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

JAMISI JERMAINE CALLOWAY,  
  
Plaintiff,  
  
v.  
  
CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION, et al.,  
  
Defendants.

No. 2:16-CV-2532-WBS-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, ECF No. 54.

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

1 dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the  
2 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment  
3 of counsel because:

4 . . . Terrell demonstrated sufficient writing ability and legal knowledge to  
5 articulate his claim. The facts he alleged and the issues he raised were not  
6 of substantial complexity. The compelling evidence against Terrell made it  
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. Plaintiff contends that his physical health conditions and the complexities of this  
10 case require that counsel be appointed to expedite trial so Plaintiff can die surrounded by family  
11 instead of being incarcerated. See generally ECF No. 54. Plaintiff does not claim that his  
12 declining health has affected his ability to properly articulate his claim. To the contrary based on  
13 the pleadings he has shown his ability to adequately articulate his claims. Moreover, Plaintiff has  
14 not demonstrated any particular likelihood of success on the merits of the claim. As such, Plaintiff  
15 has not demonstrated exceptional circumstances warranting the appointment of counsel.

16 Accordingly, IT IS HEREBY ORDERED that Plaintiff's request for the  
17 appointment of counsel, ECF No. 54, is denied.

18  
19 Dated: January 17, 2023



20 DENNIS M. COTA  
21 UNITED STATES MAGISTRATE JUDGE