

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANK BENSON,

Petitioner,

No. CIV-S-05-2022 GEB KJM P

vs.

EDWARD ALAMEIDA,

Respondent.

ORDER

_____/

Petitioner has requested the appointment of counsel. There currently exists no absolute right to appointment of counsel in habeas proceedings. See Nevius v. Sumner, 105 F.3d 453, 460 (9th Cir. 1996). However, 18 U.S.C. § 3006A authorizes the appointment of counsel at any stage of the case “if the interests of justice so require.” See Rule 8(c), Fed. R. Governing § 2254 Cases. In the present case, the court does not find that the interests of justice would be served by the appointment of counsel at the present time.

Petitioner has requested an order permitting him to proceed in forma pauperis on appeal. The court’s records reflect that he paid the filing fee for this habeas action. Docket No. 1. Rule 24(a) of the Federal Rules of Appellate Procedure provides that a party to a district court action who desires to proceed in forma pauperis on appeal must file a motion in the district court

////

////

1 which:

2 (A) shows in the detail prescribed by Form 4 of the Appendix of
3 Forms the party's inability to pay or to give security for fees and
4 costs;

4 (B) claims an entitlement to redress; and

5 (C) states the issues that the party intends to present on appeal.

6 Fed. R. App. P. 24(a)(1). Petitioner has submitted an affidavit showing he is unable to pay the
7 filing fees for his appeal and in his motion for a certificate of appealability (doc. no. 37) has
8 described the issues he wishes to pursue on appeal.

9 Accordingly, IT IS HEREBY ORDERED that

10 1. Petitioner's request for appointment of counsel (Docket No. 40) is denied
11 without prejudice to a renewal of the motion in the Court of Appeals;

12 2. Petitioner's requests to proceed in forma pauperis on appeal (Docket Nos.
13 43& 44) are granted.

14 DATED: December 3, 2010.

15
16 
17 U.S. MAGISTRATE JUDGE
18

19
20
21
22
23
24
25
26