

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

WARREN D. WAMSLEY,

Petitioner,

v.

**Civil Action No. 2:07cv41
(Judge Maxwell)**

**DAVID BALLARD, Warden
Mount Olive Correctional Center,**

Respondent.

**ORDER DENYING PETITIONER'S MOTION
FOR APPOINTED COUNSEL**

On May 21, 2007, *pro se* petitioner, Warren D. Wamsley, filed the above-styled action pursuant to 28 U.S.C. §2254. On January 22, 2008, he filed a Motion to Appoint Counsel. The authority for the Court to appoint counsel in §2241 and §2254 actions is discretionary and there is no Constitutional right to have appointed counsel in post conviction proceedings. Pennsylvania v. Finley, 481 U.S. 551 (1987). A Court may appoint counsel to a financially eligible person if justice so requires. 18 U.S.C. §3006(A). Appointment of counsel for a petitioner who qualifies for the appointment of counsel under 18 U.S.C. §3006(A), is only required when necessary for utilization of discovery procedures and when an evidentiary hearing is required. See Rules 6(a) and 8(c) of the Rules Governing Section 2254 cases in the United States District Courts.

To date, there has been no determination that this matter will require either discovery or an evidentiary hearing, and that petitioner has not established any other circumstances which demonstrate the need for appointment of counsel. Accordingly, Petitioner's motion for appointment of counsel (Doc. 49) is hereby **DENIED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

DATED: January 23, 2008

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE