

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
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS EARL PUTNEY,
Plaintiff,
v.
WARDEN ROBERT FOX, et al.,
Defendants.

No. 2:17-cv-1507 WBS DB P

ORDER

Plaintiff is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). On September 14, 2017, plaintiff’s complaint was dismissed for failure to state a claim. Leave to amend was granted, and an amended pleading was due on or before October 14, 2017. When plaintiff failed to file an amended complaint by that date, the undersigned issued findings and recommendations to dismiss this action without prejudice.

Plaintiff has now filed objections to the findings and recommendations claiming that he missed the court deadline for filing an amended pleading because he was placed in an acute crisis hospital for his mental health condition and was thus unable to write to the court. He also argues that his mental health and his placement in the Enhanced Outpatient Program (“EOP”) prevents him from properly prosecuting this action, and he once again requests the appointment of counsel.

///

1 In support of his motion, plaintiff filed several documents chronicling his physical and
2 mental issues. As for his physical health, plaintiff submits some medical records as well as
3 multiple health care grievances addressing lost or missing medical appliances. As for his mental
4 health, plaintiff submits a July 2013 order appointing counsel in a habeas case, Putney v. People
5 of the State of California, 1:13-cv-0771 JLT (E.D. Cal.), based on a July 2011 report from a
6 psychologist, who reported that plaintiff's mental illness "wax[es] and wan[es] – but [is] never
7 entirely absent – [and during which he demonstrates] chronic depression/manic episodes,
8 impulsivity and decision-making that appears anything but rationally thought out, and poor
9 cognitive, perceptual, and emotional functioning that are ever-present to some degree." Pl.'s Obj.
10 Attach. (ECF No. 21 at 8-14). He also submits a printout of "Bed Assignments" showing that
11 between January 2015 and January 2016, plaintiff was placed in a mental health crisis bed at least
12 six times. See id. (ECF No. 21 at 6).

13 The United States Supreme Court has ruled that district courts lack authority to require
14 counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490
15 U.S. 296, 298 (1989). In certain exceptional circumstances, the district court may request the
16 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d
17 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).

18 The test for exceptional circumstances requires the court to evaluate the plaintiff's
19 likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in
20 light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328,
21 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983).

22 Plaintiff's original complaint was screened and dismissed for failure to state a claim since
23 the allegations were cursory, and the undersigned declined to peruse through 450 pages of
24 attachments to find the nature of plaintiff's claim(s). Although plaintiff has now submitted
25 evidence of his mental illness, there is no indication that plaintiff is unable to articulate his claims
26 in an amended pleading. Furthermore, in the absence of the amended pleading, the court is unable
27 to evaluate the likelihood of plaintiff's success on the merits.

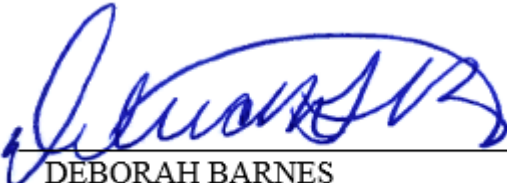
28 ///

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
27
28

For these reasons, IT IS HEREBY ORDERED that:

1. Plaintiff's request for appointment of counsel (ECF No. 21) is denied without prejudice to its renewal;
2. The October 31, 2017, findings and recommendations (ECF No. 20) are vacated; and
3. Plaintiff shall file a first amended complaint within thirty days from the date of this order.

Dated: January 25, 2018



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

/DLB7;
DB/Inbox/Substantive/putn1507.eot fac