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

EURIE BRIM, III,
Plaintiff,
v.
WILLIAM J. SCHLAERTH, *et al.*
Defendants.

Case No. 1:17-cv-00797-AWI-EPG
ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL
(ECF No. 7)

Eurie Brim, III (“Plaintiff”) is proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on June 12, 2017. (ECF No. 1). Plaintiff alleges that William J. Schlaerth, a Kern County District Attorney, and Sean Mountjoy, a Kern County Sheriff Officer, violated his constitutional rights by committing perjury and introducing false evidence to obtain an illegal conviction against him. *Id.* On October 20, 2017, this Court found that the Complaint fails to state any cognizable claim upon which relief may be granted under § 1983, and granted Plaintiff leave to file an amended complaint. (ECF No. 9.) Now before the Court is Plaintiff’s motion for appointment of counsel. (ECF No. 7.)

1 Pursuant to 28 U.S.C. § 1915(e)(1), the Court may appoint counsel to an indigent party in
2 a civil case. However, the appointment of counsel is not a constitutional right, and the Court
3 cannot require an attorney to represent a party. *See Rand v. Rowland*, 113 F.3d 1520, 1525 (9th
4 Cir. 1997), *withdrawn in part on other grounds*, 154 F.3d 952 (9th Cir. 1998); *Mallard v. United*
5 *States District Court for the Southern District of Iowa*, 490 U.S. 296, 298 (1989). Without a
6 reasonable method of securing and compensating counsel, the Court will seek the voluntary
7 assistance of counsel only in the most serious and exceptional circumstances. *Rand*, 113 F.3d at
8 1525. In determining whether exceptional circumstances exist, “a district court must evaluate
9 both the likelihood of success of the merits [and] the ability of the [plaintiff] to articulate his
10 claims pro se in light of the complexity of the legal issues involved.” *Id.* (internal quotation
11 marks and citations omitted).

12 Here, Plaintiff argues that the likelihood of success “for a writ of habeas corpus is over
13 whelming [*sic*].” (ECF No. 7.) Plaintiff, however, cannot bring a section 1983 claim to
14 collaterally attack a criminal conviction unless “the conviction or sentence has been reversed on
15 direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to
16 make such a determination, or called into question by a federal court’s issuance of a writ of
17 habeas corpus.” *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994). As it appears that Plaintiff
18 seeks to challenge his criminal conviction in this section 1983 action, the Court declines to
19 appoint counsel at this time. Nevertheless, if Plaintiff elects to amend his complaint and proceed
20 in this action, he may renew his motion for appointment of counsel.

21 For the foregoing reasons, IT IS ORDERED that Plaintiff’s motion for appointment of
22 counsel is DENIED without prejudice.

23
24 IT IS SO ORDERED.

25 Dated: October 30, 2017

26 /s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE

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