

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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|---------------------------------|---|---------------------|
| ROBERT HARDEN, |) | CASE NO. 4:11CV3084 |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | MEMORANDUM |
| |) | AND ORDER |
| FRED BRITTON, Warden, and |) | |
| ROBERT HOUSTON, Director of the |) | |
| Department of Corrections, |) | |
| |) | |
| Respondents. |) | |

This matter is before the court on Petitioner's Notice of Appeal. (Filing No. [9](#).)

Petitioner seeks to appeal the court's July 25, 2011, Memorandum and Order which denied Petitioner the appointment of counsel. (Filing No. [8](#).) However, that Memorandum and Order is not a final order, and judgment has not been entered in this matter. Petitioner's Notice of Appeal is therefore construed as a Motion for Interlocutory Appeal. As set forth in [28 U.S.C. § 1292\(b\)](#), an interlocutory appeal is warranted if the decision sought to be appealed involves a controlling question of law as to which substantial grounds for difference of opinion exist, so that an immediate appeal could materially advance the ultimate termination of this litigation. [28 U.S.C. §1292\(b\)](#).

Here, no such "controlling question of law" is implicated. The court's July 25, 2011, Memorandum and Order does not involve controlling questions of law as to which there is substantial ground for difference of opinion, and an immediate appeal would not materially advance the ultimate termination of this litigation. Therefore, there is no reason why the present appeal should proceed prior to entry of a final judgment in this matter. For these reasons, Petitioner's Notice of Appeal, construed as a Motion for Interlocutory Appeal, is denied.

Also pending is Petitioner's Motion for Injunction, which requests that the court "bar [Respondents] from restricting access to the Law Library in retaliation of any kind through the course of the Writ of Habeas Corpus Procedure." (Filing No. [11](#).) There is nothing before the court showing that Petitioner has been barred from all access to the law library at his institution. To the extent Petitioner needs additional time to respond to any future filings by Respondents due to "room restriction" or other classification issues, he should request additional time from the court.

IT IS THEREFORE ORDERED that:

1. Petitioner's Notice of Appeal, (Filing No. [9](#)), construed as a Motion for Interlocutory Appeal, is denied. The Clerk of the court is directed not to process the Notice of Appeal; and
2. Petitioner's Motion for Injunction (Filing No. [11](#)) is denied.

DATED this 31st day of August, 2011.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge

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