

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

PHILIP STOTT,

Petitioner,

v.

HAROLD WICKHAM, *et al.*,

Respondents.

Case No. 3:17-cv-00081-MMD-VPC

ORDER

This *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 comes before the Court on respondents' motion to dismiss (ECF No. 10) and petitioner's motion for appointment of counsel (ECF No. 19).

There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir. 1984), *cert. denied*, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of the case are such that denial of counsel would amount to a denial of due process and where the petitioner is a person of such limited education as to be incapable of fairly presenting his claims. *See Chaney*, 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir.1970). The petition in this case is sufficiently clear in presenting the issues that petitioner wishes to

1 raise, and the issues are not complex. Therefore, counsel is not justified in this case, and
2 the motion for appointment of counsel will be denied.

3 Following review of the motion to dismiss, it appears that some of the relevant state
4 court records were not filed with the Court. Petitioner filed a petition for writ of habeas
5 corpus in the state court on December 16, 2011, which was opened as Case No.
6 CR10P1155.¹ Litigation ensued in Case No. CR10P1155 until October 11, 2013, at which
7 point the district court ordered the case be consolidated with petitioner's underlying
8 criminal action, Case No. CR10-1155. It does not appear to the Court that respondents
9 provided the Court with any relevant documents from Case No. CR10P1155, including
10 but not limited to the petitioner's original petition. Accordingly, it is hereby ordered that
11 within thirty (30) days of the date of entry of this order, respondents must supplement the
12 record to include any and all relevant documents filed in Case No. CR10P1155.

13 It is therefore ordered that petitioner's motion for appointment of counsel (ECF
14 No.19) is denied.

15 It is further ordered that respondents must supplement the record as set forth
16 above within thirty (30) days of the date of entry of this order.

17 DATED THIS 2nd day of July 2018.

18
19 

20

MIRANDA M. DU
21 UNITED STATES DISTRICT JUDGE

22
23
24
25
26
27

¹See <https://www.washoecourts.com/Query/CaseInformation/CR10P1155> (last
28 accessed June 27, 2018).