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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JAMES G. DURAN,	)	Case No. 09cv0202-H (BLM)
	)	
Petitioner,	)	<b>ORDER DENYING WITHOUT</b>
v.	)	<b>PREJUDICE PETITIONER'S MOTION</b>
	)	<b>FOR APPOINTMENT OF COUNSEL</b>
DERRAL G. ADAMS, Warden,	)	
	)	<b>[Doc. No. 7]</b>
Respondent.	)	
_____	)	

On February 25, 2009, Petitioner James G. Duran, a state prisoner proceeding *pro se* and *in forma pauperis*, filed the Motion for Appointment of Counsel currently before the Court. Doc. No. 7. Petitioner contends that he requires appointed counsel, pursuant to 28 U.S.C. § 1915(e)(1), because of the difficulty of his case and because of his inability to represent himself in any meaningful way. *Id.* at 2, 4. Having considered the request submitted by Petitioner and the applicable law, and for the reasons set forth below, Petitioner's Motion for Appointment of Counsel is **DENIED** without prejudice.

The Sixth Amendment right to counsel does not extend to federal habeas corpus actions by state prisoners. See McClesky v. Zant, 499 U.S. 467, 495 (1991); Nevius v. Sumner, 105 F.3d 453, 460 (9th Cir.

1 1996) (noting that there currently exists no constitutional right to  
2 appointment of counsel in habeas proceedings); Chaney v. Lewis, 801 F.2d  
3 1191, 1196 (9th Cir. 1986). However, courts may appoint counsel for  
4 financially eligible habeas petitioners seeking relief pursuant to 28  
5 U.S.C. § 2254 where "the interests of justice so require." 18 U.S.C.  
6 § 3006A(a)(2)(B); Chaney, 801 F.2d at 1196. Whether or not to appoint  
7 counsel is a matter left to the court's discretion, unless an  
8 evidentiary hearing is necessary. See Knaubert v. Goldsmith, 791 F.2d  
9 722, 728-30 (9th Cir. 1986) (explaining that the interests of justice  
10 require appointment of counsel when the court conducts an evidentiary  
11 hearing on the petition).

12 The court's discretion to appoint counsel pursuant to 28 U.S.C.  
13 § 1915(e)(1), may be exercised only under "exceptional circumstances."  
14 Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991).<sup>1</sup> "A finding of  
15 exceptional circumstances requires an evaluation of both the 'likelihood  
16 of success on the merits and the ability of the petitioner to articulate  
17 his claims *pro se* in light of the complexity of the legal issues  
18 involved.' Neither of these factors is dispositive and both must be  
19 viewed together before reaching a decision." Id. (quoting Wilborn v.  
20 Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986)).

21 The Court has reviewed the Petition for Writ of Habeas Corpus  
22 submitted by Petitioner in this case [Doc. No. 1] and finds that  
23 Petitioner has provided a thorough and clear recitation of his claim and  
24 cited appropriate authority. Thus, the Court finds that Petitioner not  
25 only has a sufficient grasp of his claim for habeas relief, but also is

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28 <sup>1</sup> The Terrell court cited to 28 U.S.C. § 1915(d), but the legislature  
subsequently renumbered this section as 28 U.S.C. § 1915(e)(1).

1 able to articulate that claim adequately without legal assistance.<sup>2</sup> See  
2 LaMere v. Risley, 827 F.2d 622, 626 (9th Cir. 1987) (affirming district  
3 court's denial of request for appointment of counsel where pleadings  
4 demonstrated petitioner had "a good understanding of the issues and the  
5 ability to present forcefully and coherently his contentions"). The  
6 Court also finds that while Petitioner has asserted sufficient facts to  
7 state a claim for federal habeas relief, he has not established a  
8 likelihood of success on the merits. See Terrell, 935 F.2d at 1017.  
9 Under these circumstances, the Court concludes that this habeas  
10 proceeding does not present "exceptional circumstances" justifying the  
11 appointment of legal counsel. Id. Accordingly, Petitioner's Motion for  
12 Assignment of Counsel is **DENIED** without prejudice.

13 **IT IS SO ORDERED.**

14 DATED: March 6, 2009

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16 BARBARA L. MAJOR  
17 United States Magistrate Judge  
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22 \_\_\_\_\_  
23 <sup>2</sup> Though Petitioner contends he required the assistance of a "jailhouse  
24 lawyer" in order to prepare the instant motion and all other papers on file [Pet'r Mot.  
25 at 2], the Court notes from the Petition and attached documents that Petitioner has an  
26 Associate of Arts Degree and keeps himself abreast of developments in the law. Pet.  
27 at 11 (using Court's CM/ECF numbering) & Ex. B at 51 (using same numbering). In fact,  
28 Petitioner's work reports indicate that he served as a law clerk in the prison law  
library for over a year. Pet., Ex. A at 25-27. This suggests that while Petitioner  
may well have utilized the assistance of a jailhouse lawyer in preparing his filings,  
he is able to understand his claim and the law cited. Moreover, regardless of whether  
or not he has obtained some assistance, Petitioner has very clearly articulated his  
claim *pro se*, Terrell, 935 F.2d at 1017, such that this Court can discern both the  
factual and legal basis for his claim.