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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAHASSON HEDGEPEETH,
Petitioner,

v.

R. MADDEN,
Respondent.

Case No. 20-00858 BLF (PR)

**ORDER DENYING RENEWED
MOTION FOR STAY; DENYING
MOTION FOR APPOINTMENT OF
COUNSEL**

(Docket Nos. 25, 26)

Petitioner, a state prisoner proceeding *pro se*, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his state conviction. On April 7, 2021, the Court dismissed the petition with leave to amend because Petitioner indicated that a request for a new trial was pending in Alameda County Superior Court based on a claim of instructional error. Dkt. No. 5 at 3. Petitioner also included an instructional error claim in the petition and stated that the “instructional error wasn’t presented to any court because my lawyer thought it held no matter despite my request to raise.” *Id.* at 5. Based on this information, the Court concluded that Petitioner had not exhausted his state court remedies with respect to all the claims presented in the federal petition prior to filing this action. Dkt. No. 19 at 2-3. Accordingly, Petitioner was directed to file an amended petition that included only exhausted claims, as well as given an opportunity to file a renewed motion

1 for a stay to exhausted additional claims. *Id.* at 3-4.

2 Petitioner later filed a letter stating that the two claims in the petition, which was
3 filed on March 3, 2020, have since been exhausted, and points to supporting exhibits he
4 filed later in this action. Dkt. Nos. 20, citing Dkt. No. 14. In another letter, Petitioner
5 requested that the Court “dismiss” the renewed motion for stay as unnecessary since all his
6 claims are exhausted. Dkt. No. 21. Then on May 24, 2021, Petitioner filed a motion to
7 stay the matter pending resentencing proceedings in state court. Dkt. No. 23. In the
8 interest of justice and judicial economy, the Court deemed the original petition and the
9 later filed exhibits as the operative petition in this matter. Dkt. No. 24. Because no further
10 filing was necessary from Petitioner, his motion for a stay was denied as unnecessary. *Id.*

11 Petitioner has filed a renewed motion for a stay pending resentencing under Senate
12 Bill 620. Dkt. No. 25. Petitioner raised the following claims in this action: (1) the trial
13 court erred in failing to give instructions on self-defense, sudden quarrel or heat of passion
14 defenses; and (2) ineffective assistance of appellate counsel for failing to raise the
15 instructional error on appeal. Dkt. No. 5 at 5-6. Petitioner’s resentencing under Senate
16 Bill 620 is not an issue before this Court. Therefore, the Court finds no need to delay this
17 matter by granting a stay. Accordingly, the renewed motion for a stay is DENIED. Dkt.
18 No. 25. Petitioner also requests the Court to direct the state courts to transmit records of
19 his habeas corpus proceedings. Dkt. No. 25 at 3. The Court finds such a request is
20 unnecessary since Petitioner has already provided such records.

21 Petitioner also moves for appointment of counsel. Dkt. No. 25 at 3; Dkt. No. 26.
22 The Sixth Amendment’s right to counsel does not apply in habeas corpus actions. *See*
23 *Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir.), *cert. denied*, 479 U.S. 867 (1986).
24 Unless an evidentiary hearing is required, the decision to appoint counsel is within the
25 discretion of the district court. *Id.*; *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), *cert.*
26 *denied*, 469 U.S. 838 (1984). An evidentiary hearing does not appear necessary at this
27 time, and there are no exceptional circumstances to warrant appointment of counsel.

1 Accordingly, Petitioner’s motion for appointment of counsel is DENIED without prejudice
2 to the Court’s *sua sponte* reconsideration should the Court later find an evidentiary hearing
3 necessary following consideration of the merits of Petitioner’s claim.

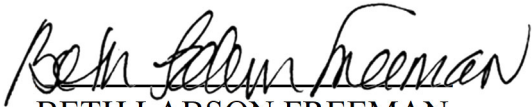
4 Currently, Respondent’s answer to the Court’s Order to Show Cause is due by
5 August 31, 2021. Dkt. No. 24. There is no further action required from Petitioner until
6 Respondent’s answer is filed. Once the answer is filed, Petitioner will have thirty days to
7 file a traverse. If he needs additional time, Petitioner may file a motion requesting an
8 extension of time with good cause.

9 The Clerk shall include a copy of the Court’s “Order to Show Cause,” Dkt. No. 24,
10 with a copy of this order to Petitioner, per his request.

11 This order terminates Docket Nos. 25 and 26.

12 **IT IS SO ORDERED.**

13 **Dated: __ July 14, 2021** _____


BETH LABSON FREEMAN
United States District Judge