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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JIMMIE STEPHEN,

Plaintiff,

v.

E. MONTEJO,

Defendant.

No. 2:18-cv-1796 KJM DB P

ORDER

Plaintiff, a state prisoner proceeding pro se with a civil rights action, has requested appointment of counsel. This case is proceeding on plaintiff’s claim that defendant Montejo was deliberately indifferent to plaintiff’s serious medical need in violation of the Eighth Amendment. Plaintiff argues that he is inexperienced in the law, has limited law library access, and cannot afford an attorney. Plaintiff further argues that the issues in his case are complex and, if the case goes to trial, an attorney would be better able to present evidence and cross-examine witnesses.

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

The test for exceptional circumstances requires the court to evaluate the plaintiff’s likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in

1 light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328,
2 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances
3 common to most prisoners, such as lack of legal education and limited law library access, do not
4 establish exceptional circumstances that would warrant a request for voluntary assistance of
5 counsel. In the present case, plaintiff's difficulties in litigating this case are those faced by most
6 prisoners. This court does not find the required exceptional circumstances.

7 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for the appointment of
8 counsel (ECF No. 113) is denied.

9 Dated: May 9, 2022

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12 DEBORAH BARNES
13 UNITED STATES MAGISTRATE JUDGE
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