

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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ROBERT J. HICKS,

Petitioner,

ORDER

v.

08-cv-0131-bbc

MICHAEL THURMER, Warden,  
Waupun Correctional Institution,

Respondent.

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Petitioner Robert Hicks has filed a motion for appointment of counsel in this habeas corpus action brought pursuant to 28 U.S.C. § 2254. Dkt. 8. When deciding whether to appoint counsel to an indigent litigant, a district court must consider 1) the difficulty of the case in relation to the petitioner's ability to represent himself and 2) whether counsel might make a difference to the outcome. *Farmer v. Haas*, 990 F.2d 319, 322 (7th Cir. 1993)). The question is "whether the difficulty of the case—factually and legally—exceeds the particular plaintiff's capacity as a layperson to coherently present it to the judge or jury himself." *Pruitt v. Mote*, 503 F.3d 647, 655 (7th Cir. 2007) (clarifying earlier articulated standard).

Petitioner has not submitted an affidavit of indigency. However, I will assume for purposes of argument that he is indigent. Having considered the requisite factors, I am denying petitioner's motion. Petitioner coherently articulated his claims, which are legally and factually straightforward. The state has provided a copy of the state court record with its motion to

dismiss, so all of the operative facts are before this court. This court is quite familiar with the case law applicable to the constitutional issues raised by petitioner's claims and to the review applicable to § 2254 petitions. This court thoroughly and fairly will apply the law to the facts of petitioner's case to determine whether habeas relief is warranted, regardless whether petitioner pens his own reply or were to have the assistance of an actual attorney. Further, petitioner has shown both in filings to this court and the state courts that he has the capacity to represent himself.

For petitioner's sake, I note that his response to the state's motion to dismiss is due May 29, 2008. *See* motion to dismiss and supporting brief, dkts. 9-12. The state will then have until June 9, 2008 in which to reply to petitioner's response. On June 9, 2008, the motion to dismiss comes before this court for a decision, and no further briefing will be permitted.

#### ORDER

IT IS ORDERED that petitioner's request for appointment of counsel is DENIED.

Entered this 13<sup>th</sup> day of May, 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge