

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

STEPHEN CARMICHAEL,)
)
 Petitioner,)
)
 v.) CIVIL NO. 04-113-B-W
)
 WARDEN, MAINE STATE PRISON,)
)
 Respondent.)

**ORDER ON APPELLATE REVIEW OF THE MAGISTRATE JUDGE'S ORDERS ON
CARMICHAEL'S MOTION FOR RECONSIDERATION AND MOTION TO APPOINT
COUNSEL**

No stranger to the judicial system, on July 12, 2004, Petitioner Stephen Carmichael filed a Petition for Writ of Habeas Corpus with this Court. *See* 28 U.S.C. § 2254. In its Response, the State of Maine (“State”) attached a comprehensive state court record consisting of two blue notebooks approximately two to three inches thick. When the State did not send a copy of these extensive attachments to Carmichael, he filed a Motion to Compel the Production of these Documents. On August 24, 2004, Magistrate Judge Kravchuk denied Carmichael’s Motion, noting that “the court cannot and will not reproduce the entire state court record for him, most of which he should have had access to in state court because he himself created many of the pleadings referenced in the answer.”¹ She allowed, however, that if Carmichael could make “a compelling showing as to his need for a specific exhibit, [she] would address that concern.” On

¹ The attachments to the State’s Response are copies of documents previously filed in Carmichael’s underlying state criminal case, *State v. Carmichael*, SOMSC-CR-98-307 (Me. Super. Ct., Som. Cty.); his Law Court appeal, *State v. Carmichael*, No. Som-99-39 (Jan. 4, 1999); his postconviction review, *Carmichael v. State*, SOMSC-CR-00-296 (Me. Super. Ct., Som. Cty.); and his postconviction appeal, *Carmichael v. State*, No. Som-03-499 (Jul. 30, 2003). The documents include, for example, a complete two volume trial transcript in *State v. Carmichael*, SOMSC-CR-98-307. Although the State did not send Carmichael a copy of each attachment, it itemized each attachment with sufficient particularity so that Carmichael would be aware which documents have been attached. He has sufficient information about the attachments to articulate a compelling need, if one exists, for copies of one or more of them.

September 8, 2004, Carmichael filed a Motion for Reconsideration and a Motion to Appoint Counsel; these Motions were denied the same day. On September 20, 2004, Carmichael appealed Magistrate Judge Kravchuk's denials of these Motions to this Court.

The standard under which Magistrate Judge Kravchuk's decisions are to be reviewed is whether it has "been shown that the magistrate's order is clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A); *see also Koken ex rel. Reliance Ins. Co. v. Auburn Mfg., Inc.*, No. 02-83-B-C, 2004 WL 2358158 at *1 (D. Me. Oct. 15, 2004)(order denying the defendants' appeal of the magistrate judge's order); *Jacobsen v. Mintz, Levin, Cohn, Ferris, Glovsky & Popeo P.C.*, 594 F. Supp. 583, 585 (D. Me. 1984). This Court concludes Carmichael has failed to demonstrate the actions of the Magistrate Judge are clearly erroneous or contrary to law.

In denying the appeal of the Magistrate Judge's denial of the Motion for Appointment of Counsel, this Court is aware there is no constitutional right to appointment of counsel in a civil case. *Bemis v. Kelley*, 857 F.2d 14, 15 (1st Cir. 1988); *Cookish v. Cunningham*, 787 F.2d 1, 2 (1st Cir. 1986). Pursuant to 18 U.S.C. § 3006A(a)(2)(B), when a court "determines that the interests of justice so require, representation may be provided for any financially eligible person" who is seeking relief under 28 U.S.C. § 2254. *Manisy v. Maloney*, 283 F. Supp. 2d 307, 317 (D. Mass. 2003). The 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." *Huenefeld v. Maloney*, 2 Fed. Appx. 54, 61 (1st Cir. 2001)(citing *Dellenbach v. Hanks*, 76 F.3d 820, 823 (7th Cir. 1996)); *see also Manisy*, 283 F. Supp. 2d at 317. Thus, a petitioner must establish "that he was indigent and that exceptional circumstances were present such that a denial of counsel was likely to result in fundamental unfairness impinging on his due process rights." *DesRosiers*

v. Moran, 949 F.2d 15, 23 (1st Cir. 1991); *Bemis*, 857 F.2d at 15; *Cookish*, 787 F.2d at 2; *Manisy*, 283 F. Supp. 2d at 317. The factors a court may consider include the indigent's ability to conduct whatever factual investigation is necessary to support his claim, the complexity of the factual and legal issues involved, and the capability of the indigent litigant to present the case. *Cookish*, 787 F.2d at 3; *Manisy*, 283 F. Supp. 2d at 317.

Here, the Magistrate Judge simply denied the motion without explanation. “[A] decision made in the absence of a basis is an abuse of discretion.” *Howland v. Kilquist*, 833 F.2d 639, 646 (7th Cir. 1987)(§ 1983 action)(quoting *Darden v. Illinois Bell Tel. Co.*, 797 F.2d 497, 502 (7th Cir. 1986)); *see also Heath v. Neal*, 909 F.2d 1486 (7th Cir. 1990)(28 U.S.C. § 2254 action). However, to remand this matter to the Magistrate Judge would be an “exercise in futility.” *See Howland*, 833 F.2d at 646. The record clearly demonstrates Carmichael's familiarity with the law. He is a veteran litigator, having previously been involved in lawsuits of various types that fill two blue notebooks approximately two to three inches thick. In this case, he has filed the following Motions: (1) Motion to Extend Time to File Reply; (2) Motion to Compel Production of Documents; (3) Motion for Reconsideration; (4) Motion to Appoint Counsel; (5) Motion for Recusal; (6) Motion to Amend Petition; and, (7) Motion to Stay Pending Exhaustion of Second Post Conviction Petition Appeal in State Court. He has also appealed the Magistrate Judge's rulings. Finally, the legal issues presented by the Petition are straightforward and require no legal assistance. *See United States v. Stewart*, No. CRIM. 03-102-P-H, 2004 WL 2270015, at * 1 (D. Me. Oct. 5, 2004); *see also Manisy*, 283 F. Supp. 2d at 317. Carmichael is obviously more than capable of representing himself.

The Appeal is DENIED and the Magistrate Judge's denials of the Motion for Reconsideration and the Motion for Appointment of Counsel are hereby AFFIRMED.²

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 17th day of November, 2004.

Petitioner

STEPHEN CARMICHAEL

represented by **STEPHEN CARMICHAEL**
MAINE STATE PRISON
807 CUSHING ROAD
WARREN, ME 04864
PRO SE

V.

Respondent

**WARDEN, MAINE STATE
PRISON**

represented by **CHARLES K. LEADBETTER**
ASSISTANT ATTORNEY
GENERAL
STATE HOUSE STATION 6
AUGUSTA, ME 04333-0006
626-8800
Email: charles.leadbetter@maine.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

² Regarding Carmichael's request for copies of the documents the State attached to its Response, Magistrate Judge Kravchuk has made it clear she will address his concerns about any specific document and, if he can demonstrate a compelling need, she would "gladly reconsider" her Order. He only needs to demonstrate why he needs a particular document.

DONALD W. MACOMBER
MAINE ATTORNEY GENERAL'S
OFFICE
STATE HOUSE STATION 6
AUGUSTA, ME 04333
626-8800
Email:
donald.w.macomber@maine.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED