

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARK HOTTON,

Petitioner,

- against -

UNITED STATES OF AMERICA,

Respondent.

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DATE FILED: 17/20/2018

18-cv-7717 (JGK)

12-cr-825 (JGK)

MEMORANDUM OPINION
& ORDER

JOHN G. KOELTL, District Judge:

The petitioner's application to the Court to appoint counsel is **denied without prejudice**. The Court of Appeals for the Second Circuit has articulated factors that should guide the Court's discretion to appoint counsel to represent an indigent civil litigant under 28 U.S.C. § 1915, and these standards are useful in determining whether the interests of justice require appointing counsel for a habeas petitioner under 18 U.S.C. § 3006A(a)(2). See Hodge v. Police Officers, 802 F.2d 58, 61-62 (2d Cir. 1986); Jackson v. Moscicki, No. 99cv2427, 2000 WL 511642, at *4 (S.D.N.Y. Apr. 27, 2000). For the Court to order the appointment of counsel, the petitioner must, as a threshold matter, demonstrate that his claim has substance or a likelihood of success on the merits. See Hodge, 802 F.2d at 61-62; see also Tarafa v. Artus, No. 10cv3870, 2010 WL 2545769, at *1 (S.D.N.Y. June 9, 2010). The Court will review all of the papers regarding


the petitioner's motion to vacate and will determine whether counsel should be appointed.

The petitioner also moves to supplement the record. This appears to be a request for discovery. This motion is **denied without prejudice**. To obtain discovery in a proceeding brought under 28 U.S.C. § 2255, the petitioner must show good cause. Drake v. Portuondo, 321 F.3d 338, 346 (2d Cir. 2003); Tarafa v. Artus, No. 10cv3870, 2010 WL 4967991, at *1 (S.D.N.Y. Dec. 2, 2010); Viertel v. United States, No. 08cv7512, 2014 WL 406523, at *1 (S.D.N.Y. Jan. 30, 2014). The Court will review all of the papers regarding the petitioner's motion to vacate and will determine whether the record should be supplemented.

The Clerk is directed to close Docket Number 83 in the criminal matter (12-cr-825) and Docket Number 17 in the civil matter (18-cv-7717).

SO ORDERED.

**Dated: New York, New York
December 19, 2018**



**John G. Koeltl
United States District Judge**