

1 Koehn as the Respondent in this case. (Doc. 12).

2 **DISCUSSION**

3 A. Motion for Counsel.

4 Tthere currently exists no absolute right to appointment of counsel in habeas proceedings. See
5 e.g., Anderson v. Heinze, 258 F.2d 479, 481 (9th Cir. 1958); Mitchell v. Wyrick, 727 F.2d 773, 774
6 (8th Cir. 1984). However, Title 18 U.S.C. § 3006A(a)(2)(B) authorizes the appointment of counsel at
7 any stage of the case "if the interests of justice so require." See Rule 8(c), Rules Governing Section
8 2254 Cases. In the present case, the Court does not find that the interests of justice require the
9 appointment of counsel at the present time. Accordingly, Petitioner's motion for appointment of
10 counsel is denied without prejudice.

11 B. Motion for Equitable Tolling.

12 In this motion, Petitioner's requests the application of equitable tolling by this Court to make
13 his petition timely under prevailing federal habeas law. However, a preliminary review of the petition
14 does not indicate that it is untimely. The AEDPA imposes a one year period of limitation on
15 petitioners seeking to file a federal petition for writ of habeas corpus. 28 U.S.C. § 2244(d)(1). The
16 one-year limitation period commences the day following the expiration of Petitioner's direct appeal.

17 Petitioner states that he filed a petition for review that was denied by the California Supreme
18 Court on July 31, 2013. (Doc. 3, p. 1). Thus, direct review would have concluded on October 30,
19 2014, when the ninety-day period for seeking review in the United States Supreme Court expired.
20 Barefoot v. Estelle, 463 U.S. 880, 887 (1983); Bowen v. Roe, 188 F.3d 1157, 1159 (9th Cir.1999);
21 Smith v. Bowersox, 159 F.3d 345, 347 (8th Cir.1998). Petitioner would then have one year from the
22 following day, October 31, 2013, or until October 30, 2014, absent applicable tolling, within which to
23 file his federal petition for writ of habeas corpus. The petition indicates that Petitioner placed the
24 petition for mailing with prison staff on October 28, 2014. (Doc. 1, p. 21). Thus, the Court's
25 preliminary review of the petition's timeliness indicates that the petition would be timely by two days
26 if Petitioner's allegations regarding the dates set forth above are accurate. Accordingly, the Court will
27 deny without prejudice the motion to apply equitable tolling, since it does not appear at this juncture
28 that any tolling is required to make the petition timely. Should a timeliness issue arise at some later

1 point, Petitioner may again raise the issue of equitable tolling.

2 C. Motion to Amend Petitioner to Name Proper Respondent.

3 Pursuant to the Court’s order, Petitioner has moved to substitute as Respondent Warden Brian
4 Keohn, warden of the Florence Correctional Center, Florence, Arizona, where Petitioner is currently
5 incarcerated, for the present Respondent, “People of the State of California.” Because Warden Koehn
6 is the proper Respondent, the motion will be granted.

7 **ORDER**

8 For the foregoing reasons, IT IS HEREBY ORDERED as follows:

- 9 1. Petitioner’s motion to name the proper Respondent (Doc. 12), is GRANTED;
- 10 2. The Clerk of the Court is DIRECTED to substitute the name of Brian Koehn for
11 “People of the State of California” as the named Respondent in this case;
- 12 3. Petitioner’s motion to appoint counsel (Doc. 3), is DENIED;
- 13 4. Petitioner’s motion for equitable tolling (Doc. 4), is DENIED without prejudice.

14
15 IT IS SO ORDERED.

16 Dated: January 8, 2015

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE