

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

EARL DIEHL,

Petitioner,

ORDER

v.

08-cv-133-bbc

MICKEY MCCASH, Warden,
Oregon Correctional Center,

Respondent.

Petitioner Earl Diehl has filed a motion for the appointment of counsel to represent him in this habeas corpus action brought pursuant to 28 U.S.C. § 2254. In the motion, petitioner alleges that he cannot represent himself properly because the legal issues are complex, he lacks legal training, he has been relying on the assistance of other prisoners thus far in the proceeding and he lacks the ability to investigate “crucial” facts of his case, namely “DOC, DCC and DHA rules of procedure.”

In *Farmer v. Haas*, 990 F.2d 319, 332 (7th Cir.), cert. denied, 510 U.S. 963 (1993), the court of appeals distilled the inquiry for determining whether to appoint counsel for indigent plaintiffs to the following:

[G]iven the difficulty of the case, did the plaintiff appear to be competent to try it himself and, if not, would the presence of counsel have made a difference in the outcome?

As the question makes clear, three factors are relevant to this inquiry: 1) the complexity of the case; 2) the plaintiff's competence to represent himself; and 3) whether the presence of counsel would make a difference to the outcome.

Having considered these factors, I am denying petitioner's motion. This case is not complex. Petitioner contends that he is in custody in violation of his rights to procedural due process as a result of what he contends were several irregularities or internal rule violations committed by the Wisconsin Department of Corrections and Division of Hearing and Appeals in the course of the revocation proceedings. It appears from documents attached to the petition that none of the significant procedural facts are in dispute. Although petitioner claims that he needs a lawyer to help him investigate the department's internal rules, he should be able to obtain those rules from the Wisconsin Administrative Code, which should be available from the institution. In fact, petitioner appears to have had access to these materials at some point. He cited to various code provisions while representing himself during state court proceedings and when drafting his *pro se* federal habeas petition. In any case, petitioner overstates the significance of any failure by the department or the division to follow its own rules. Federal habeas relief is available only for violations of *constitutional* rights, not administrative rules violations.

Not only are the facts not in dispute, but the legal issues are not unduly complex. The state courts decided most of petitioner's claims on the merits. This means that this court can grant the petition only if the state courts unreasonably applied clearly established

federal law or unreasonably determined the facts in denying the claim. 28 U.S.C. § 2254(d). As explained in the order to show cause, the federal constitutional standards that apply to revocation proceedings are set forth in *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972), (extended to probation revocation proceedings by *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), and are not unduly complicated. Petitioner has not made a sufficient showing that he lacks the competence to comprehend these standards or to argue why the state courts did not apply them reasonably in adjudicating his claims.

Finally, given that no significant facts are in dispute and the law is well settled, the presence of a lawyer is not likely to make a difference to the outcome of this case. This court is well acquainted with the controlling procedural and substantive law. In addition, the court takes pains to review habeas petitions carefully and to construe *pro se* filings liberally. Petitioner will get a fair and just review of his petition even without the help of a lawyer.

ORDER

IT IS ORDERED that the motion of petitioner for the appointment of counsel is DENIED.

Entered this 27th day of March, 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge