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

WILLIE E. LATIMORE,
Petitioner,
v.

No. C 11-00538 CW (PR)
ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

VINCE CULLEN, Warden,
Respondent.

Petitioner has filed a motion for 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

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

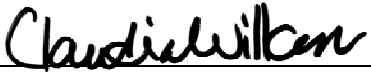
15 The Court finds that appointment of counsel is not warranted
16 in this case. Petitioner's claims are typical claims that arise in
17 criminal appeals and are not especially complex. This is not an
18 exceptional case that would warrant representation on federal
19 habeas review. There also is no indication that an evidentiary
20 hearing is required under 28 U.S.C. § 2254(e). Petitioner's claims
21 do not rely upon extra-record evidence and a factual basis exists in
22 the record to determine the claims. If during its review of the
23 merits of the petition the Court determines that further fact
24 finding is required, the Court will decide whether to hold an
25 evidentiary hearing or whether the facts can be gathered by way of
26 mechanisms short of an evidentiary hearing, such as supplementation
27 of the record with sworn declarations from the pertinent witnesses.
28 See Downs v. Hoyt, 232 F.3d 1031, 1041 (9th Cir. 2000).

1 Accordingly, Petitioner's motion for appointment of counsel is
2 DENIED. This denial is without prejudice to reconsideration should
3 the Court on its own motion find an evidentiary hearing necessary
4 following consideration of the merits of Petitioner's claims.

5 This Order terminates Docket no. 5.

6 IT IS SO ORDERED.

7 Dated: 5/24/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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

4 WILLIE E LATIMORE,

5 Plaintiff,

6 v.

7 VINCE CULLEN et al,

8 Defendant.

Case Number: CV11-00538 CW

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 May 24, 2011, 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
13 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
14 receptacle located in the Clerk's office.

15 Willie E. Latimore G37684
16 San Quentin State Prison
17 San Quentin, CA 94974

Dated: May 24, 2011

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk