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2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 OAKLAND DIVISION
5

6 AVERY DARBEY,

7 Petitioner,

8 vs.

9 JAMES WALKER,

10 Respondent.
11

Case No: C 09-1572 SBA (pr)

**ORDER DENYING REQUEST FOR
EXTENSION OF TIME TO FILE
CERTIFICATE OF
APPEALIBILITY AND DENYING
MOTION FOR APPOINTMENT OF
COUNSEL**

Dkt. 28, 30
12

13 On September 28, 2012, the Court denied Petitioner's petition for a writ of habeas
14 corpus and declined to issue a certificate of appealability (COA). Dkt. 23. On November
15 29, 2012, Petitioner filed a notice of appeal, a motion for an extension of time to request a
16 COA before the Ninth Circuit, and a motion for appointment of counsel. Dkt. 26, 28, 30.

17 With regard to Petitioner's first request, Petitioner's notice of appeal serves as a
18 request for a COA, and therefore, he need not take any further action to protect his
19 appellate rights. See Fed. R. App. P. 22(b)(2). Therefore, Petitioner's request for an
20 extension of time to submit a COA request to the Ninth Circuit is DENIED as moot.

21 As to Petitioner's request for appellate counsel, the Court notes that there is no right
22 to counsel in habeas corpus actions. Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir.
23 1986). Under 18 U.S.C. § 3006A(a)(2)(B), however, a district court may appoint counsel to
24 represent a habeas petitioner whenever "the court determines that the interests of justice so
25 require" and such person is financially unable to obtain representation. The decision to
26 appoint counsel is within the discretion of the district court. See Chaney v. Lewis, 801 F.2d
27 1191, 1196 (9th Cir.1986); Knaubert, 791 F.2d at 728. Here, Petitioner's claims are typical
28 of those that arise in habeas actions and are not especially complex. This is not an

1 exceptional case that would warrant representation on federal habeas review. Accordingly,
2 Petitioner's request for appointment of counsel on appeal is DENIED. Accordingly,

3 IT IS HEREBY ORDERED THAT:

4 1. Petitioner's motion for an extension of time to file his COA before the Ninth
5 Circuit is DENIED as moot.

6 2. Petitioner's motion for appointment of counsel is DENIED.

7 3. This Order terminates Docket 28 and 30.

8 IT IS SO ORDERED.

9 Dated: February 22, 2013


SAUNDRA BROWN ARMSTRONG
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

AVERY DARBEY,

Plaintiff,

v.

JAMES WALKER et al,

Defendant.

Case Number: CV09-01572 SBA

CERTIFICATE OF SERVICE

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 February 25, 2013, 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.

Avery M. Darbey T-39009
Salinas Valley State Prison
C-Facility #215
P.O. Box 1050
Soledad, CA 93960-1060

Dated: February 25, 2013

Richard W. Wieking, Clerk
By: Lisa Clark, Deputy Clerk

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