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3 IN THE UNITED STATES DISTRICT COURT  
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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7 MICHAEL JOHN RODRIGUES,

No. C 12-02831 YGR (PR)

8 Petitioner,

**ORDER DENYING PETITIONER'S MOTION FOR  
APPOINTMENT OF COUNSEL WITHOUT  
PREJUDICE TO REILING AFTER HE MOVES  
TO LIFT STAY OF PROCEEDINGS**

9 v.

10 RON BARNES, Warden,

11 Respondent.  
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13 Petitioner, a state prisoner, filed this petition for a writ of habeas corpus pursuant to 28  
14 U.S.C. § 2254, challenging the validity of his state conviction. Petitioner paid the full filing fee. On  
15 July 9, 2012, the Court directed Respondent to file an answer to the petition and granted Petitioner  
16 leave to file a traverse.

17 On February 19, 2013, Respondent filed his answer to the original petition, which contained  
18 the following six claims: (1) ineffective assistance of trial counsel based on counsel's failure to  
19 present evidence from a rape trauma syndrome expert to rebut the prosecution's evidence;  
20 (2) ineffective assistance of trial counsel based on counsel's failure to move to limit the admission of  
21 the prosecution's rape trauma syndrome evidence; (3) ineffective assistance of trial counsel based on  
22 counsel's failure to present expert testimony on factors affecting the reliability of a victim's  
23 testimony, such as memory and suggestibility; (4) ineffective assistance of trial counsel based on  
24 counsel's mishandling of the impeachment of Jane Doe I; (5) ineffective assistance of trial counsel  
25 based on counsel's failure to object to, and request an admonition with respect to, alleged  
26 prosecutorial misconduct; and (6) the violation of due process based on the court's admission of  
27 testimony about Petitioner's prior sexual conduct. Dkt. 11. Respondent does not argue that any of  
28 these claims is unexhausted and, as noted, has filed an answer in response thereto.



1 counsel to represent a habeas petitioner whenever "the court determines that the interests of justice  
2 so require and such person is financially unable to obtain representation." 18 U.S.C.  
3 § 3006A(a)(2)(B). The decision to appoint counsel is within the discretion of the district court. *See*  
4 *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986); *Knaubert*, 791 F.2d at 728; *Bashor v. Risley*,  
5 730 F.2d 1228, 1234 (9th Cir. 1984).

6 Attached to the motion for appointment of counsel is the declaration of Attorney Covin, who  
7 states that she is willing and able to accept appointment on Petitioner's behalf. (Covin Decl. ¶ 5.)

8 To date, Petitioner has not filed a motion to lift the stay, thus, it appears that he is still  
9 exhausting his state judicial remedies in state court. In addition, he has not established his indigency  
10 to show that he qualifies for appointment of counsel. Because this action has been stayed and  
11 administratively closed, the Court finds that the appointment of counsel is not warranted at this time.  
12 Therefore, the motion for appointment of counsel is DENIED (dkt. 23) without prejudice to refileing  
13 after Petitioner files his "Motion to Lift Stay and Reopen Action." At that time, Petitioner must also  
14 file an IFP application in order for this Court to determine whether he qualifies for appointment of  
15 counsel.

16 The Clerk of the Court shall serve a copy of this Order on Petitioner and Respondent, and  
17 send a courtesy copy to Randi Covin, Esq., P.O. Box 1120, Willits, CA, 95490.

18 The Clerk shall also send Petitioner a blank prisoner's IFP application.

19 This Order terminates Docket no. 23.

20 IT IS SO ORDERED.

21 DATED: May 23, 2014

  
22 **YVONNE GONZALEZ ROGERS**  
23 **UNITED STATES DISTRICT COURT JUDGE**

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