counsel is **DENIED** without prejudice. [Doc. 4]

/s/ Thomas C. Mummert, III
THOMAS C. MUMMERT, III
UNITED STATES MAGISTRATE JUDGE

Dated this 20th day of August, 2010.