

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

Kevin Wayne McDaniels,)	C/A No.: 1:12-642-TLW-SVH
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
John R. Owen, Warden at FCI)	
Williamsburg,)	
)	
Defendant.)	
)	

This is an action seeking habeas corpus relief under 28 U.S.C. § 2254. Petitioner is a prisoner. Therefore, in the event that a limitations issue arises, Petitioner shall have the benefit of the holding in *Houston v. Lack*, 487 U.S. 266 (1988) (prisoner’s pleading was filed at the moment of delivery to prison authorities for forwarding to District Court). Under Local Civil Rule 73.02(B)(2) (D.S.C.), pretrial proceedings in this action have been referred to the assigned United States Magistrate Judge.

Petitioner also files a motion for appointment of counsel in this case. [Entry # 3]. The law is clear that there is no constitutional right to counsel in a habeas proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Lovitt v. True*, 403 F.3d 171, 188 (4th Cir. 2005). The court, however, has discretionary authority to appoint counsel “in exceptional cases,” in a civil action brought by a litigant proceeding *in forma pauperis*. *Cook v. Bounds*, 518 F.2d 779 (4th Cir. 1975); *see also* 28 U.S.C. § 1915(d). The pleadings do not present unusual circumstances to justify the appointment of counsel, nor will Petitioner be denied due process if an attorney is not appointed. Therefore, Petitioner’s motion for appointment of counsel is **denied**.

PAYMENT OF THE FILING FEE:

Petitioner has requested to proceed without prepaying the filing fee by filing an Application to Proceed without Prepayment of Fees and Affidavit (Form AO-240), which is construed as a Motion for Leave to Proceed *in forma pauperis*. Based on a review of the motion, Petitioner’s request to proceed *in forma pauperis* is **granted**.

TO THE CLERK OF COURT:

The Clerk of Court shall not serve the § 2254 petition upon Respondent because the petition is subject to dismissal.

The Clerk of Court shall not enter any change of address submitted by Petitioner which directs that mail be sent to a person other than Petitioner unless that person is an attorney admitted to practice before this court who has entered a formal appearance.

TO PETITIONER:

Petitioner must place the civil action number listed above (C/A No. 1:12-642-TLW-SVH) on any document filed in this case. **Any future filings in this case must be sent to the following address: 901 Richland Street, Columbia, South Carolina 29201.** All documents requiring Petitioner's signature shall be signed with Petitioner's full legal name written in own handwriting. *Pro se* litigants shall *not* use the "s/typed name" format used in the Electronic Case Filing System. In all future filings with this court, Petitioner is directed to use letter-sized (eight and one-half inches by eleven inches) paper only, to write or type text on one side of a sheet of paper only and not to write or type on both sides of any sheet of paper. Petitioner is further instructed not to write to the edge of the paper, but to maintain one inch margins on the top, bottom, and sides of each paper submitted.

Petitioner is a *pro se* litigant. Petitioner's attention is directed to the following important notice:

You are ordered to always keep the Clerk of Court advised **in writing (901 Richland Street, Columbia, South Carolina 29201)** if your address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you. If as a result of your failure to comply with this order, you fail to meet a deadline set by this court, **your case may be dismissed for violating this order.** Therefore, if you have a change of address before this case is ended, you must comply with this order by immediately advising the Clerk of Court in writing of such change of address and providing the court with the docket number of all pending cases you have filed with this court. Your failure to do so will not be excused by the court.

IT IS SO ORDERED.



April 4, 2012
Columbia, South Carolina

Shiva V. Hodges
United States Magistrate Judge