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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOAQUIN MURRIETTA)	Civil No.13-1457-BTM(WVG)
MARTINEZ,)	
)	
Petitioner,)	ORDER DENYING MOTION FOR
v.)	APPOINTMENT OF COUNSEL
)	(DOC. # 8)
CAPT. PENA, et al.,)	
)	
Respondent.)	

On October 22, 2013, the Court received a letter from Petitioner requesting that an attorney be appointed for him. (Doc. No. 8). The Court construes the letter to be a Motion for Appointment of 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

1 whenever the court "determines that the interests of
2 justice so require.'" 18 U.S.C. § 3006A(a)(2)(B);
3 Terrovona v. Kincheloe, 912 F.2d 1176, 1181 (9th Cir.
4 1990); Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir.
5 1984); Hoggard v. Purkett, 29 F.3d 469, 471 (8th Cir.
6 1994).

7 The interests of justice require appointment of
8 counsel when the court conducts an evidentiary hearing on
9 the petition. Terrovona, 912 F.2d at 1177; Knaubert, 791
10 F.2d at 728; Abdullah v. Norris, 18 F.3d 571, 573 (8th
11 Cir. 1994); Rule 8(c), 28 U.S.C. foll. § 2254. The
12 appointment of counsel is discretionary when no eviden-
13 tiary hearing is necessary. Terrovona, 912 F.2d at 1177;
14 Knaubert, 791 F.2d at 728; Abdullah, 18 F.3d at 573.

15 In the Ninth Circuit, "[i]ndigent state prisoners
16 applying for habeas relief are not entitled to appointed
17 counsel unless the circumstances of a particular case
18 indicate that appointed counsel is necessary to prevent
19 due process violations." Chaney, 801 F.2d at 1196;
20 Knaubert, 791 F.2d at 728-29. A due process violation may
21 occur in the absence of counsel if the issues involved are
22 too complex for the petitioner. In addition, the appoint-
23 ment of counsel may be necessary if the petitioner has
24 such limited education that he or she is incapable of
25 presenting his or her claims. Hawkins v. Bennett, 423
26 F.2d 948, 950 (8th Cir. 1970).

27 In the Eighth Circuit, "[t]o determine whether
28 appointment of counsel is required for habeas petitioners

1 with non-frivolous claims, a district court should con-
2 sider the legal complexity of the case, the factual
3 complexity of the case, the petitioner's ability to
4 investigate and present his claim, and any other relevant
5 factors." Abdullah v. Norris, 18 F.3d at 573 (citing
6 Battle v. Armontrout, 902 F.2d 701, 702 (8th Cir. 1990));
7 Hoggard, 29 F.3d at 471; Boyd v. Goose, 4 F.3d 669, 671
8 (8th Cir. 1993); Smith v. Goose, 998 F.2d 1439, 1442 (8th
9 Cir. 1993); Johnson v. Williams, 788 F.2d 1319, 1322-23
10 (8th Cir. 1986).

11 Since these factors are useful in determining
12 whether due process requires the appointment of counsel,
13 they are considered to the extent possible based on the
14 record before the Court. Here, Petitioner has sufficiently
15 represented himself to date. From the face of the Peti-
16 tion, filed *pro se*, it appears that Petitioner has a good
17 grasp of this case and the legal issues involved. Under
18 such circumstances, a district court does not abuse its
19 discretion in denying a state prisoner's request for
20 appointment of counsel as it is simply not warranted by
21 the interests of justice. See LaMere v. Risley, 827 F.2d
22 622, 626 (9th Cir. 1987). At this stage of the proceed-
23 ings, the Court finds that the interests of justice do not
24 require the appointment of counsel. Therefore, Peti-
25 tioner's Motion for Appointment of Counsel in this regard
26 is DENIED without prejudice.

27 The Court also notes that "[w]here the issues
28 involved can be properly resolved on the basis of the

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

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

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

1 112 (9th Cir.1978) (per curiam). Even when the district
2 court accepts a state court's factual findings, it must
3 render an independent legal conclusion regarding the
4 legality of a petitioner's incarceration. Miller v.
5 Fenton, 474 U.S. 104, 112 (1985). The district court's
6 legal conclusion, moreover, will receive de novo appellate
7 review. Hayes v. Kincheloe, 784 F.2d 1434, 1436 (9th Cir.
8 1986).

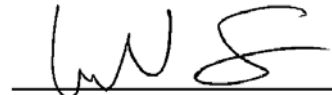
9 The assistance counsel provides is valuable. "An
10 attorney may narrow the issues and elicit relevant infor-
11 mation from his or her client. An attorney may highlight
12 the record and present to the court a reasoned analysis of
13 the controlling law." Knaubert, 791 F.2d at 729. How-
14 ever, as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

26 If an evidentiary hearing is required, Rule 8(c) of
27 the Rules Governing Section 2254 Cases requires that
28 counsel be appointed to a petitioner who qualifies under

1 18 U.S.C. § 3006A(a)(2)(B). Rule 8(c), 28 U.S.C. foll.
2 § 2254; see Wood v. Wainwright, 597 F.2d 1054 (5th Cir.
3 1979). In addition, the Court may appoint counsel for the
4 effective utilization of any discovery process. Rule 6(a),
5 28 U.S.C. foll. § 2254. For the above-stated reasons, the
6 "interests of justice" in this matter do not compel the
7 appointment of counsel. Accordingly, Petitioner's Motion
8 for Appointment of Counsel is DENIED without prejudice.
9 IT IS SO ORDERED.

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DATED: October 24, 2013



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