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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIATYRONE REED, Sr.,
Petitioner,
v.
MARTIN BITER,
Respondent.Case No. [13-cv-5455-TEH](#)

ORDER DENYING MOTIONS

Re: Dkt. Nos. 51, 55

Petitioner, Tyrone Reed, filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254. The Court granted a motion to dismiss and dismissed many claims from the petition as procedurally defaulted. Docket No. 47. The Court then reviewed the merits of the remaining claim and denied the petition. Docket No. 48. Petitioner has filed an appeal and a motion to appoint counsel.

The Sixth Amendment right to counsel does not apply in habeas corpus actions. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). Title 18 U.S.C. § 3006A(a)(2)(B), however, authorizes a district court to appoint counsel to represent a habeas petitioner whenever "the court determines that the interests of justice so require" and such person is financially unable to obtain representation. The decision to appoint counsel is within the discretion of the district court. See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986); Knaubert, 791 F.2d at

1 728; Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984). The
2 courts have made appointment of counsel the exception rather than
3 the rule by limiting it to: (1) capital cases; (2) cases that
4 turn on substantial and complex procedural, legal or mixed legal
5 and factual questions; (3) cases involving uneducated or mentally
6 or physically impaired petitioners; (4) cases likely to require
7 the assistance of experts either in framing or in trying the
8 claims; (5) cases in which petitioner is in no position to
9 investigate crucial facts; and (6) factually complex cases. See
10 generally 1 Randy Hertz & James Liebman, Federal Habeas Corpus
11 Practice and Procedure § 12.3b at 799-813 (6th ed. 2011).
12 Appointment is mandatory only when the circumstances of a
13 particular case indicate that appointed counsel is necessary to
14 prevent due process violations. See Chaney, 801 F.2d at 1196;
15 Eskridge v. Rhay, 345 F.2d 778, 782 (9th Cir. 1965).

16 The Court finds that appointment of counsel is not warranted
17 in this case. While Petitioner states he is suffering from a
18 mental illness, he has not submitted "substantial evidence" that
19 he currently suffers from a serious mental illness that impairs
20 his ability to prosecute this action. See Allen v. Calderon, 408
21 F.3d 1150, 1152-53 (9th Cir. 2005) (holding that court must
22 assess petitioner's mental health during "relevant time period,"
23 pendency of habeas petition, and must hold competency hearing if
24 "substantial evidence" of debilitating mental illness exists).

25 Petitioner has filed seven different state habeas petitions
26 regarding this conviction, each of which challenged his
27 conviction on different grounds. Since 2009, Petitioner has
28 filed at least ten civil rights complaints. It is possible that

1 all of these lawsuits were filed with the assistance of other
2 inmates, but that would merely prove that Petitioner's mental
3 impairment does not interfere with his ability to secure legal
4 assistance when needed. See, e.g., Payne v. Gipson, No. ED CV
5 12-1377-CAS (SP), 2013 WL 693011, at *6 (C.D. Cal. Jan. 15, 2013)
6 (equitable tolling context) ("Although petitioner's papers
7 indicate he never personally prepared a habeas petition,
8 petitioner admittedly understood that he needed 'to go [through]
9 the courts to obtain relief' and sought the assistance of three
10 different inmates to file four habeas petitions. In other words,
11 petitioner's mental state did not 'interfere [] with the ability
12 to understand the need for assistance, the ability to secure it,
13 or the ability to cooperate with or monitor assistance the
14 petitioner does secure.'") (quoting Bills v. Clark, 628 F.3d
15 1092, 1100 (9th Cir. 2010)) (alterations in original). Moreover,
16 Petitioner has adequately litigated this habeas case.

17 The Court notes that Petitioner has also filed a motion to
18 appoint counsel in this case in the Ninth Circuit. Petitioner's
19 motion for the appointment of counsel (Docket No. 55) is DENIED.
20 Petitioner's motion for a response (Docket No. 51) is DENIED as
21 moot.

22 IT IS SO ORDERED.

23 Dated: 5/17/2016

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25 THELTON E. HENDERSON
26 United States District Judge

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