

1 IN THE UNITED STATES DISTRICT COURT
2
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA

4 WILLIAM RUSSELL GARRETT,
5
6 Petitioner,

No. C 06-05182 SBA (PR)

**ORDER DENYING RENEWED MOTION
FOR APPOINTMENT OF COUNSEL**

7 v.

8 D. L. RUNNELS, Warden,
9 Respondent.

10 Petitioner has filed a renewed request for appointment of counsel in this action. In an Order
11 dated March 20, 2008, the Court denied Petitioner's first request for appointment of counsel.
12 Petitioner thereafter filed a motion for reconsideration of the Court's denial of his motion for
13 appointment of counsel. In an Order dated May 7, 2008, the Court denied Petitioner's motion for
14 reconsideration.

15 On February 4, 2009, the Court received a document from Petitioner entitled, "Emergency
16 Motion for Appointment of Counsel to Stop Respondent from Retaliating/Interfering with
17 Petitioner's Due Process Rights." Petitioner alleges that he suffers from "several mental/learning
18 disabilities." (Mot. for Att'y at 1.) He complains of alleged violations of the Americans with
19 Disabilities Act (ADA) at the prison where he is incarcerated, and he seeks appointment of counsel
20 to assist him in litigating those claims.

21 The Sixth Amendment right to counsel does not apply in habeas corpus actions. See
22 Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). Title 18 U.S.C. § 3006A(a)(2)(B),
23 however, authorizes a district court to appoint counsel to represent a habeas petitioner whenever "the
24 court determines that the interests of justice so require" and such person is financially unable to
25 obtain representation. The decision to appoint counsel is within the discretion of the district court.
26 See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986); Knaubert, 791 F.2d at 728; Bashor v.
27 Risley, 730 F.2d 1228, 1234 (9th Cir. 1984). The courts have made appointment of counsel the
28

1 exception rather than the rule by limiting it to: (1) capital cases; (2) cases that turn on substantial and
2 complex procedural, legal or mixed legal and factual questions; (3) cases involving uneducated or
3 mentally or physically impaired petitioners; (4) cases likely to require the assistance of experts either
4 in framing or in trying the claims; (5) cases in which petitioner is in no position to investigate crucial
5 facts; and (6) factually complex cases. See generally 1 J. Liebman & R. Hertz, Federal Habeas
6 Corpus Practice and Procedure § 12.3b at 383-86 (2d ed. 1994). Appointment is mandatory only
7 when the circumstances of a particular case indicate that appointed counsel is necessary to prevent
8 due process violations. See Chaney, 801 F.2d at 1196; Eskridge v. Rhay, 345 F.2d 778, 782 (9th
9 Cir. 1965).

10 The Court has previously determined that appointment of counsel is not warranted in this
11 case even if Petitioner has alleged that he is somewhat mentally impaired. (Mar. 20, 2008 Order at
12 2.) The record shows that Petitioner's claims were all well briefed by counsel on direct appeal and
13 that they are typical claims that are not especially complex. (Id.) Furthermore, Petitioner has filed
14 responses to Respondent's answer and supplemental answer. Accordingly, the interests of justice do
15 not require appointment of counsel, and Petitioner's renewed request is DENIED. This denial is
16 without prejudice to the Court's sua sponte reconsideration should the Court find an evidentiary
17 hearing necessary following consideration of the merits of Petitioner's claims.

18 Furthermore, Petitioner may not pursue ADA claims in this habeas action. If he wishes to
19 pursue such claims and he has already completely exhausted his administrative remedies within the
20 prison grievance system or disability accommodation mechanism, he may file a separate civil rights
21 action using the attached form. The Clerk of the Court shall send Petitioner a blank § 1983 civil
22 rights complaint form.

23 This Order terminates Docket no. 38.

24 IT IS SO ORDERED.

25 Dated: 2/17/09

26 
27 SAUNDRA BROWN ARMSTRONG
28 UNITED STATES DISTRICT JUDGE

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF
4 CALIFORNIA

5 WILLIAM RUSSELL GARRETT,
6
7 Plaintiff,

Case Number: CV06-05182 SBA

CERTIFICATE OF SERVICE

8 v.

9 D.L. RUNNELS et al,

10 Defendant.

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

13 That on February 17, 2009, I SERVED a true and correct copy(ies) of the attached, by placing
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
16 delivery receptacle located in the Clerk's office.

17 William R. Garrett V-30110
18 California Men's Colony
19 P.O. Box 8101
20 San Luis Obispo, CA 93409-8101

21 Dated: February 17, 2009

Richard W. Wiekling, Clerk
By: LISA R CLARK, Deputy Clerk