

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
28UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

WILLIAM CECIL THORTON,

Petitioner,

v.

EUKETA OLIVER,

Respondent.

Civil No. 11-cv-0338-IEG (POR)

**ORDER DENYING PETITIONER'S
MOTION FOR APPOINTMENT OF
COUNSEL****[ECF No. 66]**

On February 17, 2011, Petitioner William Cecil Thorton (“Petitioner”), a state prisoner proceeding *pro se* and *in forma pauperis*, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (ECF No. 1.) On December 5, 2011, Petitioner filed his fifth Motion to Appoint Counsel. (ECF No. 66.) Petitioner argues the appointment of counsel is necessary because his claims are meritorious and he is unable to afford legal counsel.

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 to 28 U.S.C. § 2254 may obtain representation whenever the court “determines that the interests of justice so require.” 18 U.S.C. § 3006A(a)(2)(B); Terrovona v. Kincheloe, 912 F.2d 1176, 1181 (9th Cir. 1990); Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984).

In the Ninth Circuit, “[i]ndigent state prisoners applying for habeas relief are not entitled to

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

7 In the absence of counsel, however, “[t]he procedures employed by the federal courts are
8 highly protective of a pro se petitioner’s rights,” and “[t]he district court is required to construe a pro
9 se petition more liberally than it would construe a petition drafted by counsel.” Knaubert, 791 F.2d
10 at 729 (citing Haines v. Kerner, 404 U.S. 519, 520 (1972) (holding pro se complaint to less stringent
11 standard) (per curiam)); Bashor, 730 F.2d at 1234.

12 Here, Petitioner does not present any new facts or circumstances demonstrating the
13 appointment of counsel is necessary. Indeed, the instant motion is identical to Petitioner’s previous
14 motion for appointment of counsel. As the Court has found on four previous occasions, Petitioner
15 has adequately represented himself to date. Petitioner’s voluminous filings demonstrate an
16 understanding of the law and relevant facts. On November 18, 2011, Petitioner filed a Traverse to
17 Respondent’s Answer. No further briefing is required at this time. Therefore, at this stage of the
18 proceedings, the Court finds that the interests of justice do not require the appointment of counsel.

19 Based on the foregoing, the Court hereby **DENIES** without prejudice Petitioner’s Motion for
20 Appointment of Counsel.

21 **IT IS SO ORDERED.**

22 DATED: December 20, 2011

23 
24 _____
25 LOUISA S PORTER
26 United States Magistrate Judge

27 cc: The Honorable Irma E. Gonzalez
28 All parties