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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SALVADOR M. GONZALEZ,	)	Civil No. 10cv02243 JLS(RBB)
	)	
Petitioner,	)	<b>ORDER DENYING PETITIONER'S</b>
	)	<b>MOTION FOR APPOINTMENT OF</b>
v.	)	<b>COUNSEL [ECF NO. 21]</b>
	)	
TIMOTHY E. BUSBY, Warden,	)	
	)	
Respondent.	)	
_____)		

Petitioner Salvador M. Gonzalez, a state prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 [ECF No. 1].<sup>1</sup> In general, Gonzalez contests his conviction for first degree murder on several bases including, among other things, the sufficiency of the evidence, the adequacy of the jury instructions, cumulative error, ineffective assistance of appellate counsel, the denial of his motions for substitution of trial counsel and for a continuance to retain counsel, as well as the denials of his state habeas petitions by the superior and appellate courts. (See Pet. 5, 11, 15, 18, 20, 25, 39, 59, 68, 73,

<sup>1</sup> Because the Petition includes a Memorandum of Points and Authorities that is not consecutively paginated, the Court will cite to the Petition using the page numbers assigned by the electronic case filing system.

1 ECF No. 1.) Respondent Timothy E. Busy, warden, filed an Answer  
2 [ECF No. 12] and Gonzalez filed a Traverse [ECF No. 19]. This  
3 Court issued a Report and Recommendation Re: Denial of Petition for  
4 Writ of Habeas Corpus and Order Denying Request for Evidentiary  
5 Hearing [ECF No. 22], which is currently pending before the  
6 district court.

7 Petitioner's "Request for a Legal Assistance to [A]ppoint an  
8 Attorney" was filed nunc pro tunc to January 30, 2012 [ECF No.  
9 21].<sup>2</sup> The Court construes this as a Motion for Appointment of  
10 Counsel. The arguments in Gonzalez's Motion, in general, are  
11 focused largely on the claims in his underlying Petition. (See  
12 Req. Legal Assistance Appoint Att'y 4-8, ECF No. 21.) In support  
13 of his request for counsel, Petitioner asserts that he does not  
14 understand the law. (See id. at 3.) Also, he cannot afford an  
15 attorney because his family members do not have jobs and do not  
16 have money to pay for a lawyer for him. (See id.) Gonzalez's  
17 remaining arguments concern the merits of his Petition. (See  
18 generally id. at 4-8.)

19 The Sixth Amendment right to counsel does not extend to  
20 federal habeas corpus actions by state prisoners. McCleskey v.  
21 Zant, 499 U.S. 467, 495 (1991); Chaney v. Lewis, 801 F.2d 1191,  
22 1196 (9th Cir. 1986); Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th  
23 Cir. 1986). Nonetheless, financially eligible habeas petitioners  
24 seeking relief pursuant to 28 U.S.C. § 2254 may obtain representa-  
25 tion whenever "the court determines that the interests of justice  
26 so require . . . ." 18 U.S.C.A. § 3006A(a)(2)(B) (West Supp.

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28 <sup>2</sup> The Court will also cite to this document using the page numbers assigned by the electronic filing system.

1 2010); see Terrovona v. Kincheloe, 912 F.2d 1176, 1181 (9th Cir.  
2 1990); Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984);  
3 Hoggard v. Purkett, 29 F.3d 469, 471 (8th Cir. 1994). The  
4 interests of justice require appointment of counsel when the court  
5 conducts an evidentiary hearing on the petition. Terrovona, 912  
6 F.2d at 1177; Knaubert, 791 F.2d at 728; Abdullah v. Norris, 18  
7 F.3d 571, 573 (8th Cir. 1994); Rule 8(c), 28 U.S.C. foll. § 2254  
8 (West 2010). Otherwise, the appointment of counsel is  
9 discretionary. See Terrovona, 912 F.2d at 1177; Knaubert, 791 F.2d  
10 at 728; Abdullah, 18 F.3d at 573.

11 "Indigent state prisoners applying for habeas relief are not  
12 entitled to appointed counsel unless the circumstances of a  
13 particular case indicate that appointed counsel is necessary to  
14 prevent due process violations." Chaney, 801 F.2d at 1196; see  
15 Knaubert, 791 F.2d at 728-29. A due process violation may occur in  
16 the absence of counsel if the issues involved are too complex for  
17 the petitioner. In addition, the appointment of counsel may be  
18 necessary if the petitioner has such limited education that he or  
19 she is incapable of presenting his or her claims. Hawkins v.  
20 Bennett, 423 F.2d 948, 950 (8th Cir. 1970). "To determine whether  
21 appointment of counsel is required for habeas petitioners with  
22 nonfrivolous claims, a district court should consider the legal  
23 complexity of the case, the factual complexity of the case, the  
24 petitioner's ability to investigate and present his claim, and any  
25 other relevant factors." Abdullah, 18 F.3d at 573 (citing Battle  
26 v. Armontrout, 902 F.2d 701, 702 (8th Cir. 1990); Johnson v.  
27 Williams, 788 F.2d 1319, 1322-23 (8th Cir. 1986)).

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1           Because these factors are useful in determining whether due  
2 process requires court-appointed counsel, they are considered to  
3 the extent possible based on the record before the Court. Gonzalez  
4 argues, "I . . . [do] not understand most [laws] . . . I[]  
5 understand little . . . [it] is for this reason I ask help from  
6 [the Court] if [it] is possible." (Req. Legal Assistance Appoint  
7 Att'y 3, ECF No. 21.) Further, the Petitioner submits that he  
8 cannot afford a lawyer because his family members do not have money  
9 or jobs and are losing their homes. (Id.)

