

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

JUAN A. ORENGO,

Petitioner,

v.

WARDEN LIZZIE TEGELS,

Respondent.

ORDER

12-cv-890-wmc

State inmate Juan Orenge has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his conviction for possession with intent to deliver THC and cocaine in Milwaukee County Case No. 03CF3178. Orenge contends that he was denied effective assistance of counsel at his trial and on direct appeal. The respondent has filed an answer and Orenge was given a deadline of August 21, 2013, in which to file a brief in support of his claims. To date, Orenge has not filed a brief. Instead, he has filed a two-page motion for appointment of counsel. *See* Dkt. 18. The motion is denied 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).

Orengo has paid the filing fee in this case and he does not allege or show that he is without means to obtain counsel. Assuming that he is indigent, Orengo does not otherwise demonstrate that the appointment of counsel is required here.

The ineffective-assistance claims that Orengo presents are not complex and are governed by well-established precedent. *See Strickland v. Washington*, 466 U.S. 668 (1984) (requiring a petitioner to demonstrate both constitutionally deficient performance by counsel and actual prejudice as a result of the alleged deficiency). The respondent has provided the state court record, which contains the last reasoned opinion to address Orengo's claims and the parties' briefing with regard to these claims. *See* Dkt. 17. The certificate of service reflects that these records were provided to Orengo, meaning that he has access to the arguments that were raised in state court and the governing legal standards.

Other than pointing to his status as a *pro se* litigant, Orengo does not allege facts showing that he is unable to submit a simple brief in support of his petition, explaining why he believes the state court's decision is unreasonable or wrong. The record does not otherwise disclose facts showing that Orengo is incapable of continuing to litigate his claims. Accordingly, the motion for appointment of counsel will be denied. The court will, however, extend the deadline for Orengo to submit a brief should he choose to do so.

ORDER

IT IS ORDERED THAT:

1. The motion for appointment of counsel filed by petitioner Juan Orengo, dkt. 18, is DENIED;

2. Paragraph 5 of the scheduling order in this case, dkt. 6, is AMENDED as follows.

- (a) Petitioner shall file a brief in support of his petition within 30 days of the date of this order. With respect to claims adjudicated on the merits in state court, petitioner must show either that (1) the state court contravened a controlling opinion of the United States Supreme Court; (2) the state court applied a controlling opinion of the United States Supreme Court in an unreasonable manner; or (3) the state court's decision rested upon an unreasonable determination of the facts. 28 U.S.C. § 2254(d).
- (b) Respondent shall file a brief in opposition within 30 days after petitioner files his initial brief.
- (c) Petitioner shall have 20 days after respondent files its brief in which to file a reply brief.

3. As a result of the foregoing amendment, petitioner's motion for an extension of time to submit his brief, dkt. 19, is MOOT.

4. Petitioner is advised that if he does not file a brief as instructed, then this case will be placed under advisement and may be dismissed without further notice under Fed. R. Civ. P. 41(b).

Entered this 19th day of September, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge