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

FRANKIE LEE SMITH,

Petitioner,

No. CIV S-06-0009 MCE GGH P

vs.

J.D. STOKES,

Respondent.

ORDER

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Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with an application to proceed in forma pauperis.

Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

Since petitioner may be entitled to relief if the claimed violation of constitutional rights is proved, respondents will be directed to file a response to petitioner’s habeas petition.

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

1 § 2254 Cases. In the present case, the court does not find that the interests of justice would be  
2 served by the appointment of counsel at the present time.

3 In accordance with the above, IT IS HEREBY ORDERED that:

4 1. Petitioner's application to proceed in forma pauperis is granted;  
5 2. Petitioner's November 17, 2005, motion for appointment of counsel is denied;  
6 3. Respondents are directed to file a response to petitioner's habeas petition  
7 within thirty days from the date of this order. See Rule 4, Fed. R. Governing § 2254 Cases. An  
8 answer shall be accompanied by all transcripts and other documents relevant to the issues  
9 presented in the petition. See Rule 5, Fed. R. Governing § 2254 Cases;

10 4. If the response to the habeas petition is an answer, petitioner's reply, if any,  
11 shall be filed and served within thirty days after service of the answer;

12 5. If the response to the habeas petition is a motion, petitioner's opposition or  
13 statement of non-opposition to the motion shall be filed and served within thirty days after  
14 service of the motion, and respondents' reply, if any, shall be filed and served within fifteen days  
15 thereafter; and

16 6. The Clerk of the Court shall serve a copy of this order together with a copy of  
17 the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on Jo Graves, Senior  
18 Assistant Attorney General.

19 DATED: 2/1/06

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21 /s/ Gregory G. Hollows

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GREGORY G .HOLLOWS  
UNITED STATES MAGISTRATE JUDGE

23 ggh:kj  
24 smit0009.110  
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