

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

BRAD ROBERT MILLER,

Petitioner,

vs.

CRAIG KOENIG, Warden, Correctional
Training Facility-Soledad,

Respondent.

No. 2:15-cv-01365-JKS

ORDER

[Re: Motion at Docket No. 53]

This Court denied Brad Robert Miller, a state prisoner proceeding *pro se*, habeas relief and a certificate of appealability on March 22, 2019. Docket Nos. 50, 51. Miller timely filed a notice of appeal with this Court dated April 2, 2019. Docket No. 52. Miller concurrently moved for the appointment of counsel and to proceed *in forma pauperis* on appeal. Docket No. 53.

While this Court is not unmindful of the plight of unrepresented state prisoners in federal habeas proceedings, there is no constitutional right to counsel in federal habeas proceedings. *See Lawrence v. Florida*, 549 U.S. 327, 336-37 (2007) (citing *Coleman v. Thompson*, 501 U.S. 722, 756-57 (1991)). Appointment of counsel is not required in a habeas corpus proceeding in the absence of an order granting discovery or an evidentiary hearing. *See* Rules Governing Section 2254 Cases in the U.S. District Courts, Rule 6(a), 8(c). This Court may under the Criminal Justice Act appoint counsel in this case if it determines that the interests of justice so require. 28 U.S.C. § 2254(h); 18 U.S.C. § 3006A(a)(2)(B); *see Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983) (“In deciding whether to appoint counsel in a habeas proceeding, the district court must evaluate the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved.”). Because

this case has been fully briefed, and the Court has considered and adjudicated it on the merits and determined that no Certificate of Appealability should be granted, this Court does not so determine. Miller's request for counsel is therefore denied. Miller may renew his request for the appointment of counsel in the event he obtains a certificate of appealability from the Ninth Circuit Court of Appeals.

Miller also moves for leave to appeal *in forma pauperis*. Docket No. 53. As this Court has already granted Miller leave to proceed *in forma pauperis*, Docket No. 7, it is unnecessary for him to obtain further authorization from this Court, *see* FED. R. APP. P. 24(a)(3).

IT IS THEREFORE ORDERED THAT the Motion to Appoint Counsel and Proceed *In Forma Pauperis* is **DENIED**.

Dated: April 9, 2019.

/s/James K. Singleton, Jr.
JAMES K. SINGLETON, JR.
Senior United States District Judge