

United States District Court
For the Northern District of California

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

VICENTE BATALON,
Petitioner,
vs.

No. C 11-03810 YGR (PR)

**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL AND
EVIDENTIARY HEARING**

KIM HOLLAND, Acting Warden, et al.
Respondents.

Petitioner has filed requests for the appointment of counsel and an evidentiary hearing 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 limiting it to: (1) capital cases; (2) cases that turn on substantial and complex procedural, legal or mixed legal and factual questions; (3) cases involving uneducated or

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

8 At this time, the Court is unable to determine whether the appointment of counsel is
9 mandated for Petitioner. Accordingly, the interests of justice do not require appointment of counsel,
10 and Petitioner's request is DENIED.

11 There also is no indication that an evidentiary hearing is required under 28 U.S.C. § 2254(e).
12 Petitioner's claims do not rely upon extra-record evidence and a factual basis exists in the record to
13 determine the claims. If during its review of the merits of the petition the Court determines that
14 further fact finding is required, the Court will decide whether to hold an evidentiary hearing or
15 whether the facts can be gathered by way of mechanisms short of an evidentiary hearing, such as
16 supplementation of the record with sworn declarations from the pertinent witnesses. *See Downs v.*
17 *Hoyt*, 232 F.3d 1031, 1041 (9th Cir. 2000).

18 For these reasons, Petitioner's requests for the appointment of counsel and an evidentiary
19 hearing are DENIED. This denial is without prejudice to the Court's *sua sponte* reconsideration
20 should the Court find an evidentiary hearing necessary following consideration of the merits of
21 Petitioner's claims.

22 Kim Holland, the current acting warden of the prison where Petitioner is incarcerated, has
23 been substituted as Respondent pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

24 This Order terminates Docket no. 11.

25 IT IS SO ORDERED.

26 Dated: February 29, 2012

27 
28 YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE