

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

JOHN BROWN,

Petitioner,

v.

MARC CLEMENTS,

Respondent.

ORDER

12-cv-861-bbc

John Brown has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his conviction for second-degree sexual assault of a child. In a December 17, 2012 order, the court ordered the state to respond to the petition, and the parties are currently briefing the petition. Currently before the court is petitioner's motion for the appointment of counsel. The motion will be denied at this time for reasons set forth briefly below.

Habeas corpus proceedings in federal court are civil actions for which there is no absolute constitutional right to the assistance of counsel. *See Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987) ("Our cases establish that the right to appointed counsel extends to the first appeal of right, and no further."). A federal habeas corpus court may appoint counsel for a financially eligible petitioner where "the interests of justice so require." 18 U.S.C. § 3006A(g); *Johnson v. Chandler*, 487 F.3d 1037, 1038 (7th Cir. 2007). Appointment of counsel in this context is discretionary "unless denial would result in fundamental unfairness impinging on due process rights." *Wilson v. Duckworth*, 716 F.2d 415, 418 (7th Cir. 1983) (quoting *LaClair v. United States*, 374 F.2d 486, 489 (7th Cir. 1967)); *Winsett v. Washington*, 130 F.3d 269, 280 (7th Cir. 2007).

Petitioner's motion will be denied at this time because the record in this case, including his recent brief in support of his petition, reflects that he has competently represented himself thus far and that he is capable of continuing to litigate his claims. Nor does petitioner indicate

why (other than his relatively common status as a pro se litigant) he needs counsel to assist him. The denial of petitioner's motion will be without prejudice so that petitioner may renew his motion if the case proceeds past the current briefing stage.

ORDER

It is ORDERED that petitioner John Brown's motion for appointment of counsel, dkt. 9, is DENIED without prejudice.

Entered this 26th day of February, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge