

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**

CHRISTOPHER DALE SMITH,

Petitioner,

v.

LARRY SMALL, Warden, et al.,

Respondents.

Civil      10cv2429-LAB (WMc)  
No.

**ORDER DENYING  
PETITIONER'S REQUEST FOR  
APPOINTMENT OF COUNSEL  
WITHOUT PREJUDICE**

[ECF No. 30.]

**I. INTRODUCTION**

Petitioner Christopher Dale Smith has requested his current *pro bono* counsel be appointed counsel in connection with his federal habeas corpus petition filed November 24, 2010. [Doc. No. 30.] Petitioner contends his case is too complex to proceed without court-appointed counsel and he would not have been able to advance his case to its present status had it not been for the help of *pro bono* counsel. *Id.* at 1-2. After reviewing Petitioner's claims, this Court denies his request for appointment of counsel without prejudice.

**II. STANDARD OF REVIEW**

The Sixth Amendment right to counsel does not extend to federal habeas corpus actions by state prisoners. *McCleskey v. Zant*, 499 U.S. 467, 495 (1991); *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986); *Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir. 1986). However, financially eligible habeas petitioners seeking relief pursuant

1 to 28 U.S.C. § 2254 may obtain representation whenever the court “determines that the  
2 interests of justice so require.” 18 U.S.C. § 3006A(a)(2)(B) (West Supp. 1995);  
3 *Terrovona v. Kincheloe*, 912 F.2d 1176, 1181 (9th Cir. 1990); *Bashor v. Risley*, 730 F.2d  
4 1228, 1234 (9th Cir. 1984); *Hoggard v. Purkett*, 29 F.3d 469, 471 (8th Cir. 1994).

### 5 **III. DISCUSSION**

6 To determine if appointment of counsel is appropriate for Petitioner, the Court  
7 must examine the possibility and extent of due process violations that may arise as  
8 Petitioner proceeds *pro se*. In the Ninth Circuit, “[i]ndigent state prisoners applying for  
9 habeas relief are not entitled to appointed counsel unless the circumstances of a particular  
10 case indicate that appointed counsel is necessary to prevent due process violations.”  
11 *Chaney*, 801 F.2d at 1196; *Knaubert*, 791 F.2d at 728-29. A due process violation may  
12 occur in the absence of counsel if the issues involved are too complex for the petitioner.  
13 In addition, the appointment of counsel may be necessary if the petitioner has such  
14 limited education that he or she is incapable of presenting his or her claims. *Hawkins v.*  
15 *Bennett*, 423 F.2d 948, 950 (8th Cir. 1970).

16 In the Eighth Circuit, “[t]o determine whether appointment of counsel is required  
17 for habeas petitioners with nonfrivolous claims, a district court should consider the legal  
18 complexity of the case, the factual complexity of the case, the petitioner’s ability to  
19 investigate and present his claim, and any other relevant factors.” *Abdullah v. Norris*, 18  
20 F.3d at 573 (citing *Battle v. Armontrout*, 902 F.2d 701, 702 (8th Cir. 1990)); *Hoggard*,  
21 29 F.3d at 471; *Boyd v. Goose*, 4 F.3d 669, 671 (8th Cir. 1993); *Smith v. Goose*, 998  
22 F.2d 1439, 1442 (8th Cir. 1993); *Johnson v. Williams*, 788 F.2d 1319, 1322-23 (8th Cir.  
23 1986). The Ninth Circuit also considers the clarity and coherence of a petitioner’s district  
24 court pleadings to determine the necessity of appointment of counsel; if clear and  
25 understandable, the court usually finds appointment of counsel unnecessary. *LaMere v.*  
26 *Risley*, 827 F.2d 622, 626 (9th Cir. 1987); *see also Chu Tran v. Malfi*, No. C 06-6374,  
27 2007 WL 988117, at \*2 (N.D. Cal. Apr. 2, 2007).


1           When determining if due process requires appointment of counsel, the Court  
2 utilizes the record before it to address the matter. After reviewing Petitioner’s federal  
3 habeas petition and supplemental materials, it appears Petitioner has adequately  
4 articulated his claims in the hand-written Petition. [ECF No. 1.] Moreover, “[w]here the  
5 issues involved can be properly resolved on the basis of the state court record, a district  
6 court does not abuse its discretion in denying a request for court-appointed counsel.”  
7 *Hoggard*, 29 F.3d at 471; *McCann v. Armontrout*, 973 F.2d 655, 661 (8th Cir. 1992);  
8 *Travis v. Lockhart*, 787 F.2d 409, 411 (8th Cir. 1986) (per curiam) (holding that district  
9 court did not abuse its discretion in denying § 2254 habeas petitioner’s motion for  
10 appointment of counsel where allegations were properly resolved on basis of state court  
11 record). Here, the Court has reviewed the state court record and determined it is able to  
12 properly resolve the issues involved on the basis of the state court record. Accordingly,  
13 on October 21, 2013, it issued its Report & Recommendation. [ECF No. 31.] Therefore,  
14 this Court finds no appointment of counsel is necessary at this time.

15 **IV. CONCLUSION AND ORDER THEREON**

16           For the above-stated reasons, the “interests of justice” in this matter do not compel  
17 the appointment of counsel. Accordingly, Petitioner’s request for appoint of counsel is  
18 **DENIED** without prejudice.

19           **IT IS SO ORDERED.**

20 DATED: December 31, 2013

21   
22 \_\_\_\_\_  
23 Hon. William McCurine, Jr.  
24 U.S. Magistrate Judge  
25 U.S. District Court  
26  
27  
28