

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SHAWN JAMES ALLEN WOODALL,	)	Civil No. 10-1127-BEN(WVG)
	)	
Petitioner,	)	
	)	ORDER DENYING RENEWED MOTION
v.	)	FOR APPOINTMENT OF COUNSEL
	)	(DOC. # 41)
GEORGE A. NEOTTI, Warden,	)	
	)	
Respondent.	)	

---

On May 24, 2010, Petitioner Shawn James Allen Woodall ("Petitioner") filed a Petition for Writ of Habeas Corpus and Motion for Appointment of Counsel. On July 27, 2010, the Court denied Petitioner's Motion for Appointment of Counsel. On December 7, 2010, Petitioner filed a Renewed Motion for Appointment of Counsel.

Petitioner's first Motion for Appointment of Counsel requested that Attorney Kurt David Hermansen be appointed to represent him in this proceeding because Mr. Hermansen was appointed to represent him in an appeal from an order denying a separate Petition for Writ of Habeas Corpus. Further, Petitioner alleged that he required counsel to be appointed for him because the case was

1 complex, and an appointed attorney could more effectively obtain and  
2 use discovery in this proceeding than he could.

3 In Petitioner's Renewed Motion for Appointment of Counsel,  
4 Petitioner cites the same reasons for his request. Further, he adds  
5 that he can not afford an attorney to represent him in this  
6 proceeding and that he has limited law library access at the prison  
7 where he is incarcerated.

8 The Sixth Amendment right to counsel does not extend to  
9 federal habeas corpus actions by state prisoners. McCleskey v.  
10 Zant, 499 U.S. 467, 495 (1991); Chaney v. Lewis, 801 F.2d 1191,  
11 1196 (9th Cir. 1986); Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th  
12 Cir. 1986). However, financially eligible habeas petitioners  
13 seeking relief pursuant to 28 U.S.C. § 2254 may obtain representa-  
14 tion whenever the court "determines that the interests of justice so  
15 require.'" 18 U.S.C. § 3006A(a)(2)(B) (West Supp. 1995); Terrovona  
16 v. Kincheloe, 912 F.2d 1176, 1181 (9th Cir. 1990); Bashor v. Risley,  
17 730 F.2d 1228, 1234 (9th Cir. 1984); Hoggard v. Purkett, 29 F.3d  
18 469, 471 (8th Cir. 1994).

19 The interests of justice require appointment of counsel when  
20 the court conducts an evidentiary hearing on the petition.  
21 Terrovona, 912 F.2d at 1177; Knaubert, 791 F.2d at 728; Abdullah v.  
22 Norris, 18 F.3d 571, 573 (8th Cir. 1994); Rule 8(c), 28 U.S.C. foll.  
23 § 2254. The appointment of counsel is discretionary when no  
24 evidentiary hearing is necessary. Terrovona, 912 F.2d at 1177;  
25 Knaubert, 791 F.2d at 728; Abdullah, 18 F.3d at 573.

26 In the Ninth Circuit, "[i]ndigent state prisoners applying  
27 for habeas relief are not entitled to appointed counsel unless the  
28 circumstances of a particular case indicate that appointed counsel

1 is necessary to prevent due process violations." Chaney, 801 F.2d  
2 at 1196; Knaubert, 791 F.2d at 728-29. A due process violation may  
3 occur in the absence of counsel if the issues involved are too  
4 complex for the petitioner. In addition, the appointment of counsel  
5 may be necessary if the petitioner has such limited education that  
6 he or she is incapable of presenting his or her claims. Hawkins v.  
7 Bennett, 423 F.2d 948, 950 (8th Cir. 1970).

8 In the Eighth Circuit, "[t]o determine whether appointment of  
9 counsel is required for habeas petitioners with non-frivolous  
10 claims, a district court should consider the legal complexity of the  
11 case, the factual complexity of the case, the petitioner's ability  
12 to investigate and present his claim, and any other relevant  
13 factors." Abdullah v. Norris, 18 F.3d at 573 (citing Battle v.  
14 Armontrout, 902 F.2d 701, 702 (8th Cir. 1990)); Hoggard, 29 F.3d at  
15 471; Boyd v. Goose, 4 F.3d 669, 671 (8th Cir. 1993); Smith v.  
16 Goose, 998 F.2d 1439, 1442 (8th Cir. 1993); Johnson v. Williams,  
17 788 F.2d 1319, 1322-23 (8th Cir. 1986).

