

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

SHERMAN CUMMINGS,

Petitioner,

No. CIV S-10-2657 DAD P

vs.

ATTORNEY GENERAL OF THE
STATE OF CALIFORNIA,

Respondents.

ORDER

_____/

Petitioner has filed a form habeas corpus petition 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)(1).

The court has conducted a cursory review of the petition in this action and
determined that it must be dismissed with leave to amend. If petitioner elects to proceed with
this action by filing an amended petition, he must allege facts clarifying what conviction he is
seeking to challenge and state when and where that judgment of conviction was entered against
him. He must also allege facts explaining why he believes his conviction was improperly

1 obtained in violation of his rights under the U.S. Constitution. The court notes that in his
2 original petition, petitioner failed to assert any claims whatsoever.

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

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Petitioner's motion to proceed in forma pauperis (Doc. No. 2) is granted;
- 11 2. Petitioner's application for writ of habeas corpus is dismissed with leave to
12 amend within thirty days from the date of this order;
- 13 3. Any amended petition must be filed on the form employed by this court and
14 must state all claims and prayers for relief on the form. It must bear the case number assigned to
15 this action and must bear the title "Amended Petition";
- 16 4. Petitioner's motion for appointment of counsel (Doc. No. 3) is denied; and
- 17 5. The Clerk of the Court is directed to send petitioner the form for habeas corpus
18 application.

19 DATED: March 8, 2011.

20
21 
22 _____
23 DALE A. DROZD
24 UNITED STATES MAGISTRATE JUDGE

22 DAD:9
23 cumm2657.amd