

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KEVIN G. SMITH,)
)
 Petitioner,)
)
 v.)
)
 ROBERT BAKEWELL, Warden, and)
 ROBERT HOUSTON, Director,)
)
 Respondents.)

8:10CV278

**MEMORANDUM
AND ORDER**

This matter is before the court on Petitioner’s Motion to Appoint Counsel. (Filing No. [16](#).) “There is neither a constitutional nor statutory right to counsel in habeas proceedings; instead, [appointment] is committed to the discretion of the trial court.” [McCall v. Benson, 114 F.3d 754, 756 \(8th Cir. 1997\)](#). 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.) The court has carefully reviewed the record and finds that there is no need for the appointment of counsel at this time.

It appears that Petitioner seeks the assistance of counsel in order to prepare a motion for certificate of appealability, which should have been filed no later than January 21, 2011. (Filing No. [15](#).) In light of this Memorandum and Order, the court will provide Petitioner with one additional opportunity to submit a motion for certificate of appealability.

IT IS THEREFORE ORDERED that:

1. Petitioner shall have until **March 28, 2011**, to file a motion for certificate of appealability and brief in support.

2. In the event that Petitioner fails to file a motion and brief as set forth in this Memorandum and Order, the court will deny the issuance of a certificate of appealability without further notice.

3. The Clerk of the court is directed to set a pro se case management deadline in this case with the following text: March 28, 2011: check for COA and separate brief and deny if none filed.

4. Petitioner's Motion to Appoint Counsel (filing no. [16](#)) is denied.

DATED this 28th day of February, 2011.

BY THE COURT:

Richard G. Kopf
United States District Judge

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