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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ADRIAN FRANK ANDRADE,
Petitioner,
v.
MATTHEW CATE,
Respondent.

No. 2:09-cv-2270 KJM AC P

ORDER

Petitioner is a state prisoner now proceeding pro se in this habeas matter. On September 24, 2013, the district judge vacated the January 18, 2012 Order adopting Magistrate Judge Bommer’s Findings and Recommendations and denying the instant habeas petition. District Judge Mueller re-opened this case on petitioner’s pro se Rule 60(b)(6) motion, on the ground that petitioner’s retained habeas counsel had “effectively abandoned him” following the filing of the traverse in this case. See Order at ECF No. 24. Petitioner’s counsel was faulted for having failed to object to the findings and recommendations, to seek a certificate of appealability, to file a notice of appeal, or even to notify petitioner himself about the decision denying his petition. In addition, Judge Mueller noted that only four of the five grounds of the petition had been addressed in the answer or reply or had been considered by the then-assigned magistrate judge, and found that this omission also warranted relief under Rule 60(b). The unanswered ground of the petition is Ground Five: “There was insufficient evidence to sustain a conviction for murder

1 or robbery as the accomplice's testimony, upon which the prosecution's case was predicated, was
2 not sufficiently corroborated." Petition (ECF No. 1) at 17. This case has been assigned to the
3 undersigned for further proceedings.

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

10 Accordingly, IT IS ORDERED that:

- 11 1. Respondent is directed to file an answer to ground five of the petition within 60 days;
- 12 2. Petitioner must file any reply to the answer within 60 days thereafter; and
- 13 3. Petitioner's October 7, 2013 request for appointment of counsel (ECF No. 27) is
14 denied without prejudice to a renewal of the motion at a later stage of the proceedings.

15 DATED: October 28, 2013

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17 ALLISON CLAIRE
18 UNITED STATES MAGISTRATE JUDGE
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