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

ALFREDO VARGAS,

Petitioner,

No. CIV S-09-1697 GGH P

vs.

ANTHONY HEDGPETH, et al.,

Respondents.

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. The petition raises five claims: 1) insufficient evidence to support conviction for assault with a firearm; 2) tainted eyewitness identification procedure; 3) partial verdict procedure improper; 4) comments to the jury by the court were improper; 5) use of juvenile conviction to justify upper term improper.

On June 26, 2009, the court issued an order finding that the insufficient evidence claim was not exhausted. The court ordered petitioner to inform the court whether he wanted to stay the action and return to state court to exhaust this claim or proceed on the exhausted claims only. On July 27, 2009, petitioner filed a request to dismiss the unexhausted claim and proceed on the exhausted claim only.

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

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

8           1. Petitioner’s July 27, 2009, motion to dismiss the insufficient evidence claim  
9 (no. 7) is granted;

10           2. Petitioner’s June 18, 2009, motion for the appointment of counsel (no. 3) is  
11 denied;

12           3. Respondents are directed to file a response to petitioner’s habeas petition  
13 within sixty days from the date of this order. See Rule 4, Fed. R. Governing § 2254 Cases. An  
14 answer shall be accompanied by all transcripts and other documents relevant to the issues  
15 presented in the petition. See Rule 5, Fed. R. Governing § 2254 Cases;

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

18           5. If the response to the habeas petition is a motion, petitioner’s opposition or  
19 statement of non-opposition to the motion shall be filed and served within thirty days after  
20 service of the motion, and respondents’ reply, if any, shall be filed and served within fifteen days  
21 thereafter; and

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