

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

ALBERT L. HOWARD,

Petitioner,

OPINION AND ORDER

11-cv-793-bbc

v.

ROBERT HUMPHREYS, Warden of
Kettle Moraine Correctional Institution,

Respondent.

Petitioner Albert Howard, an inmate at Waupun Correctional Institution, filed this pro se petitioner for a writ of habeas corpus under 28 U.S.C. § 2254 in November 2011. Although I initially allowed petitioner's suit to go forward, on March 2, 2012, I closed the case administratively and held his petition in abeyance while petitioner exhausted various state law claims. Recently, petitioner informed the court that he had either exhausted or procedurally defaulted on all of these claims, so I reopened the case and ordered the state to respond to the petition. Soon after entering this order, petitioner filed a motion for appointment of counsel, dkt. #27, which I am denying.

OPINION

The court's authority to appoint counsel in a case brought under 28 U.S.C. § 2255 is derived from § 3006A(a)(2)(B), which provides that "[w]henver the United States

magistrate judge or the court determines that the interests of justice so require, representation may be provided for any financially eligible person who is seeking relief under section 2241, 2254, or 2255 of title 28.” 18 U.S.C. § 3006A(a)(2)(B). In determining whether the interests of justice require the appointment of counsel in a § 2254 case, courts rely on the standard set forth in Pruitt v. Mote, 503 F.3d 647 (7th Cir. 2007). In Pruitt, the Court of Appeals for the Seventh Circuit held that assisting a litigant with the recruitment of counsel is appropriate when: (1) the movant has “made a reasonable attempt to obtain counsel or been effectively precluded from doing so”; and (2) the movant demonstrates that, “given the difficulty of the case,” the movant does not appear competent to litigate it himself. Id. at 654.

I am denying petitioner’s request because he has failed to demonstrate that the complexity of this case is beyond his abilities. For the five years this case has been pending, plaintiff has succeeded in navigating both the state and federal courts in exhausting what I have deemed plausible constitutional claims. His filings have been articulate and well-reasoned. There is no reason to believe that this case has evolved in such a way that petitioner is no longer capable of effectively representing himself. If after reviewing the state’s response to the petition and petitioner’s reply brief, the court determines that an evidentiary hearing is necessary, petitioner may renew his request for counsel. However, for the time being, I am denying his motion.

Petitioner is advised that even if the court determines that an evidentiary hearing is necessary and petitioner requires counsel to effectively represent him at such a hearing, the

court will not assist him with the recruitment of counsel unless plaintiff can establish that he has made reasonable efforts to find a lawyer on his own. Jackson v. County of McLean, 953 F.2d 1070, 1073 (7th Cir. 1992). Therefore, if plaintiff believes he may renew his motion for counsel later in this case, he should write to at least three law firms and seek representation. In any renewed motion for assistance with the recruitment of counsel, to establish that he has made sufficient efforts to find a lawyer, he will need to submit either (1) the rejection letters he received from the firms he wrote to; or (2) copies of the letters petitioner sent to the firms, as well as a declaration identifying the firms he wrote to, the dates he wrote to them, the firms' addresses, and whether he provided proper postage.

ORDER

IT IS ORDERED that plaintiff Albert L. Howard's motion for assistance with the recruitment of counsel, dkt. #27, is DENIED. Petitioner may refile his motion if the court determines that an evidentiary hearing is necessary.

Entered this 31st day of August, 2016.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge