

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

KEVIN LOUIS HOLLOWAY,

No. 2:09-00922-MCE-DAD P

Petitioner,

vs.

ORDER

BEN CURRY,

Respondent.

_____ /

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 27, 2010, the magistrate judge filed findings and recommendations herein which were served on petitioner and which contained notice to petitioner that any objections to the findings and recommendations were to be filed within twenty-one days. Petitioner was granted an extension of time on August 16, 2010. On September 13, 2010, petitioner filed objections to the findings and recommendations.

///

///

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
2 court has conducted a de novo review of this case. Having carefully reviewed the entire file, the
3 court finds the findings and recommendations to be supported by the record and by proper
4 analysis.

5 Petitioner has also requested that a certificate of appealability issue should the court adopt
6 the findings and recommendations. The request will be denied. The court cannot issue a
7 certificate since an order denying a motion for stay and abeyance is not a final, appealable order
8 under 28 U.S.C. § 1291.

9 Lastly, in his objections petitioner has requested the appointment of counsel. There
10 currently exists no absolute right to appointment of counsel in habeas proceedings. See Nevius
11 v. Sumner, 105 F.3d 453, 460 (9th Cir. 1996). However, 18 U.S.C. § 3006A authorizes the
12 appointment of counsel at any stage of the case “if the interests of justice so require.” See Rule
13 8(c), Fed. R. Governing § 2254 Cases. In the present case, the court does not find that the
14 interests of justice would be served by the appointment of counsel at the present time.

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. The findings and recommendations filed July 27, 2010, are adopted in full;
- 17 2. Petitioner’s February 19, 2010 motion for a stay and abeyance (Doc. No. 13) is denied;
- 18 3. Petitioner’s third and fourth claims for relief are dismissed as unexhausted;
- 19 4. Petitioner’s September 13, 2010 request for a certificate of appealability and request
20 for appointment of counsel are denied; and
- 21 5. The Magistrate Judge shall issue an order directing the respondent to file a response to
22 Grounds One and Two of petitioner’s petition for a writ of habeas corpus.

23 Dated: September 17, 2010

24 
25 MORRISON C. ENGLAND, JR.
26 UNITED STATES DISTRICT JUDGE