

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KEVIN JOHN WATT,

Petitioner,

vs.

SCOTT R. FRAKES, Director; and
MICHELE WILHELM, Warden;

Respondents.

8:20CV493

MEMORANDUM AND ORDER

This matter is before the court on Petitioner's third request for the appointment of counsel. (Filing 14.)

Again, "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). A district court may appoint counsel for a habeas petitioner if it "determines that the interests of justice so require." 18 U.S.C. § 3006A(a)(2)(B). "In exercising its discretion, the court 'should consider the legal complexity of the case, the factual complexity of the case, and the petitioner's ability to investigate and present his claims, along with any other relevant factors.'" *Wiseman v. Wachendorf*, 984 F.3d 649, 655 (8th Cir. 2021) (quoting *Hoggard v. Purkett*, 29 F.3d 469, 471 (8th Cir. 1994)).

At present, Respondents have filed a motion for summary judgment (filing 11), with supporting state court records (filing 12) and a brief (filing 13), asserting that Petitioner's habeas petition is barred by the one-year limitations period set forth in 28 U.S.C. § 2244(d). Considering the procedural posture of this case and the other relevant factors,

IT IS ORDERED that:

1. Petitioner's motion for the appointment of counsel (filing 14) is denied.
2. Petitioner is advised that he has until **April 19, 2021**, to file and serve his brief in opposition to the motion for summary judgment. Petitioner may request an extension of time if needed.

Dated this 1st day of April, 2021.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge