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United States District Court
Eastern District of California

Kinte M. Graves,

Petitioner,

vs.

Richard J. Kirkland,

Respondent.

No. Civ. S 05-1349 GEB PAN P

Order

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Petitioner, a state prisoner proceeding without counsel, seeks a writ of habeas corpus. See 28 U.S.C. § 2254. Petitioner has paid the filing fee.

A judge "entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243. Petitioner may be entitled to relief.

1 Petitioner requests appointment of counsel on the grounds he is
2 indigent and lacks legal training and the law is complex.

3 There is no absolute right to appointment of counsel in
4 habeas proceedings. See Nevius v. Sumner, 105 F.3d 453, 460 (9th
5 Cir. 1996). However, whenever the court determines the interests
6 of justice so require, representation may be provided for any
7 financially eligible person who is seeking relief under section
8 18 U.S.C. § 2254. 18 U.S.C. § 3006A(a)(2)(B). Unless an
9 evidentiary hearing is necessary, the decision to appoint counsel
10 is discretionary. Bashor v. Risley, 730 F.2d 1228, 1234 (9th
11 Cir.), *cert. denied*, 469 U.S. 838 (1984); Rule 8(c), Rules
12 Governing § 2254 Cases.

13 In deciding whether to appoint counsel the court exercises
14 discretion governed by a number of factors, including the
15 likelihood of success on the merits and the applicant's ability
16 to present his claims in light of their complexity. Weygandt v.
17 Look, 718 F.2d 952, 954 (9th Cir. 1983); see also, LaMere v.
18 Risley, 827 F.2d 622, 626 (9th Cir. 1987). Ordinarily the
19 presumption of regularity in the state's procedures for confining
20 prisoners suggests a lack of likely success and counsels against
21 appointment of counsel. See Maclin v. Freake, 650 F.2d 885, 887
22 (7th Cir. 1981). As a general rule, the court will not appoint
23 counsel unless the applicant shows his claim has merit in fact
24 and law. Id. Even if the applicant overcomes this hurdle, the
25 court will not appoint counsel if the law is settled and the
26 material facts are within the petitioner's possession, viz., they

1 do not require investigation outside the prison walls. Id. at
2 887-88.

3 Here, petitioner alleges his constitutional rights were
4 violated in connection with sentencing. The law governing these
5 issues is settled. Neither factual development nor legal insight
6 are required because these proceedings are limited to claims that
7 already were identified and presented to the California Supreme
8 Court. There is, on the record before the court, no reason to
9 believe appointment of counsel would be of significant benefit.

10 Accordingly, the court hereby orders that:

11 1. Petitioner's July 5, 2005, request for the appointment
12 of counsel therefore is denied.

13 2. Respondent shall respond to petitioner's application
14 within 60 days from the date of this order. See Rule 4, Fed. R.
15 Governing § 2254 Cases. An answer shall be accompanied by any
16 and all transcripts or other documents relevant to the
17 determination of the issues presented in the application. See
18 Rule 5, Fed. R. Governing § 2254 Cases. Petitioner's reply, if
19 any, shall be filed and served within 30 days of service of an
20 answer. If the response to petitioner's application is a motion,
21 petitioner's opposition or statement of non-opposition shall be
22 filed and served within 30 days of service of the motion, and
23 respondents' reply, if any, shall be filed within 15 days
24 thereafter. The Clerk of the Court shall serve a copy of this
25 order together with a copy of petitioner's June 27, 2005,
26 petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254

1 on Jo Graves, Attorney General for the State of California.

2 Dated: July 7, 2005.

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/s/ Peter A. Nowinski

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PETER A. NOWINSKI

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Magistrate Judge

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