

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

DONNELL KING, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 ROBERT P. HOUSTON, Director, )  
 and DENNIS BAKEWELL, Warden, )  
 )  
 Respondents. )

4:11CV3067

**MEMORANDUM  
 AND ORDER ON PETITIONER’S  
 MOTION FOR EXTENSION,  
 MOTION FOR APPOINTMENT  
 OF COUNSEL, AND MOTION  
 FOR LEAVE FOR DISCOVERY**

This matter is before the court on a Motion for Extension (filing no. [12](#)), a Motion for Appointment of Counsel, (filing no. [13](#)), and a Motion for Leave for Discovery (filing no. [14](#)) all filed by the petitioner, Donnell King. The respondents have filed a Response to Petitioner’s Motions. (Filing No. [15](#).) The court will address each motion in turn.

***I. Motion for Extension***

In his Motion for Extension , Donnell King asks the court to provide him with 60 additional days to file a brief in response to the respondents’ Brief in Support of Respondents’ Answer. (Filing No. [12](#).) The respondents do not object to King’s request for time as stated in their Response to Petitioner’s Motions (filing no. [15](#)); therefore, King’s motion for extension of time is granted.

***II. Motion to Appoint Counsel***

King has also filed a Motion for Appointment of Counsel. (Filing No. [13](#).) “[T]here is neither a constitutional nor statutory right to counsel in habeas proceedings; instead, [appointment of counsel] is committed to the discretion of the trial court.” [McCall v. Benson, 114 F.3d 754, 756 \(8th Cir. 1997\)](#) (citations omitted).

As a general rule, counsel will not be appointed unless the case is unusually complex or the petitioner's ability to investigate and articulate the claims is unusually impaired or an evidentiary hearing is required. *See, e.g., Morris v. Dormire*, 217 F.3d 556, 558-59 (8th Cir. 2000), *cert. denied*, 531 U.S. 984 (2000); *Hoggard v. Purkett*, 29 F.3d 469, 471 (8th Cir. 1994) (citations omitted); *see also* Rule 8(c) of the *Rules Governing Section 2254 Cases in the United States District Courts* (requiring appointment of counsel if an evidentiary hearing is warranted). Upon review of the pleadings and King's motion, there is no need for the appointment of counsel at this time.

### ***III. Motion for Discovery***

In his Motion for Leave for Discovery, King seeks trial transcripts, a bill of exceptions and exhibits. (Filing No. [14](#).) The respondents have agreed to file these documents in a filing entitled "Supplemental Designation of Records in Support of the Answer." (Filing No. [15](#).) Because the respondents have agreed to file the documents King seeks in discovery, his Motion for Discovery is moot.

IT IS THEREFORE ORDERED that:

1. The Motion for Extension (filing no. [12](#)) filed by Donnell King is granted. King shall file his brief in response to the respondents' brief no later than 60 days after the respondents file their "Supplemental Designation of Records in Support of the Answer."

2. King's Motion for Appointment of Counsel (filing no. [13](#)) is denied.
3. King's Motion for Leave for Discovery (filing no. [14](#)) is denied as moot.

Dated August 22, 2011.

BY THE COURT

s/ Warren K. Urbom  
United States Senior District Judge