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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICK ALAN PETROVICH,
Petitioner,
v.
KELLY SANTORO,
Respondent.

Case No. 1:15-cv-01546-JDP
ORDER DENYING PETITIONER’S MOTION
FOR APPOINTMENT OF COUNSEL
ECF No. 1 at 17

Petitioner Rick Alan Petrovich is a state prisoner proceeding without counsel on a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. A request for appointment of counsel was filed with the petition initiating this case.¹ ECF No. 1 at 17. In support of his request, petitioner submits that he is indigent and unable to afford counsel. *Id.*

A petitioner in a habeas proceeding does not have an absolute right to counsel. *See Anderson v. Heinze*, 258 F.2d 479, 481 (9th Cir. 1958) (“The Sixth Amendment has no application here . . .”). There are three specific circumstances where appointment of counsel is required in habeas proceedings. First, appointment of counsel is required for an indigent person seeking to vacate or set aside a death sentence in post-conviction proceedings under 28 U.S.C §§

¹ The motion has been pending for far too long (over three years). It appears this was due to a filing error. The motion should have been filed separately from the petition at the time the case was initiated but was, instead, filed as page 17 of the initial filing in docket number one.

1 2254 or 2255. *See* 18 U.S.C. § 3599(a)(2). Second, appointment of counsel may be required if
2 an evidentiary hearing is warranted. *See* Rules Governing Section 2254 and 2255 Cases 8(c).
3 Third, appointment of counsel may be necessary for effective discovery. *See* Rules Governing
4 Section 2254 and 2255 Cases 6(a). None of these situations is present here.

5 This court is further authorized to appoint counsel for an indigent petitioner in a habeas
6 corpus proceeding if the court determines that the interests of justice require the assistance of
7 counsel. *See Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986); 18 U.S.C. § 3006A(a)(2)(B).
8 However, “[i]ndigent state prisoners applying for habeas corpus relief are not entitled to
9 appointed counsel unless the circumstances of a particular case indicate that appointed counsel is
10 necessary to prevent due process violations.” *Chaney*, 801 F.2d at 1196. In assessing whether to
11 appoint counsel, the court evaluates the petitioner’s likelihood of success on the merits as well as
12 the ability of the petitioner to articulate his claims pro se, considering the complexity of the legal
13 issues involved. *See Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983).

14 The court cannot conclude at this point that counsel is necessary to prevent a due process
15 violation. The legal issues currently involved are not exceptionally complicated and petitioner
16 has not demonstrated a likelihood of success on the merits. Accordingly, the court finds that
17 appointed counsel is not necessary to guard against a due process violation and that the interests
18 of justice do not require the appointment of counsel at this time.

19 Accordingly, petitioner’s motion for the appointment of counsel, ECF No. 1, is denied.

20
21 IT IS SO ORDERED.

22 Dated: October 23, 2018

23 
24 UNITED STATES MAGISTRATE JUDGE