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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

DWIGHT TAMPLIN, JR.,

 Petitioner,

 v.

RANDY GROUNDS,

 Respondent.

Case No. 1:12-cv-01633-AWI-SKO-HC

ORDER GRANTING PETITIONER'S MOTION
FOR THE APPOINTMENT OF COUNSEL AND
APPOINTING THE FEDERAL DEFENDER TO
REPRESENT PETITIONER (DOCS. 30, 40)

ORDER VACATING THE DEADLINE FOR THE
FILING OF PETITIONER'S TRAVERSE
(DOC. 42)

ORDER DEFERRING CONSIDERATION OF
PETITIONER'S MOTION FOR LEAVE TO
AMEND (DOC. 35)

ORDER DIRECTING THE FILING OF A
JOINT SCHEDULING STATEMENT WITHIN
FORTY-FIVE (45) DAYS

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 303. Pending before the Court are Petitioner's motions for appointment of counsel (doc. 30, filed on May 8, 2013, and doc. 40, filed on August 22, 2013), and Petitioner's motion regarding amendment of grounds for his petition (doc. 35, filed June 24, 2013).

1 I. Background

2 In the petition filed on October 4, 2012, Petitioner challenges
3 his conviction of being an ex-felon in possession of a firearm with
4 a gang enhancement, which he sustained on or about January 23, 2006,
5 in the Superior Court of the State of California, County of Fresno,
6 and pursuant to which he is serving a sentence of forty-five years
7 to life. In his 189-page petition, Petitioner raises many claims,
8 some of which in turn have sub-claims, such as his numbered claims
9 concerning the allegedly ineffective assistance of counsel. His
10 claims or groups of claims raised may be very generally summarized
11 as follows: 1) trial counsel's failure to make motions constituted
12 the ineffective assistance of counsel in violation of Petitioner's
13 rights under the Sixth Amendment (pet., doc. 1, 5-10); 2) trial
14 counsel's failure to investigate and call defense witnesses
15 constituted ineffective assistance of counsel in violation of
16 Petitioner's rights under the Sixth Amendment (id. at 11-89); 3)
17 appellate counsel's failure to raise the denial of Petitioner's
18 Faretta motion constituted ineffective assistance of counsel (id. at
19 90-130, also 39-90); 4) allowing a statement allegedly made by
20 Petitioner into evidence as an element of a gang enhancement
21 constituted a violation of Petitioner's protection against self-
22 incrimination under the Fifth Amendment and a Miranda violation
23 because Petitioner had not waived his rights (id. at 131-47); 5)
24 trial counsel's failure to prepare for evidentiary issues concerning
25 gang affiliation and to consult Petitioner concerning his defense
26 violated Petitioner's right under the Sixth Amendment to the
27 effective assistance of counsel (id. at 148-51); and 6) the trial
28 court's failure to bifurcate gang enhancement allegations and the

1 remainder of the trial constituted an abuse of discretion and a
2 violation of Petitioner's right to due process under the Fifth
3 Amendment (id. at 152-86).

4 On April 30, 2013, Respondent filed an answer and a first
5 amended answer (FAA) in which Respondent appears to have addressed
6 at least some of Petitioner's first and second contentions as listed
7 above, but which was devoid of any response to Petitioner's
8 remaining contentions. (FAA, doc. 29, 2.)

9 On May 8, 2013, Petitioner moved for the appointment of
10 counsel; however, Petitioner's motion lacked a signature. (Doc.
11 30.) Pursuant to the Court's order, Petitioner filed a declaration
12 and signed statement concerning the motion on May 30, 2013. (Doc.
13 34.)¹

14 On June 24, 2013, Petitioner filed a document entitled "NOTICE
15 OF CORRECTION AND ASK THE COURT TO AMEND NAMED GROUNDS." (Doc. 35.)
16 In this document, Petitioner requests that the Court take notice
17 that he had "more grounds," asks the Court to correct the error,
18 refers to various claims in the petition, and submits materials
19 concerning the denial of his Faretta motion as an independent ground
20 or claim. (Doc. 35, 1-2.) Petitioner also indicates that the
21 grounds are already before the Court. (Id.)

