

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

NELSON BIDO, :
Petitioner, :
 :
v. : C.A. No. 13-239ML
 :
A.T. WALL, Director of Rhode Island :
Department of Corrections, :
Respondent. :

**MEMORANDUM AND ORDER
DENYING MOTION TO APPOINT COUNSEL**

Before the Court is Petitioner Nelson Bido's second Motion for appointment of counsel (ECF No. 8) to represent him in connection with his second Petition for Writ of Habeas Corpus¹ challenging his conviction in the Providence Superior Court for aiding and abetting murder and conspiracy to commit robbery. This Petition was filed on April 12, 2013; the State of Rhode Island's motion to dismiss followed on May 10, 2013. My recommendation that the Petition be dismissed because it is a second successive petition filed without leave from the Court of Appeals and because it is time-barred is pending before Chief Judge Mary M. Lisi. Petitioner's objection to the report and recommendation is due on July 10, 2013. Meanwhile this Motion for appointment of counsel was filed on July 1, 2013, and has been referred to me for determination.

Petitioner seeks to have counsel appointed to represent him in connection with his Petition because:

- 1) He is unable to file a successive petition for collateral relief without the assistance of a person learned in the law;
- 2) Assistance by counsel is an indispensable element of meaningful access to the court;

¹ The first Petition was filed on October 23, 2008. Bido v. Wall, No. C.A. 08-399 ML. His first motion for appointment of counsel was in connection with that Petition. It was denied by this Court on November 18, 2008. Bido v. Wall, No. CA 08-399 ML, 2008 WL 496017, at *2 (D.R.I. Nov. 18, 2008).

- 3) His limited understanding of English prevents him from filing and amending a successful petition; and
- 4) He is without money or means with which to employ or retain an attorney.

As this Court advised Mr. Bido when his first motion for appointment of counsel was denied, there is no constitutional right to counsel in habeas corpus proceedings. Bido v. Wall, No. CA 08-399 ML, 2008 WL 4960197, at *1 (D.R.I. Nov. 18, 2008) (Mem. & Order of Martin, M.J.); see Pennsylvania v. Finley, 481 U.S. 551, 555 (1987); Ellis v. United States, 313 F.3d 636, 652 (1st Cir. 2002). Section 3006A allows for the appointment of counsel in a § 2254 action “[w]henever the United States magistrate judge or the court determines that the interests of justice so require” 18 U.S.C. § 3006A(a)(2). In making the discretionary determination whether to appoint counsel, “a court must examine the total situation, focusing, *inter alia*, on the merits of the case, the complexity of the legal issues, and the litigant’s ability to represent himself.” Manisy v. Maloney, 283 F. Supp. 2d 307, 317 (D. Mass. 2003) (quoting DesRosiers v. Moran, 949 F.2d 15, 24 (1st Cir. 1991)).

Petitioner seeks relief based on five grounds, all of which appear to be lacking in merit.

The reasons are summarized in my report and recommendation:

Claim One, alleging the lack of a speedy trial, was previously rejected by this Court on his first petition. Claims One and Five (substantive speedy trial and the related ineffective assistance claim) were carefully considered by the Rhode Island Supreme Court in its decision on his post-conviction petition, which was not contrary to, or an unreasonable application of, federal law. Claims Two, Three and Four (raising the denial of his motions for continuance and his motion to suppress his statement) were carefully considered by the Rhode Island Supreme Court in its affirmance of the trial court on direct appeal, also a decision that was not contrary to, or an unreasonable application of federal law. See 28 U.S.C. § 2254(d)(1).

Report & Recommendation of 6/12/13 at 8 (ECF No. 6). More importantly, the Petition is subject to dismissal because it is a second successive petition filed without leave of the Court of

Appeals and is time-barred. Id. at 7-8. Accordingly, I find that the lack of merit of Petitioner's claims weighs heavily against the appointment of counsel.

The second factor to be examined – the complexity of the legal issues – is similarly insufficient to justify appointment of counsel. The legal issues asserted in the Petition are relatively clear and straightforward. A speedy trial claim involves the application of the four factors enunciated by the Supreme Court in Barker v. Wingo, 407 U.S. 514 (1972), while Petitioner's ineffective assistance of counsel claim is governed by the well-established test set forth in Strickland v. Washington, 466 U.S. 668 (1984). His due process claims are not so complex as to be beyond the grasp of a lay person. Similarly, the requirement that leave of the Court of Appeals is required for a second successive petition is clear and straightforward. In all, the legal issues raised by these claims are not complex enough to weigh in favor of the appointment of counsel.

Consideration of the third factor – Petitioner's ability to represent himself – does not alter the analysis or suggest that this is a circumstance where the interests of justice require appointment of counsel. Rather, the filings Petitioner has made demonstrate that he has the ability to file motions and communicate in writing in an understandable manner despite his indication that he has a limited understanding of the English language. Indeed, Petitioner's filings evince the ability to draft documents that not only are understandable to the Court but have achieved some success. For example, he was granted a fourteen-day extension based on his motion for time to object to this Court's report and recommendation. Therefore, the Court concludes that Petitioner has an adequate, if rudimentary, ability to manage self-representation.

After considering the totality of these circumstances, the Court is not persuaded that this is a case where the interests of justice require that counsel should be appointed. See Ellis v.

United States, 313 F.3d 636, 653 (1st Cir. 2002) (habeas cases where counsel should be appointed are “few and far between”); United States v. Gonzalez-Vazquez, 219 F.3d 37, 42 (1st Cir. 2000) (appointment of counsel in habeas cases will be “rare”); Serrano v. Dickhaut, Civil No. 12-40012-FDS, 2012 WL 2343730, at *1-2 (D. Mass. June 19, 2012) (when habeas petition time-barred appointment of counsel not warranted). Accordingly, the Motion for appointment of counsel (ECF No. 8) is DENIED.

So ordered.

ENTER:

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
July 8, 2013