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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN ANTHONY DUKE SR.,

No. C 07-02882 CW (PR)

Petitioner,

ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL

v.

JAMES WALKER, Acting Warden,

Respondent.

\_\_\_\_\_ /  
Petitioner has requested appointment of counsel in this  
action.

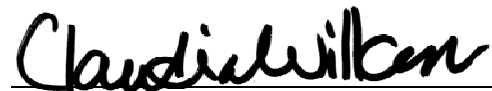
The Sixth Amendment right to counsel does not apply in habeas  
corpus actions. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th  
Cir. 1986). Title 18 U.S.C. § 3006A(a)(2)(B), however, authorizes  
a district court to appoint counsel to represent a habeas  
petitioner whenever "the court determines 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 728; Bashor v.  
Risley, 730 F.2d 1228, 1234 (9th Cir. 1984). The courts have made  
appointment of counsel the exception rather than the rule by

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

14 At this early stage of the proceedings the Court is unable to  
15 determine whether the appointment of counsel is mandated for  
16 Petitioner. The Court notes that Petitioner has presented his  
17 claims adequately in the petition, and no evidentiary hearing  
18 appears necessary. Accordingly, the interests of justice do not  
19 require appointment of counsel at this time, and Petitioner's  
20 request is DENIED. This denial is without prejudice to the Court's  
21 sua sponte reconsideration should the Court find an evidentiary  
22 hearing necessary following consideration of the merits of  
23 Petitioner's claims.

24 IT IS SO ORDERED.

25 Dated: 6/19/07



26 CLAUDIA WILKEN  
27 UNITED STATES DISTRICT JUDGE  
28

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

JOHN ANTHONY DUKE SR,

Case Number: CV07-02882 CW

Plaintiff,

**CERTIFICATE OF SERVICE**

v.

JIMMY WALKER et al,

Defendant.

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

That on June 19, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

John Anthony Duke P-97706  
C.S.P. Sac IV  
P.O. Box 290066  
Represa, CA 95671-0066

Dated: June 19, 2007

Richard W. Wieking, Clerk  
By: Sheilah Cahill, Deputy Clerk

United States District Court  
For the Northern District of California

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