

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JAMES STEPHEN MARTIN,

Petitioner,

v.

No. 17-cv-0368 RB/SMV

**RICARDO MARTINEZ and
ATTORNEY GENERAL OF THE STATE OF NEW MEXICO,**

Respondents.

ORDER DENYING MOTION TO APPOINT COUNSEL

THIS MATTER is before the Court on Petitioner’s Motion for Appointment of Counsel [Doc. 4], filed on May 10, 2017. Petitioner filed his 28 U.S.C. § 2254 petition for a writ of habeas corpus on March 23, 2017. [Doc. 1]. In it, he challenges his sentence to an indeterminate period of parole as unlawful. *Id.* at 16–17.

However, there is no constitutional right to counsel in habeas proceedings. *Coronado v. Ward*, 517 F.3d 1212, 1218 (10th Cir. 2008). Instead, whether to appoint counsel is a matter left to the discretion of the court. *Swazo v. Wyo. Dep’t of Corr.*, 23 F.3d 332, 333 (10th Cir. 1994). In so deciding, courts should consider “the merits of the litigant’s claims, the nature of the factual issues raised in the claims, the litigant’s ability to present his claims, and the complexity of the legal issues raised by the claims.” *Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995) (internal quotation marks omitted). Ultimately, the burden is on the petitioner “to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel.” *Hill v. Smithkline Beecham Corp.*, 393 F.3d 1111, 1115 (10th Cir. 2004) (internal quotation marks omitted).

At this time, the Court is not convinced that appointment of counsel is warranted for these § 2254 proceedings. First, Petitioner offers no grounds whatsoever that might warrant appointment of counsel. *See* [Doc. 4]. He merely asks the Court to appoint “the public defender’s office to represent him.” *Id.* at 1. More to the point, though, the Court is not convinced that there is sufficient merit or complexity in Plaintiff’s claims to warrant appointment of counsel at this time. Additionally, thus far, Plaintiff has been adequately presenting his claims.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Petitioner’s Motion for Appointment of Counsel [Doc. 4] is **DENIED**.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge