

FILED

SEP 29 2011

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAIN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MILTON N. HAYES,

No. C 11-00161 EJD (PR)

Petitioner,

ORDER DENYING MOTIONS FOR
APPOINTMENT OF COUNSEL

v.

ANTHONY HEDGPETH, Warden,

Respondent.

/ (Docket Nos. 18 & 19)

Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has filed two letters in which he states, "This is a motion for appointment of counsel." (Docket Nos. 18 and 19.)

The Sixth Amendment's right to counsel does not apply in habeas corpus actions. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir.), cert. denied, 479 U.S. 867 (1986).

Unless an evidentiary hearing is required, the decision to appoint counsel is within the discretion of the district court. See Knaubert, 791 F.2d at 728; Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469 U.S. 838 (1984). An evidentiary hearing does not appear necessary at this time, and there are no exceptional circumstances to warrant appointment of counsel. Accordingly, Petitioner's motion for appointment of counsel, (Docket No. 18), is DENIED, and Docket No. 19 is DENIED as duplicative. This denial is

United States District Court

For the Northern District of California

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without prejudice to the Court's sua sponte reconsideration should the Court later find an evidentiary hearing necessary following consideration of the merits of Petitioner's claims.

This order terminates Docket Nos. 18 and 19.

DATED: 9/29/11



EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MILTON N. HAYES,

Petitioner,

v.

ANTHONY HEDGPETH, Warden, et al.,

Respondent.

Case Number: CV11-00161 EJD

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 9/29/11, 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.

Milton N. Hayes G37757
Salinas Valley State Prison
P. O. Box 1050
Soledad, CA 93960

Dated: 9/29/11

Richard W. Wieking, Clerk
By:  Deputy Clerk