

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

TIMOTHY J. GOYETTE,

Petitioner,

v.

WARDEN JEFFREY PUGH,

Respondent.

ORDER

12-cv-80-wmc

State inmate Timothy J. Goyette has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his conviction for reckless homicide and aggravated battery in La Crosse County Case No. Case No. 2001CF479. The respondent has filed an answer and both parties have submitted all of the necessary briefing in this case. Goyette has now filed a motion for an evidentiary hearing and he requests the appointment of counsel to assist him in the event that a hearing is held. The motion is 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, e.g., 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).

The record reflects that Goyette paid the filing fee and that he has not requested leave to proceed *in forma pauperis* previously in this case. In that respect, he has not provided a

certified copy of his inmate trust fund account statement for purposes of establishing his status as an indigent litigant or his financial eligibility for appointed counsel. *See* 28 U.S.C. §§ 1915(a)(2), 1915(e)(1). He does not otherwise demonstrate that the appointment of counsel is required at this time. Assuming that Goyette qualifies as indigent and meets the other criteria for appointment of counsel, then the court will reconsider his request on its own motion after it determines whether an evidentiary hearing is warranted pursuant to 28 U.S.C. § 2254(e)(2). Until such a determination is made, Goyette's pending motion must be denied.

ORDER

IT IS ORDERED THAT the motion for appointment of counsel and evidentiary hearing filed by petitioner Timothy J. Goyette, dkt. 21, is DENIED at this time.

Entered this 3rd day of September, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge