

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

JEREMY T. GREENE,

Petitioner,

ORDER

v.

08-cv-623-slc

WILLIAM POLLARD, Warden,
Green Bay Correctional Institution,

Respondent.

Jeremy Greene has moved for the appointment of counsel to assist him in the prosecution of his habeas corpus application pursuant to 28 U.S.C. § 2254. Under 18 U.S.C. § 3006A(2)(B), a district court may appoint counsel to represent an indigent petitioner seeking relief under § 2254 if the court determines that “the interests of justice so require.” In *Farmer v. Haas*, 990 F.2d 319 (7th Cir.), cert. denied, 510 U.S. 963 (1993), the court of appeals stated that a court considering whether to appoint a lawyer for an indigent petitioner must consider petitioner’s competence in relation to the difficulty of the case and whether the presence of counsel will make a difference to the outcome.

Conducting this evaluation is a bit difficult at this early stage of the case. The state has not yet filed its response to the petition. About all the court has from which to judge petitioner’s competence is the petition, which petitioner asserts was prepared with the assistance of a jailhouse lawyer who is no longer able to able to help him. I note, however,

that petitioner was able to navigate on his own Wisconsin's idiosyncratic procedures for bringing claims of ineffective assistance of counsel and ineffective assistance of appellate counsel, no small feat for an unrepresented litigant. Further, in the course of that process, petitioner obtained from the state courts rulings on the merits of nearly all of his claims. Thus, the issues in this case are relatively well-defined and the outcome does not appear to rest on procedural rules, which in habeas cases are often more complex than the merits of the underlying claims. Petitioner appears to have the competence to litigate these issues.

Even if he does not, the presence of counsel is not likely to make a difference to the outcome. Success on many of petitioner's claims depends upon him showing that the state appellate court unreasonably applied clearly established federal law when it determined that petitioner's appellate lawyer was not ineffective because the claims that petitioner says counsel should have raised on appeal were weaker than the one issue counsel did raise. To do this, petitioner must show that the court committed a clear error or reached a conclusion that was objectively unreasonable. Even a highly-skilled lawyer is not likely to be able to make this showing. None of petitioner's other claims are so complex that the assistance of a lawyer is likely to make a difference.

Accordingly, petitioner's motion for the appointment of counsel will be denied at this time. If it later appears from the parties' submissions that I have underestimated either the complexity of the case or petitioner's ability to litigate it on his own, I will revisit this decision.

ORDER

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

Entered this 20th day of November, 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge