

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Jose Reyes Arevalos,)	C/A No. 0:16-3322-TMC-PJG
)	
Petitioner,)	
)	
vs.)	ORDER
)	
Warden Joseph McFadden,)	
)	
Respondent.)	
_____)	

Petitioner Jose Reyes Arevalos, a self-represented state prisoner, filed this habeas action pursuant to 28 U.S.C. § 2254. This matter is before the court on petitioner’s motion for appointment of counsel and for an evidentiary hearing. (ECF No. 43.)

Motion for Evidentiary Hearing

Relying on § 2254(e)(2)(B), Arevalos summarily argues that he is entitled to an evidentiary hearing because his response in opposition to the respondent’s motion for summary judgment establishes by clear and convincing evidence that but for constitutional error, no reasonable jury would have found him guilty. The court’s review of the issues raised in a petition is generally limited to the evidence that was placed before the state court. See Cullen v. Pinholster, 563 U.S. 170, 180, 184 n.7 (2011); see also 28 U.S.C. § 2254(d)(2). Arevalos has not established that any exception to this general rule applies here. See Cullen, 536 U.S. at 184-5; see also 28 U.S.C. § 2254(e)(2). As discussed in the Report and Recommendation issued contemporaneously with this Order, Arevalos’s Petition should be denied as his claims lack merit. Accordingly, Arevalos’s motion for an evidentiary hearing is denied.

PJG

Motion for Appointment of Counsel

There is no right to appointed counsel in habeas cases. See Pennsylvania v. Finley, 481 U.S. 551, 555 (1987); Hunt v. Nuth, 57 F.3d 1327, 1340 (4th Cir. 1995). Attorneys may be appointed for a person “seeking relief under section 2241, 2254, or 2255 of title 28” when “the court determines that the interests of justice so require.” 18 U.S.C. § 3006A(a)(2)(B). Counsel may be appointed when counsel is necessary for effective discovery and must be appointed when evidentiary hearings are required. See Rules Governing § 2254 Cases, Rules 6(a) & 8(c), 28 U.S.C. foll. § 2254. At this time, no evidentiary hearing has been set in this case and the questions presented are not so complex as to require an attorney to effectively argue them for Arevalos.

In support of his motion, Arevalos asserts that he is a Mexican immigrant and attended school in Mexico only until the third grade. He further declares that he has a limited grasp of spoken English, and that he is unable to read or write in English. Additionally, Arevalos asserts that Lieber Correctional Institution does not have legal materials in the Spanish language, and that inmates are prohibited from assisting each other with their legal filings.

The court notes that Arevalos has filed documents in this court without the assistance of counsel—including a twenty-three page response in opposition to summary judgment—and those documents are cogent and clear. Arevalos has thus far demonstrated a capacity to present his claims. Accordingly, Arevalos’s request for counsel to be appointed under the Criminal Justice Act, 18 U.S.C. § 3006A(a)(2)(B), is denied.

IT IS SO ORDERED.

July 20, 2017
Columbia, South Carolina


Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE