

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

RICK J. CUSUMANO,)
Petitioner,)
v.) No. 4:17 CV 291 JMB
CINDY GRIFFITH,)
Respondent.)

ORDER

This matter is before the Court on Petitioner Rick Cusumano's ("Petitioner") Motion to Appoint Counsel (ECF No. 3) in his action pursuant to 28 U.S.C. § 2254. Petitioner was previously granted leave to proceed in forma pauperis in this case.

There is no constitutional right to appointment of counsel in a habeas corpus proceeding. See McClesky v. Zant, 499 U.S. 467, 494 (1991); Hoggard v. Purkett, 29 F.3d 469, 471 (8th Cir. 1994). The Court must, however, appoint counsel if there is to be an evidentiary hearing on the petition, and may, in its discretion, appoint counsel when no evidentiary hearing is necessary. See Id. (citing Abdullah v. Norris, 18 F.3d 571, 573 (8th Cir. 1994)). In exercising its discretion, the Court should consider, among other things, the legal complexity of the case, the factual complexity of the case, and the petitioner's ability to investigate and present his claims. See Id. Where the issues involved can be properly resolved on the basis of the state court record, the Court does not abuse its discretion in denying a request for appointment of counsel. See Id.

Petitioner's allegations of ineffective assistance of counsel and trial court error in ruling on the admissibility of evidence appear to be appropriate for resolution on the record. The allegations appear to be neither legally nor factually complex, and Petitioner's pleadings are

articulate and appropriate. Therefore, his motion for appointment of counsel will be denied without prejudice. Should an evidentiary hearing be necessary, the Court will appoint Petitioner counsel. Accordingly,

IT IS HEREBY ORDERED that Petitioner's Motion to Appoint Counsel (ECF No. 3) is DENIED WITHOUT PREJUDICE.

/s/ *John M. Bodenhausen*
UNITED STATES MAGISTRATE JUDGE

Dated this 16th day of June, 2017.