22 On August 22, 2013, Petitioner filed another request for
23 appointment of counsel on his original grounds of limited training
24
25

26 ¹ Petitioner previously moved for the appointment of counsel on the ground that his
27 petition stated a prima facie case, he was legally untrained and had what he
28 generally described as limited law library access, and Respondent had the benefit
of counsel. (Doc. 5.) The motion was denied on the ground that at that time, the
Court did not find that the interests of justice required the appointment of
counsel. (Doc. 6.)

1 and law library access and his petition's stating a prima facie
2 case. (Doc. 40.)

3 II. Petitioner's Motion for the Appointment of Counsel

4 In his motion filed on May 8, 2013, Petitioner moved for
5 counsel on the ground that he was "under the American with
6 Disability Act." (Doc. 30, 1.) He submitted documentation,
7 including a letter written by Petitioner with the assistance of CCI
8 J. Jackson, pursuant to two court-ordered remedial plans providing
9 assistance to an inmate claiming a disability and requesting
10 accommodation under the Americans with Disabilities Act (ADA). (Id.
11 at 2.) The letter states that Petitioner might be unable
12 effectively to communicate with the Court or fully to prosecute this
13 action due to his claimed disability. Petitioner states he has an
14 unspecified formal diagnosis, accompanied by symptoms of hearing
15 voices and racing thoughts, as well as deep depression resulting in
16 inactivity and an inability to concentrate and think. (Id.)
17 Petitioner states he is a participant in the Mental Health Delivery
18 Services System and is prescribed medications for his illness,
19 including Risperdal, and Prozac and Zoloft for "anti-psychotic
20 behavior." (Id.) In the letter, Petitioner seeks an accommodation
21 in the form of the assistance of counsel in this proceeding. (Id.)
22 Petitioner later submitted a declaration verifying as true under
23 penalty of perjury the contents of the motion, which was initially
24 submitted without a signature. (Doc. 34.)

25 Petitioner attaches a statewide psychotropic medication consent
26 form dated April 29, 2013, indicating his consent after consultation
27 to administration of Risperdal, Zoloft, and Remeron, which are
28 described as atypical antipsychotics used to treat symptoms of

1 psychosis, confused thinking, and manic episodes or mood swings, as
2 well as serotonin reuptake inhibitor and serotonin noepinephrine
3 antidepressants used to treat depression and associated symptoms.
4 (Id. at 4-5.)

5 Petitioner attaches more temporally remote medication consent
6 forms for Abilify for his mental health in 2009 (id. at 6) and
7 Remeron and Risperdal in 2010, as well as physician's orders from
8 the California State Prison in Sacramento in March 2010 to
9 administer Risperdal and renew Abilify, Remeron, and Cogentin. (Id.
10 at 7-10.) He submits a chronological interdisciplinary progress
11 note from a psychologist in December 2008 indicating he was
12 suffering suicidal ideations and depression with a history of
13 schizoaffective disorder, and he was followed with suicide
14 precautions and psychotropic medications. (Id. at 13.)

15 Respondent has not submitted any opposition to Petitioner's
16 motion. In the absence of any evidence to conflict with
17 Petitioner's allegations, which are supported by appropriate
18 documentation, the Court accepts as true Petitioner's allegations
19 that he hears voices, has racing thoughts, and suffers deep
20 depression resulting in inactivity and an inability to concentrate
21 and think. Further, Petitioner has recently been prescribed
22 medications, including atypical antipsychotics used to treat
23 symptoms of psychosis, confused thinking, and manic episodes or mood
24 swings, and serotonin reuptake inhibitor and serotonin noepinephrine
25 antidepressants used to treat depression and associated symptoms.
26 He has further documented a historical diagnosis of schizoaffective
27 disorder.

28

1 There currently exists no absolute right to the appointment of
2 counsel in non-capital, federal habeas corpus proceedings.
3 McFarland v. Scott, 512 U.S. 849, 857 n.3 (1994); Miranda v. Castro,
4 292 F.3d 1063, 1067 (9th Cir. 2002); Anderson v. Heinze, 258 F.2d
5 479, 481 (9th Cir. 1958), cert. denied, 358 U.S. 889 (1958). The
6 Sixth Amendment right to counsel does not apply in habeas corpus
7 actions, which are civil in nature. Chaney v. Lewis, 801 F.2d 1191,
8 1196 (9th Cir.1986); Anderson, 258 F.2d at 481.

