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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JOSE CARMEN MURILL GARCIA,	)	NO. CV 14-5262-PSG(E)
	)	
Petitioner,	)	
	)	
v.	)	ORDER RE "MOTION AND
	)	
JOHN N. KATAVICH, Warden,	)	DECLARATION FOR APPOINTMENT
	)	
Respondent.	)	OF COUNSEL"
_____	)	

On July 8, 2014, Jose Carmen Murill Garcia, a state prisoner, filed a "Motion and Declaration For Appointment of Counsel" ("Motion"). Mr. Garcia, who has not yet filed a petition for a writ of habeas corpus in this Court, seeks the appointment of counsel to file such a petition. Mr. Garcia currently is serving a life sentence for first degree murder. See People v. Garcia, 223 Cal. App. 4th 1173, 168 Cal. Rptr. 3d 23 (2014).

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1 Unlike a capital prisoner who may commence a habeas corpus  
2 proceeding by filing a request for the appointment of counsel,<sup>1</sup> a non-  
3 capital prisoner must initiate a habeas corpus proceeding by filing a  
4 habeas corpus petition pursuant to 28 U.S.C. section 2254. See  
5 Calderon v. United States District Court for the Northern District of  
6 California (Nicolaus), 98 F.3d 1102, 1107 n.3 (9th Cir. 1996), cert.  
7 denied, 520 U.S. 1233 (1997); see also Mayfield v. McEwen, 2010 WL  
8 3955788, at \*1 (S.D. Cal. Oct. 8, 2010) (non-capital prisoner could  
9 not commence habeas proceeding by filing a motion for an order  
10 permitting prisoner to make copies of exhibits at prison law library);  
11 Sexton v. McDonald, 2009 WL 3401264, at \*1 (S.D. Cal. Oct. 20, 2009)  
12 (filing of motion to toll habeas statute of limitations did not  
13 initiate habeas proceeding in non-capital case). Mr. Garcia's Motion  
14 is insufficient to commence a habeas proceeding in this Court.

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28 <sup>1</sup> See 18 U.S.C. § 3599(a)(2); McFarland v. Scott, 512  
U.S. 849, 856-57 (1994).

1 Accordingly, the Motion is denied and the action is dismissed without  
2 prejudice.

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4 IT IS SO ORDERED.

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6 Dated: July 17, 2014.



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8 PHILIP S. GUTIERREZ  
9 UNITED STATES DISTRICT JUDGE

10  
11 Presented this 15th day  
12 of July, 2014 by:

13  
14 \_\_\_\_\_/s/  
15 CHARLES F. EICK  
16 UNITED STATES MAGISTRATE JUDGE