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

ROBERT E. VENTURA,

Petitioner,

v.

DARREL ADAMS, Warden,

Respondent.

No. C 08-01708 SBA (PR)

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

Petitioner has filed a renewed request for the appointment of counsel to represent him in this action. The Court previously denied Petitioner's first request for appointment of counsel. Thereafter, the Court denied his motion for reconsideration of the Court's Order denying appointment of 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 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 limiting it to: (1) capital cases; (2) cases that turn on substantial and

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

9 As mentioned previously in the Court's denial of appointment of counsel, the Court is unable
10 to determine whether the appointment of counsel is mandated for Petitioner. Accordingly, the
11 interests of justice do not require appointment of counsel at this time, and Petitioner's renewed
12 request is DENIED. Petitioner need not keep renewing his request for counsel because this denial is
13 without prejudice to the Court's sua sponte reconsideration should the Court find an evidentiary
14 hearing necessary following consideration of the merits of Petitioner's claims.

15 This Order terminates Docket no. 16.

16 IT IS SO ORDERED.

17 Dated: 2/10/09
18 _____

Saundra B. Armstrong

SAUNDRA BROWN ARMSTRONG
UNITED STATES DISTRICT JUDGE

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

4 ROBERT E. VENTURA,

5 Plaintiff,

6 v.

7 DARREL ADAMS et al,

8 Defendant.

Case Number: CV08-01708 SBA

CERTIFICATE OF SERVICE

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

11 That on February 11, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
14 in the Clerk's office.

15 Robert Elias Ventura V-80485
16 CSP - Corcoran State Prison
17 P.O. Box 3476
18 Corcoran, CA 93212-3476

19 Dated: February 11, 2009

20 Richard W. Wieking, Clerk
21 By: LISA R CLARK, Deputy Clerk