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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

OMAR VALDIVIA,
Petitioner,
v.
S. FRAUENHEIM, Warden,
Respondent.

No. 2:14-cv-2097 TLN KJN P

ORDER

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).

Petitioner was convicted by a jury of “committing numerous sexual offenses against two minors, including rape, oral copulation, digital penetration, and lewd and lascivious conduct by use of force, violence, duress, menace or threat of great bodily harm.” People v. Valdivia, 2014 WL 1465115 (Cal. App. 3 Dist. April 15, 2014). Petitioner was sentenced to ten consecutive terms of 15 years to life in state prison. (Id., at *1.)

On September 10, 2014, petitioner, through the help of another inmate, filed a motion for appointment of counsel. (ECF No. 3.) Petitioner claims he speaks only Spanish, and cannot read

1 or write English. During the underlying criminal proceedings, counsel communicated with
2 petitioner solely in Spanish. See e.g. ECF No. 3 at 3. Petitioner provided evidence that at the
3 present time he tests at a 1.5 grade point level in reading. (ECF No. 3 at 6.)


4 In light of the complexity of the legal issues involved, as well as petitioner's disability, the
5 court has determined that the interests of justice require appointment of counsel. See 18 U.S.C.
6 § 3006A(a)(2)(B); see also Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983).

7 Because counsel is appointed to represent petitioner, counsel is granted leave to file a
8 motion to amend or advise the court whether counsel intends to proceed on the pro se petition.
9 Petitioner is granted sixty days in which to file a motion to amend. If petitioner does not so
10 move, the court will order briefing on the original petition.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. Petitioner's motion to proceed in forma pauperis (ECF No. 2) is granted;
- 13 2. Petitioner's motion for appointment of counsel (ECF No. 3) is granted;
- 14 3. The Federal Defender is appointed to represent petitioner;
- 15 4. The Clerk of the Court is directed to serve a copy of the petition (ECF No. 1), the
16 motion for appointment of counsel (ECF No. 3), and this order on David Porter, Assistant Federal
17 Defender; and
- 18 5. Petitioner is granted sixty days in which to renew his motion to amend. If petitioner
19 does not so move, the court will order briefing on the original petition.

20 Dated: January 12, 2015

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23 KENDALL J. NEWMAN
24 UNITED STATES MAGISTRATE JUDGE

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