9 However, a Magistrate Judge may appoint counsel at any stage of
10 a habeas corpus proceeding if the interests of justice require it.
11 18 U.S.C. § 3006A; Rule 8(c) of the Rules Governing Section 2254
12 Cases. A district court evaluates the likelihood of a petitioner's
13 success on the merits and the ability of a petitioner to articulate
14 his claims pro se in light of the complexity of the of the legal
15 issues involved. Weygandt v. Look, 718 F.2d 952, 954 (9th Cir.
16 1983).

17 Here, although it appears that Petitioner has been able to read
18 the orders and pleadings filed in this action, Petitioner has
19 required extra time to comply with the requirements and directions
20 of the Court. Further, the petition presents numerous, complex
21 claims. In light of Petitioner's showing regarding his mental
22 condition, the Court finds that the interests of justice would be
23 served by the appointment of counsel at the present time.

24 Accordingly, the Court will order that counsel be appointed to
25 represent Petitioner.

26 III. Petitioner's Motion regarding Amending Grounds

27 The title of Petitioner's motion suggests that Petitioner seeks
28 to amend the grounds set forth in his petition.

1 A court has inherent power to control its docket and the
2 disposition of its cases with economy of time and effort for both
3 the court and the parties. Landis v. North American Co., 299 U.S.
4 248, 254-255 (1936); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th
5 Cir. 1992). Because counsel will be appointed for Petitioner, the
6 Court exercises its discretion to defer consideration of
7 Petitioner's motion until after counsel has been appointed and has
8 had an opportunity to review the motion as well as all the pleadings
9 filed in the action and to determine whether to pursue the motion.

10 IV. Additional Case Management Considerations

11 The Court notes that the Respondent's answer is not responsive
12 to some of the issues raised in the petition. However, in view of
13 the fact that counsel will be appointed for Petitioner, counsel may
14 desire to attempt to amend the petition. Thus, consideration of the
15 adequacy of the answer is premature. When the parties have filed a
16 joint scheduling statement indicating what pleadings or motions will
17 be required, the Court will proceed to schedule deadlines for the
18 filing of supplemental or additional pleadings and motions.

19 The due date of October 21, 2013, for Petitioner's filing of a
20 traverse, will be vacated.

21 V. Disposition

22 Accordingly, it is ORDERED that:

23 1) Petitioner's motion for the appointment of counsel is
24 GRANTED; and

25 2) The Federal Defender is APPOINTED to represent Petitioner;
26 and

27 3) The Clerk is DIRECTED to serve a copy of Petitioner's habeas
28 corpus petition and a copy of this Order on the Office of the

1 Federal Defender, and a copy of this order on Assistant Federal
2 Defendant David Porter and his assistant by direct, electronic
3 service to them at david_porter@fd.org and erin_mckenna@fd.org; and

4 4) Petitioner's counsel shall CONTACT the Clerk's Office to
5 make arrangements for copies of other documents in the file; and

6 5) Petitioner's counsel is INFORMED that any and all requests
7 for fees or costs must be made in advance of counsel's incurring or
8 contracting for them; and

9 6) The present deadline for filing the traverse is VACATED; and

10 7) Within forty-five (45) days of the date of service of this
11 order, the parties shall FILE a joint scheduling statement which
12 addresses the timing and order of the following matters:

13 a) The number of days Petitioner's counsel estimates it
14 will take to file either:

15 i) A statement indicating that Petitioner will stand
16 on the existing petition, or

17 ii) An amended petition;

18 b) Possible future amendments to the pleadings; and

19 c) Anticipated motions, including counsel's determination
20 of whether or not to proceed with Petitioner's motion for leave to
21 amend the petition (doc. 35).

22 Counsel are REMINDED of the importance of timely filing a
23 joint scheduling statement. Failure to do so may result in
24 sanctions.

25
26 IT IS SO ORDERED.

27 Dated: October 2, 2013

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE