

97CV02482-EHN-MO

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARCELIN ALEXANDRE,

97 CV 2482

Petitioner,

MEMORANDUM

AND

- against -

ORDER

DANIEL A. SENKOWSKI, Superintendent,
Clinton Correctional Facility,

Respondent.

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MARECELIN ALEXANDRE
Prisoner # 92A9299
P.O. Box B
Clinton Corr. Facility
Dannemora, New York 12929
Petitioner pro se.

DISTRICT ATTORNEY'S OFFICE
Kings County
(Howard A. Getzler, of counsel)
400 Municipal Building
210 Joralemon Street
Brooklyn, New York 11201

NICKERSON, District Judge:

Petitioner requests appointment of counsel in this
case.

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Cooper v. A. Sargenti Co., 877 F.2d 170 (2d Cir. 1989), articulates the factors the Court must consider before appointing counsel for an indigent litigant:

- (1) whether the indigent's position seems likely to be of substance,
- (2) the indigent's ability to investigate the crucial facts,
- (3) whether conflicting evidence implicating the need for cross-examination will be the major proof presented to the fact finder,
- (4) the indigent's ability to present the case or obtain private counsel,
- (5) the complexity of the legal issues,
- (6) the availability of counsel, and
- (7) and special reasons why appointment of counsel would be likely to lead to a more just determination.

In Cooper, the Court of Appeals for the Second Circuit emphasized that a court should closely scrutinize the apparent merits of the indigent's claim to determine if it is likely to be of substance. 877 F.2d at 172. Only if the claim meets this "threshold requirement" should the other criteria be considered.

Id. (quoting Hodge v. Police Officers, 802 F.2d 58 (2d Cir. 1986)).

The court cannot say at this time whether plaintiff's claims are likely to be of substance. Since this threshold requirement has not been met, the court does not consider the other factors.

At the present time, the court denies plaintiff's motion for appointment of counsel. The court will consider the motion on renewal as the case progresses.

So ordered.

Dated: Brooklyn, New York
August 7, 1998

Eugene H. Nickerson
Eugene H. Nickerson, U.S.D.J.