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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JEFFREY ANTHONY WOODFORK,)	Case No. 09cv1543-JM (BLM)
)	
Petitioner,)	ORDER DENYING WITHOUT
v.)	PREJUDICE PETITIONER’S MOTION
)	FOR APPOINTMENT OF COUNSEL
MATTHEW CATE, Secretary of the)	
California Department of)	[Doc. No. 6]
Corrections and Rehabilitation,)	
)	
Respondent.)	
_____)	

On August 26, 2009, Petitioner Jeffrey A. Woodfork, a state prisoner proceeding *pro se* and *in forma pauperis*, filed the instant Motion for Appointment of Counsel. Doc. No. 6. Petitioner contends that he requires appointed counsel because of his indigent status and inability to afford counsel. Id. 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).¹ "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. It appears that
23 Plaintiff has a sufficient grasp of his case, the legal issues involved,
24 and is able to adequately articulate the basis of his claims. Thus, the
25 Court finds that Petitioner not only has a sufficient grasp of his claim
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28 ¹ 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 for habeas relief, but also is able to articulate that claim adequately
2 without legal assistance. See LaMere v. Risley, 827 F.2d 622, 626 (9th
3 Cir. 1987) (affirming district court's denial of request for appointment
4 of counsel where pleadings demonstrated petitioner had "a good
5 understanding of the issues and the ability to present forcefully and
6 coherently his contentions"). The Court also finds that while
7 Petitioner has asserted sufficient facts to state a claim for federal
8 habeas relief, he has not established a likelihood of success on the
9 merits. See Terrell, 935 F.2d at 1017. Under these circumstances, the
10 Court concludes that this habeas proceeding does not present
11 "exceptional circumstances" justifying the appointment of legal counsel.
12 Id. Accordingly, Petitioner's Motion for Assignment of Counsel is
13 **DENIED** without prejudice.

14 **IT IS SO ORDERED.**

15 DATED: August 28, 2009

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17 BARBARA L. MAJOR
18 United States Magistrate Judge
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