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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CEDRIC E. WALKER,

Petitioner,

v.

ERIC ARNOLD, Warden,

Respondent.

Case No.: 16CV2430-LAB (BLM)

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

[ECF No. 24]

On June 1, 2017, Petitioner, a state prisoner proceeding *pro se*, filed a request for appointment of counsel that was accepted by this Court on discrepancy on June 13, 2017. ECF Nos. 23-24. In support of his motion, Petitioner alleges that he is incarcerated and “indigent and unable to afford counsel.” ECF No. 24 at 1. Petitioner further asserts that he suffered ineffective assistance of counsel from his trial counsel and that denying the instant request “would further deprive petitioner as a citizen, free exercise or enjoyment of rights and privilege secured to him by constitution or laws of the United States.” Id. at 2. Petitioner notes that his case is being reviewed by the innocence project and that he is waiting to be considered for resentencing.¹ Id. at 2-3. Finally, Petitioner argues that he should be appointed counsel from

¹ Petitioner received a letter from the prison law office stating that he did not qualify for

1 somewhere “other than the public defenders [sic] office. . . . as the public defenders [sic] office
2 has rendered ineffective assistance of counsel in all prior representations.” Id. at 3.

3 Having considered Petitioner’s motion and the applicable law, and for the reasons set
4 forth below, the motion is **DENIED WITHOUT PREJUDICE**.

5 The Sixth Amendment right to counsel does not extend to federal habeas corpus actions
6 by state prisoners. McCleskey v. Zant, 499 U.S. 467, 495 (1991); Nevius v. Sumner, 105 F.3d
7 453, 460 (9th Cir. 1996) (noting that there currently exists no constitutional right to appointment
8 of counsel in habeas proceedings); Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986).
9 However, courts may appoint counsel for financially eligible habeas petitioners seeking relief
10 pursuant to 28 U.S.C. § 2254 whenever the court “determines that the interests of justice so
11 require.” 18 U.S.C. § 3006A(a)(2)(B); Terrovona v. Kincheloe, 912 F.2d 1176, 1181 (9th Cir.
12 1990) (citing 18 U.S.C. § 3006A(a)(2)(B)); Chaney, 801 F.2d at 1196 (“Indigent state prisoners
13 applying for habeas corpus relief are not entitled to appointed counsel unless the circumstances
14 of a particular case indicate that appointed counsel is necessary to prevent due process
15 violations.”). Whether or not to appoint counsel is a matter left to the court’s discretion, unless
16 an evidentiary hearing is necessary. Knaubert v. Goldsmith, 791 F.2d 722, 728-30 (9th Cir.
17 1986) (explaining that the interests of justice require appointment of counsel when the court
18 conducts an evidentiary hearing on the petition.).

19 The court’s discretion to appoint counsel may be exercised only under “exceptional
20 circumstances.” Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991).¹ “A finding of
21 exceptional circumstances requires an evaluation of both the likelihood of success on the merits
22 and the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the
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25 resentencing, but CDCR Correctional Counselors told Petitioner that he did qualify and just
26 needed to be patient while the Court worked through a large backlog of cases and that a public
defender would contact him when his case comes up for review. ECF No. 24 at 2.

27 ¹ The Terrell court cited 28 U.S.C. § 1915(d), but the legislature subsequently renumbered this
28 section as 28 U.S.C. § 1915(e)(1).

1 legal issues involved. Neither of these factors is dispositive and both must be viewed together
2 before reaching a decision.” Id. (citations and internal quotation marks omitted).

3 Thus far, Petitioner has drafted and submitted several documents without the assistance
4 of legal counsel. In addition to the instant motion, Petitioner has submitted a Petition for Writ
5 of Habeas Corpus [ECF No. 1], a notice to correct address [ECF No. 8], an order re consent or
6 request for reassignment [ECF No. 11], a motion for *in forma pauperis* filing clarification for the
7 Southern District/motion to transfer *in forma pauperis* status request to the Southern District
8 [ECF No. 12-3], an application to proceed *in forma pauperis* [ECF No. 13], a motion for
9 reconsideration of *in forma pauperis* status [ECF No. 17], a motion to amend the original petition
10 [ECF No. 25], a traverse and lodgment [ECF No. 27], and a motion for clarification [ECF No. 29].
11 From the Court’s review of these documents, it is clear that Petitioner is able to articulate the
12 claims of his case. While it is too early for the Court to determine Petitioner’s likelihood of
13 success on the merits, Petitioner fails to establish the requisite “exceptional circumstances”
14 warranting the apportionment of counsel. Under such circumstances, a district court does not
15 abuse its discretion in denying a state prisoner’s request for appointment of counsel as it is
16 simply not warranted by the interests of justice. See LaMere v. Risley, 827 F.2d 622, 626 (9th
17 Cir. 1987) (affirming district court’s denial of request for appointment of counsel where pleadings
18 demonstrated petitioner had “a good understanding of the issues and the ability to present
19 forcefully and coherently his contentions”).

20 The Court therefore finds that at this stage of the pleadings, the interests of justice do
21 not require the appointment of counsel and that this habeas proceeding does not present
22 “exceptional circumstances” justifying the appointment of legal counsel. Accordingly,
23 Petitioner’s Motion for Appointment of Counsel is **DENIED WITHOUT PREJUDICE**.

24 **IT IS SO ORDERED.**

25 Dated: 7/20/2017


26 Hon. Barbara L. Major
27 United States Magistrate Judge
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