18 Since these factors are useful in determining whether due  
19 process requires the appointment of counsel, they are considered to  
20 the extent possible based on the record before the Court. Here,  
21 Petitioner has sufficiently represented himself to date. From the  
22 face of the Petition filed *pro se*, and from other documents that  
23 Petitioner has filed *pro se*, it appears that Petitioner has a good  
24 grasp of this case and the legal issues involved. Under such  
25 circumstances, a district court does not abuse its discretion in  
26 denying a state prisoner's request for appointment of counsel as it  
27 is simply not warranted by the interests of justice. See LaMere v.  
28 Risley, 827 F.2d 622, 626 (9th Cir. 1987). At this stage of the

1 proceedings, the Court finds that the interests of justice do not  
2 require the appointment of counsel.

3 The Court also notes that “[w]here the issues involved can be  
4 properly resolved on the basis of the state court record, a district  
5 court does not abuse its discretion in denying a request for court-  
6 appointed counsel.” Hoggard, 29 F.3d at 471; McCann v. Armontrout,  
7 973 F.2d 655, 661 (8th Cir. 1992); Travis v. Lockhart, 787 F.2d 409,  
8 411 (8th Cir. 1986) (per curiam) (holding that district court did  
9 not abuse its discretion in denying § 2254 habeas petitioner’s  
10 motion for appointment of counsel where allegations were properly  
11 resolved on basis of state court record). At this stage of the  
12 proceedings, it appears the Court will be able to properly resolve  
13 the issues involved on the basis of the state court record.

14 “The procedures employed by the federal courts are highly  
15 protective of a pro se petitioner’s rights. The district court is  
16 required to construe a pro se petition more liberally than it would  
17 construe a petition drafted by counsel.” Knaubert, 791 F.2d at 729  
18 (citing Haines v. Kerner, 404 U.S. 519, 520 (1972) (holding pro se  
19 complaint to less stringent standard) (per curiam)); Bashor, 730  
20 F.2d at 1234. The Petition in this case was pleaded sufficiently to  
21 warrant this Court’s order directing Respondent to file an answer or  
22 other responsive pleading to the Petition.

23 “The district court must scrutinize the state court record  
24 independently to determine whether the state court procedures and  
25 findings were sufficient.” Knaubert, 791 F.2d at 729; Richmond v.  
26 Ricketts, 774 F.2d 957, 961 (9th Cir.1985); Rhinehart v. Gunn, 598  
27 F.2d 557, 558 (9th Cir.1979) (per curiam); Turner v. Chavez, 586  
28 F.2d 111, 112 (9th Cir.1978) (per curiam). Even when the district

1 court accepts a state court's factual findings, it must render an  
2 independent legal conclusion regarding the legality of a peti-  
3 tioner's incarceration. Miller v. Fenton, 474 U.S. 104, 112  
4 (1985). The district court's legal conclusion, moreover, will  
5 receive de novo appellate review. Hayes v. Kincheloe, 784 F.2d  
6 1434, 1436 (9th Cir. 1986).

7 The assistance counsel provides is valuable. "An attorney  
8 may narrow the issues and elicit relevant information from his or  
9 her client. An attorney may highlight the record and present to the  
10 court a reasoned analysis of the controlling law." Knaubert, 791  
11 F.2d at 729. However, as the court in Knaubert noted: "unless an  
12 evidentiary hearing is held, an attorney's skill in developing and  
13 presenting new evidence is largely superfluous; the district court  
14 is entitled to rely on the state court record alone." Id. (citing  
15 Sumner v. Mata, 449 U.S. 539, 545-57 (1981), and 28 U.S.C.  
16 § 2254(d)). Because this Court denies Petitioner's motion for  
17 appointment of counsel, it must "review the record and render an  
18 independent legal conclusion." Id. Moreover, because the Court  
19 does not appoint counsel, it must "inform itself of the relevant  
20 law. Therefore, the additional assistance provided by attorneys,  
21 while significant, is not compelling." Id.

22 If an evidentiary hearing is required, Rule 8(c) of the Rules  
23 Governing Section 2254 Cases requires that counsel be appointed to  
24 a petitioner who qualifies under 18 U.S.C. § 3006A(a)(2)(B). Rule  
25 8(c), 28 U.S.C. foll. § 2254; see Wood v. Wainwright, 597 F.2d 1054  
26 (5th Cir. 1979). In addition, the Court may appoint counsel for the  
27 effective utilization of any discovery process. Rule 6(a), 28  
28 U.S.C. foll. § 2254. For the above-stated reasons, the "interests

1 of justice" in this matter do not compel the appointment of counsel.  
2 Accordingly, Petitioner's Motion for Appointment of Counsel is  
3 **DENIED** without prejudice.

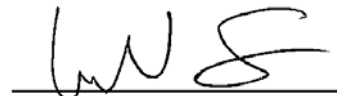
4 IT IS SO ORDERED.

5

6 DATED: December 9, 2010

7

8



Hon. William V. Gallo  
U.S. Magistrate Judge

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28