

United States District Court
Southern District of Texas

ENTERED

June 15, 2016

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MICHAEL A DAVIS,

Petitioner,

VS.

LORIE DAVIS,ⁱ

Respondent.

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CIVIL ACTION NO. 2:16-CV-110

**OPINION AND ORDER DENYING
MOTION FOR APPOINTMENT OF COUNSEL**

Petitioner, an inmate incarcerated at the Tennessee Colony Unit of the Texas Department of Criminal Justice – Correctional Institutions Division (TDCJ-CID) filed this petition pursuant to 28 U.S.C. § 2254 petition challenging the results of a disciplinary conviction he received while assigned to TDCJ-CID's McConnell Unit in Beeville, Texas. Pending is his motion for appointment of counsel (D.E. 8).

Although Petitioner has demonstrated that he is indigent and has been allowed to proceed *in forma pauperis*, his citation to state law regarding his request for appointment of counsel does not apply in federal courts. There is no constitutional right to counsel in federal habeas proceedings. *Johnson v. Hargett*, 978 F.2d 855 (5th Cir. 1992). Rule 8 of the Rules Governing § 2254 Cases requires that counsel be appointed if the habeas petition raises issues which mandate an evidentiary hearing. Service of process was only recently ordered on June 6, 2016 (D.E. 10), and at this point there are no issues that mandate an evidentiary hearing.

An evidentiary hearing will be scheduled and counsel will be assigned *sua sponte* if there are issues which mandate a hearing. Moreover, counsel may be assigned if discovery is ordered and issues necessitating the assignment of counsel are evident. Rule 6(a) of the Rules Governing § 2254 Cases; *Thomas v. Scott*, 47 F.3d 713, 715 n. 1 (5th Cir. 1995). Accordingly, petitioner's motion for appointment of counsel (D.E. 8) is denied without prejudice.

ORDERED this 15th day of June, 2016.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE

¹ Lorie Davis is the newly appointed Director of the Texas Department of Criminal Justice – Correctional Institutions Division (TDCJ-CID), and is the proper Respondent. The Clerk shall substitute Lorie Davis for William Stephens. Fed. R. Civ. P. 25(d); Rule 2(a), Rules Governing Section 2254 Cases.