UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GREGORY S. ROBINSON, Petitioner, v. SCOTT FRAKES, Respondent.	No. C11-5302 RJB/KLS ORDER DENYING SECOND MOTION FOR THE APPOINTMENT OF COUNSEL

Before the Court is Petitioner's second motion for the appointment of counsel in this habeas case. ECF No. 25. Petitioner bases this second motion on his claim that the issues he raises are of constitutional magnitude and because portions of his claim have been re-referred to this Court for consideration on the merits. He appears to equate the re-referral with a likelihood of success on the merits and states that he has made a prima facie showing that he was denied effective assistance of counsel. ECF No. 27.

This Court recommended the dismissal of Claim Seven (denial of trial transcripts and court records) and Claim Eight (ineffective assistance of appellate counsel) on the merits. It also recommended the dismissal of the remainder of Petitioner's claims, except for a portion of claim five, as unexhausted and procedurally barred. ECF No. 22. The District Court adopted the Report and Recommendation in part, re-referring the matter to the undersigned for consideration of claim three and a portion of claim five on the merits and for a recommendation on the issuance of a certificate of appealability. ECF No. 25. The District Court further found that

Petitioner had provided no reasonable argument in support of holding an evidentiary hearing. *Id.* at 5.

There is no right to have counsel appointed in cases brought under 28 U.S.C. § 2254 unless an evidentiary hearing is required, because the action is civil, not criminal, in nature. See *Terravona v. Kincheloe*, 852 F.2d 424, 429 (9th Cir. 1988); *Brown v. Vasquez*, 952 F.2d 1164, 1168 (9th Cir. 1992); and Rule 8(c) of the Rules Governing Section 2254 Cases in the United States District Courts. An evidentiary hearing has not been granted in this case and the claims in the petition are adequately set forth and articulated. Petitioner has not yet demonstrated that an evidentiary hearing is necessary or that he is entitled to one.

Accordingly, it is **ORDERED**:

(1) Petitioner's second motion for counsel (ECF No. 27) is **DENIED**.

(2) The Clerk is directed to send copies of this Order to Petitioner.

DATED this 6th day of December, 2011.

Karen L. Strombom
United States Magistrate Judge