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

DURRELL ANTHONY PUCKETT,
Plaintiff,
v.
A. AGBOLI, et al.,
Defendants.

No. 2:14-CV-2776-JAM-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Plaintiff’s motion for the appointment of counsel and access to his mental health records, ECF No. 128.

The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). A finding of “exceptional circumstances” requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims on his own in light of the complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the

1 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment
2 of counsel because:

3 . . . Terrell demonstrated sufficient writing ability and legal knowledge to
4 articulate his claim. The facts he alleged and the issues he raised were not
5 of substantial complexity. The compelling evidence against Terrell made it
6 extremely unlikely that he would succeed on the merits.

7 Id. at 1017.

8 In the present case, the Court does not at this time find the required exceptional
9 circumstances. Here, Plaintiff asserts that he is unable to competently prepare and present his case
10 due to the nature and severity of his mental illness. See ECF No. 128. Plaintiff claims that he
11 hears voices and has recently attempted to commit suicide. See id. Additionally, Plaintiff claims
12 he is receiving the highest possible level of mental health care at the California Department of
13 Corrections and Rehabilitation. See id. Plaintiff asserts that, as a consequence of his condition, he
14 is unable to properly present his case. As such, Plaintiff requests the appointment of counsel to
15 allow him to articulate his claim in the light of the complexity of the legal issues involved. See id.

16 However, there is nothing in Plaintiff's motion or other filings to indicate he is
17 unable to comprehend these proceedings. In this regard, the Court notes that Plaintiff has
18 attached no documentation to his current motion for the appointment of counsel establishing the
19 level of his mental health care, or limitations posed by his mental health problems. The Court
20 also notes that Plaintiff's motion is well-written and coherent. Further, a review of the file in this
21 case reflects that Plaintiff is able to articulate his claims, which are neither factually nor legally
22 complex. Finally, the Court still cannot say that Plaintiff has established a particular likelihood of
23 success on the merits.

24 As to Plaintiff's request for access to his mental health records, the request is denied
25 without prejudice. It is the Court's understanding that inmates may be permitted access to their prison
26 file, including medical records, on the inmate's request to appropriate prison officials. If, after
27 making such request, Plaintiff is still unable to access his mental health records, the Court will
28 entertain a renewed motion.

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Accordingly, IT IS HEREBY ORDERED that Plaintiff's request for the appointment of counsel and access to mental health records, ECF No. 128, is denied, without prejudice to a renewal of either or both requests for relief, upon the showing referenced above. Pending such further motion(s), the Clerk of the Court is directed to terminate ECF No. 128 as a pending motion.

Dated: January 17, 2023



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE