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7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**
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10 ROBERT LEE ELLIS,
11 Petitioner,

12 v.

13 MARTIN BITER,
14 Respondent.

Case No. 1:17-cv-01443-DAD-SAB-HC
ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL
(ECF No. 23)

15
16 Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus
17 pursuant to 28 U.S.C. § 2254.

18 Petitioner has moved for appointment of counsel. (ECF No. 23). There currently exists no
19 absolute right to appointment of counsel in habeas proceedings. See, e.g., Chaney v. Lewis, 801
20 F.2d 1191, 1196 (9th Cir. 1986); Anderson v. Heinze, 258 F.2d 479, 481 (9th Cir. 1958).
21 However, the Criminal Justice Act authorizes the appointment of counsel at any stage of the
22 proceeding for financially eligible persons if “the interests of justice so require.” 18 U.S.C. §
23 3006A(a)(2)(B). See also Rule 8(c), Rules Governing Section 2254 Cases. To determine whether
24 to appoint counsel, the “court must evaluate the likelihood of success on the merits as well as the
25 ability of the petitioner to articulate his claims pro se in light of the complexity of the legal issues
26 involved.” Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983).

27 Petitioner argues that counsel should be appointed because he “is unlearned in the law,
28 having only a 12th grade education; indigent and cannot afford to obtain counsel, and because of

1 his incarceration, is unable to obtain crucial evidence under discovery that only an attorney can
2 obtain through cooperation.” (ECF No. 23 at 1).

3 Upon review of the petition, the Court finds that Petitioner appears to have a sufficient
4 grasp of his claims and the legal issues involved and that he is able to articulate those claims
5 adequately. The legal issues involved are not extremely complex, and Petitioner does not
6 demonstrate a likelihood of success on the merits such that the interests of justice require the
7 appointment of counsel at the present time. Moreover, leave of court is required to conduct
8 discovery, and the Court has not authorized discovery in this proceeding. Rule 6, Rules
9 Governing § 2254 Cases.

10 Accordingly, IT IS HEREBY ORDERED that the motion for appointment of counsel
11 (ECF No. 22) is DENIED without prejudice.

12 IT IS SO ORDERED.

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14 Dated: February 9, 2018


UNITED STATES MAGISTRATE JUDGE