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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 WILLIE LEO HARRIS,
12 Petitioner,

13 v.

14 RON DAVIS, Warden of California State
15 Prison at San Quentin,
16 Respondent.

Case No. 1:16-cv-01572-DAD

DEATH PENALTY CASE

ORDER GRANTING APPLICATION FOR
APPOINTMENT OF COUNSEL
(Doc. No. 1)

ORDER GRANTING APPLICATION TO
PROCEED WITHOUT PREPAYMENT OF
FEES
(Doc. No. 2)

ORDER DENYING WITHOUT PREJUDICE
APPLICATION FOR STAY OF EXECUTION
(Doc. No. 1)

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20 On October 18, 2016, petitioner Willie Leo Harris, a state prisoner facing capital
21 punishment, commenced this action pursuant to 28 U.S.C. § 2254 by filing an application for
22 appointment of counsel to represent him and for stay of execution (*see* Doc. No. 1). Petitioner
23 appends his declaration (*see* Doc. No. 1-1) supporting both this application and his separate
24 application to proceed in forma pauperis filed on his behalf by Jennifer Mann, Assistant Federal
25 Defender (*see* Doc. No. 2). Petitioner's declaration includes a statement of his indigence.

26 I. REQUEST FOR APPOINTMENT OF COUNSEL

27 Section 3599(a)(2) of Title 18 of the United States Code provides for the appointment of
28 one or more attorneys to represent an indigent person proceeding under 28 U.S.C. § 2254 to

1 vacate a death sentence. Rule 191(c) of the Local Rules of the United States District Court for
2 the Eastern District of California also provides for the appointment of counsel for indigent
3 capital habeas petitioners. Under this rule, selection of counsel is made from a panel of attorneys
4 qualified for appointment in death penalty cases and certified by a selection board appointed by
5 the Chief Judge. Based on petitioner's submissions, he is entitled to appointment of counsel
6 under 18 U.S.C. § 3599(a)(2).

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8 **II. STAY OF EXECUTION**

9 Section 2251(a)(3) of Title 28 of the United States Code provides for grant of stay of
10 execution once federal jurisdiction is invoked by a request for appointment of counsel pursuant
11 to Section 3359(a) of Title 18 of the United States Code. Rule 191(g)(1-2) of the Local Rules of
12 the United States District Court for the Eastern District of California also provides for stay of
13 execution pending appointment of counsel and final disposition. Based on the petitioner's
14 submissions, an order granting a stay of execution is unnecessary at this time because no
15 execution date has been set.

16 **III. APPLICATION TO PROCEED IN FORMA PAUPERIS**

17 Rule 3(a) of the Rules Governing § 2254 Cases in the United States District Courts
18 provides that a petitioner seeking in forma pauperis status shall file an affidavit of assets as
19 required by 28 U.S.C. § 1915. Rule 3(a) also requires a certificate from the prison stating the
20 amount on deposit in the petitioner's accounts. Based on petitioner's submissions, he has
21 complied with the requirements of 28 U.S.C. § 1915 and Rule 3(a) of the Rules Governing §
22 2254 Cases in the United States District Courts. Petitioner is entitled to proceed in forma
23 pauperis.

24 **IV. ORDER**

25 The court finds good cause to grant petitioner's application for appointment of counsel
26 and to proceed in forma pauperis. No stay of execution order is necessary at this time and that
27 request will be denied without prejudice to its renewal should it become necessary.

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1 For the reasons set forth above:

- 2 1. Petitioner's application for appointment of counsel is granted. The matter is
3 referred to the Selection Board for the Eastern District of California for
4 recommendation of suitable counsel;
- 5 2. Petitioner's application to proceed in forma pauperis is granted; and
- 6 3. Petitioner's application for stay of execution is denied without prejudice.

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8 IT IS SO ORDERED.

9 Dated: October 19, 2016



UNITED STATES DISTRICT JUDGE