10           Despite Petitioner's claimed lack of understanding of the law,  
11 he has sufficiently represented himself to date. He has prepared  
12 and filed the following documents in this action: a 232-page  
13 Petition with exhibits [ECF No. 1], a request to proceed in forma  
14 pauperis [ECF No. 2], a thirty-five-page Traverse [ECF No. 19],  
15 this Motion for Appointment of Counsel [ECF No. 21], a request for  
16 an extension of time to object to the Report and Recommendation  
17 [ECF No. 23], a request to file excess pages with the 100-page  
18 proposed objections [ECF No. 25], and a twenty-six-page Motion for  
19 a Certificate of Appealability [ECF No. 26]. There is no  
20 indication that anyone other than Gonzalez drafted these documents.

21           From the face of the Petition, filed pro se, it appears that  
22 Gonzalez has a good understanding of this case and the legal issues  
23 involved. The substantive arguments in the Petition span sixty-  
24 eight pages and raise ten distinct grounds for relief. (See  
25 generally Pet. 5-73, ECF No. 1.) The arguments are well organized  
26 and contain a recitation of relevant facts with citations to the  
27 applicable portions of the reporter's transcripts and state court  
28 opinions; the claims also include extensive legal arguments with

1 citations to caselaw and other supporting authority. (See  
2 generally id.) The detail and clarity of Gonzalez's Petition is  
3 more than sufficient to competently present his claims. Petitioner  
4 has not pointed to any particular circumstances that would make the  
5 appointment of counsel necessary at this time. See Bashor, 730  
6 F.2d at 1234 (denying request for appointed counsel where  
7 petitioner thoroughly presented the issues in his petition and  
8 memorandum of law). Under such circumstances, a district court  
9 does not abuse its discretion in denying a state prisoner's request  
10 for attorney representation. See LaMere v. Risley, 827 F.2d 622,  
11 626 (9th Cir. 1987).

12 Furthermore, "where the issues involved can be properly  
13 resolved on the basis of the state court record, a district court  
14 does not abuse its discretion in denying a request for court-  
15 appointed counsel." Hoggard, 29 F.3d at 471; see McCann v.  
16 Armontrout, 973 F.2d 655, 661 (8th Cir. 1992); Travis v. Lockhart,  
17 787 F.2d 409, 411 (9th Cir. 1986) (per curiam) (finding the  
18 district court did not abuse its discretion in denying the  
19 petitioner's motion for appointment of counsel where the  
20 allegations were properly resolved on the state court record).  
21 Here, as discussed, Gonzalez challenges his conviction on numerous  
22 grounds. (See Pet. 5, 11, 15, 18, 20, 25, 39, 59, 68, 73, ECF No.  
23 1.) The Court was provided all relevant documents and transcripts  
24 and was able to analyze the issues involved on the basis of the  
25 state court record [ECF No. 22]. The district court will likewise  
26 be able to properly resolve the allegations in the Petition on the  
27 basis of the record. See Travis, 787 F.2d at 411.

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1           Moreover, “[t]he procedures employed by the federal courts are  
2 highly protective of a pro se petitioner’s rights. The district  
3 court is required to construe a pro se petition more liberally than  
4 it would construe a petition drafted by counsel.” Knaubert, 791  
5 F.2d at 729 (citing Haines v. Kerner, 404 U.S. 519, 520 (1972)  
6 (holding pro se complaint to less stringent standard) (per  
7 curiam)); see Bashor, 730 F.2d at 1234. Gonzalez’s Petition was  
8 pleaded sufficiently for this Court to direct Respondent to file an  
9 answer or other responsive pleading to the Petition [ECF No. 5].

10           Indeed, the assistance that counsel provides is valuable. “An  
11 attorney may narrow the issues and elicit relevant information from  
12 his or her client. An attorney may highlight the record and  
13 present to the court a reasoned analysis of the controlling law.”  
14 Knaubert, 791 F.2d at 729. But as the court in Knaubert noted,  
15 “[U]nless an evidentiary hearing is held, an attorney’s skill in  
16 developing and presenting new evidence is largely superfluous; the  
17 district court is entitled to rely on the state court record  
18 alone.” Id. (citing Sumner v. Mata, 449 U.S. 539, 545-57 (1981);  
19 28 U.S.C.A. § 2254(d)). “Therefore, the additional assistance  
20 provided by attorneys, while significant, is not compelling.” Id.

21           If an evidentiary hearing is ordered, Rule 8(c) of the Rules  
22 Governing Section 2254 Cases requires that counsel be appointed to  
23 a petitioner who qualifies under 18 U.S.C. § 3006A(a)(2)(B). Rule  
24 8(c), 28 U.S.C. foll. § 2254; see Wood v. Wainwright, 597 F.2d 1054  
25 (5th Cir. 1979). Additionally, the Court may appoint counsel for  
26 the effective utilization of any discovery process. Rule 6(a), 28  
27 U.S.C. foll. § 2254. “A habeas petitioner’s interest in release  
28 from illegal confinement undoubtedly is high. However,

1 consideration of remaining factors leads to the conclusion that due  
2 process does not require appointment of counsel when an evidentiary  
3 hearing is not held." Knaubert, 791 F.2d at 729. This Court has  
4 recommended that Petitioner's request for an evidentiary hearing be  
5 denied [ECF No. 22], and at this time, it does not appear that  
6 discovery will be necessary.

7 For the reasons stated above, the interests of justice do not  
8 warrant court-appointed counsel at this time. Petitioner's Motion  
9 for Appointment of Counsel is **DENIED**.

10 **IT IS SO ORDERED.**

11  
12 DATED: June 14, 2012



13 Ruben B. Brooks  
United States Magistrate Judge

14 cc: Judge Sammartino  
15 All parties  
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