

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

CRAIG PRICE :
 :
 v. : C.A. No. 04-38S
 :
 ASHBEL T. WALL, et al. :

MEMORANDUM AND ORDER

Before this Court is Petitioner's Motion for Extension of Time and for Appointment of Counsel. (Document No. 19). The Motion has been referred to me for determination. 28 U.S.C. § 636(b)(1)(A); LR Cv 72(a). For the reasons set forth below, Petitioner's request for an extension of time is GRANTED and his request for appointment of counsel is DENIED.

Petitioner indicates that he is having difficulty meeting filing deadlines due to his incarceration, including having limited access to the prison law library and related legal materials. The State's Motion to Dismiss was filed on December 10, 2012 and Petitioner's Response was due by December 27, 2012. (Document No. 16). Petitioner has already been granted one extension of time. (See Text Order dated 1/16/2013). Petitioner's Second and Third Requests for an Extension of Time were filed within days of one another. (Document Nos. 18, 19). In light of Petitioner's pro se status, and his claimed difficulties, the Court GRANTS Petitioner additional time to file his Response. Petitioner is ordered to file his response to the Motion to Dismiss by March 10, 2013.

Petitioner also indicates that he is unable to afford counsel and requests that Counsel be appointed for him. This Court may appoint an attorney pursuant to 18 U.S.C. § 3006A(a)(2)(B) if "the interests of justice so require," however, there is no absolute right to an attorney in a civil

case. DesRosiers v. Moran, 949 F.2d 15, 23-24 (1st Cir. 1991). Before appointing an attorney, the Court must look to the type and complexity of the case, and the ability of Petitioner to prosecute it. Id.; Whisenant v. Yuam, 739 F.2d 160 (4th Cir. 1984). This analysis also applies to persons such as Petitioner seeking habeas corpus relief. Manisy v. Maloney, 283 F. Supp. 2d 307, 317 (D. Mass. 2003) (“[t]he decision to appoint counsel is discretionary, as ‘an indigent civil litigant in federal court has no constitutional or statutory right to the appointment of counsel, even if he is challenging a criminal conviction as by a proceeding such as this for habeas corpus.’”) (citation omitted). Petitioner bears the burden of demonstrating that “exceptional circumstances [a]re present such that a denial of counsel [i]s likely to result in fundamental unfairness impinging on his due process rights.” DesRosiers, 949 F.2d at 23.

Petitioner has not demonstrated “exceptional circumstances” sufficient to convince the Court that he is entitled to appointed counsel in this civil action. From a review of the documents filed in this case to the present time, the Court finds that Petitioner has the capacity to prosecute the claim and that Petitioner has a basic understanding of the legal procedures to be followed. If an evidentiary hearing is scheduled in this case, Petitioner may refile his Motion to Appoint Counsel and the Court will reconsider the request. See Rule 8(c), Federal Rules Governing Section 2254 cases. Thus, the Court determines that Petitioner does not, at this time, meet the test for appointment of counsel and will, therefore, be required to prosecute this action by himself.

IT IS THEREFORE ORDERED, that Petitioner's Motion for Extension of Time is GRANTED, and his Motion to Appoint Counsel is DENIED without prejudice.

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
February 6, 2013