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FILED

SEP 04 2015

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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

KEITH H. KING,

Petitioner,

v.

JAMES SOTO, Warden,

Respondent.

No. C 14-03554 BLF (PR)

**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL;
DENYING MOTION FOR LEAVE
TO PROCEED *IN FORMA*
PAUPERIS AS MOOT**

(Docket Nos. 21 & 22)

Petitioner, a state prisoner proceeding *pro se*, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his state conviction. Petitioner has filed a motion for leave to proceed *in forma pauperis* (“IFP”), (Docket No. 21), and a motion for nunc pro tunc appointment of counsel, (Docket No. 22). He specifically requests the appointment of Jill A. Fordyce, who represented Petitioner in state court. (*Id.*) It appears that Ms. Fordyce, without compensation, assisted Petitioner in preparing all the pleadings in this matter as well as the motion for appointment of counsel and the declaration attached to the motion.

DISCUSSION

The Sixth Amendment’s right to counsel does not apply in habeas corpus

1 actions. *See Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir. 1986). The
2 decision to appoint counsel is within the discretion of the district court. *See Chaney*
3 *v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986); *Knaubert*, 791 F.2d at 728; *Bashor v.*
4 *Risley*, 730 F.2d 1228, 1234 (9th Cir. 1984).

5 Here, Petitioner has adequately presented his claims which do not involve
6 particularly complex issues. Accordingly, the motion for appointment of counsel is
7 denied. *See LaMere v. Risley*, 827 F.2d 622, 626 (9th Cir. 1987) (no abuse of
8 discretion in denying appointment of counsel where pleadings illustrate that
9 petitioner had good understanding of issues and ability to present forcefully and
10 coherently his contentions); *Bashor*, 730 F.2d at 1234 (although petitioner was over
11 60 years of age and had no background in law, he thoroughly presented issues in
12 petition and accompanying memorandum). However, if an evidentiary hearing
13 becomes necessary at a later time, Rule 8(c) of the Rules Governing Section 2254
14 Cases ("Habeas Rules") makes the appointment of counsel mandatory pursuant to
15 section 3006A(g). *See United States v. Duarte-Higareda*, 68 F.3d 369, 370 (9th Cir.
16 1995). In such an event, the Court will appoint an appropriate attorney from its
17 approved list of counsel.

18 Notwithstanding this denial, Petitioner may choose to retain Ms. Fordyce as
19 private counsel at a nominal fee or pro bono, and she may make an official
20 appearance on his behalf. Otherwise, Petitioner shall proceed *pro se* in this matter.

21 22 CONCLUSION

23 For the reasons discussed above, the Court orders as follows:

- 24 1. Petitioner's motion for appointment of counsel is **DENIED**.

25 (Docket No. 22.)

- 26 2. Petitioner has already paid the filing fee. (*See* Docket No. 1.)


27 Accordingly, his motion for leave to proceed IFP, (Docket No. 21), is **DENIED** as
28 moot.

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This order terminates Docket Nos. 21 and 22.

IT IS SO ORDERED.

DATED: Sept 4, 2015



BETH LABSON FREEMAN
United States District Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KEITH H. KING,
Plaintiff,

v.

JOHN SOTO,
Defendant.

Case No. 5:14-cv-03554-BLF (PR)

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 9/4/2015, 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.

Keith H. King
AK4086
California State Prison – Los Angeles
P.O. Box 4430
Lancaster CA 93539

Dated: 9/4/2015

Susan Y. Soong
Clerk, United States District Court

By: Elizabeth C Garcia
Elizabeth Garcia, Deputy Clerk