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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID BENNETT,
Petitioner,
v.
DEBBIE ASUNCION,
Respondent.

Case No. [16-cv-01918-JD](#)

ORDER

Re: Dkt. No. 28

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This action is fully briefed and was recently reassigned to the Court. Petitioner has requested the appointment of counsel. The Sixth Amendment’s right to counsel does not apply in habeas corpus actions. *Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir. 1986). However, 18 U.S.C. § 3006A(a)(2)(B) provides that in habeas cases, whenever “the court determines that the interests of justice so require”, representation may be provided for any financially eligible person. Petitioner has presented his claims adequately, and they are not particularly complex. The request is denied without prejudice.

Petitioner has also requested an evidentiary hearing. The petition presents two claims: (1) that trial and appellate counsel rendered ineffective assistance; and (2) that the prosecutor violated *Brady v. Maryland*, 373 U.S. 83 (1963). Petitioner’s request for an evidentiary hearing involves his allegations that the district attorney did not have legal grounds to prosecute him, there were violations of the Fourth Amendment and there was an improper photo line-up. None of these allegations concern the underlying claims in the petition and the record before the Court contains all the information relevant to the claims. “[A]n evidentiary hearing is not required on issues that can be resolved by reference to the state court record.” *Schriro v. Landrigan*, 550 U.S. 465, 474

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(2007) (quoting *Totten v. Merkle*, 137 F.3d 1172, 1176 (9th Cir. 1998)). The motion is denied without prejudice.

For the foregoing reasons, the Court hereby orders as follows:

Petitioner’s motion for the appointment of counsel and an evidentiary hearing (Docket No. 28) is **DENIED**.

IT IS SO ORDERED.

Dated: August 17, 2017



JAMES DONATO
United States District Judge

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 DAVID BENNETT,
4 Plaintiff,
5 v.
6 DEBBIE ASUNCION,
7 Defendant.
8

Case No. [16-cv-01918-JD](#)

CERTIFICATE OF SERVICE

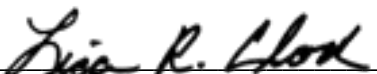
9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
10 District Court, Northern District of California.

11
12 That on August 17, 2017, I SERVED a true and correct copy(ies) of the attached, by
13 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
15 receptacle located in the Clerk's office.
16

17 David Bennett ID: V90090
18 California Medical Facility Housing: Q3 - 320
19 P.O. Box 2000
20 Vacaville, CA 95696-2000

21 Dated: August 17, 2017

22
23 Susan Y. Soong
24 Clerk, United States District Court

25 By: 
26 LISA R. CLARK, Deputy Clerk to the
27 Honorable JAMES DONATO
28