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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TROY D. WARD,

Petitioner,

v.

NEIL McDOWELL, Warden,

Respondent.

Case No.: 16cv3055-LAB-MDD

**ORDER ON PETITIONER'S MOTION
FOR AN EVIDENTIARY HEARING,
SECOND MOTION FOR EXTENSION
OF TIME TO OBJECT, and SECOND
MOTION FOR APPOINTMENT OF
COUNSEL**

[ECF No. 24]

On July 5, 2017, Petitioner constructively filed this motion asking 1) appointment of counsel, and 2) for an additional 90 day extension of time to file objections to the pending Report and Recommendation. (ECF No. 28).

A. Third Motion for Appointment of Counsel

Petitioner's motion for appointment of pro bono counsel is **DENIED**. The Sixth Amendment right to counsel does not extend to federal habeas corpus actions by state prisoners. *See McClesky v. Zant*, 499 U.S. 467, 495(1991); *Nevius v. Sumner*, 105 F.3d 453, 460 (9th Cir. 1996) (noting that there currently exists no constitutional right to appointment of counsel in habeas proceedings); *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986).

1 Courts may appoint counsel for financially-eligible habeas petitioners seeking
2 relief pursuant to 28 U.S.C. § 2254 only where “the interests of justice so
3 require.” 18 U.S.C. § 3006A(a)(2)(B); *Chaney*, 801 F.2d at 1196.

4 The interests of justice require appointment of counsel when the court
5 conducts an evidentiary hearing on the petition. *Terrovona v. Kincheloe*, 912
6 F.2d 1176, 1177 (9th Cir. 1990); *Knaubert v. Goldsmith*, 791 F.2d 722, 728
7 (9th Cir. 1986); *Abdullah v. Norris*, 18 F.3d 571, 573 (8th Cir. 1994); Rule
8 8(c), 28 U.S.C. foll. § 2254. The appointment of counsel is discretionary when
9 no evidentiary hearing is necessary. *Id.* When “the district court chooses to
10 deny a motion for appointment of counsel, the court must review the record
11 and render an independent legal conclusion.” *Knaubert*, 791 F.2d at 729.

12 Moreover, when “the court declines to appoint counsel, it will have to inform
13 itself of the relevant law. Therefore, the *additional* assistance provided by
14 attorneys” is not required by the Constitution unless an evidentiary hearing
15 is required. *Id.*

16 An evidentiary hearing has not been ordered in this case, and therefore
17 the interests of justice do not require appointment of counsel. Petitioner has
18 not shown that this Court should exercise its discretion to appoint counsel.
19 This is not a death penalty case. Petitioner does not show that this case is
20 particularly complex. Petitioner included standardized testing results in his
21 third request, however he does not explain how these results render him
22 significantly less capable of pursuing his action than similarly situated
23 petitioners.

24 Petitioner has not shown that appointment of counsel is required by the
25 interests of justice, that appointment of counsel is necessary to prevent due
26 process violations in this action, or that this Court should exercise its
27 discretion for alternative reasons. Accordingly, Petitioner’s motion for

1 appointment of counsel is **DENIED** without prejudice.

2 **B. Second Motion for Extension**

3 Petitioner's objections to the Report and Recommendation were
4 originally due June 14, 2017. (ECF No. 19 at 39 (setting deadline to file
5 objections)). Petitioner's first motion for an extension sought a 90 day
6 extension, but provided no grounds for seeking an extension. (ECF No. 21).
7 In the interests of justice, the Court granted Petitioner's motion in part,
8 granted a month-long extension, and ordered Petitioner to file his objections
9 on or before July 12, 2017. (ECF No. 22). Petitioner's second motion for an
10 extension sought an additional 60 days. (ECF No. 24). Petitioner was given
11 an additional two weeks in order to file his objections. (ECF No. 25).

12 In this third motion for an extension, Petitioner request an additional
13 90 days. (ECF No. 28). In support, Petitioner does not provide any grounds
14 except to note that he continues to wait for a reply back from his parole office.

15 The Court finds that Petitioner has not shown good cause for the
16 requested extension and **DENIES** this third motion for an extension.
17 Nevertheless, in the interests of justice, this Court will provide Petitioner one
18 last opportunity to file his objections. Petitioner must file objections on or
19 before **September 11, 2017**. Respondent must file any response to
20 Petitioner's objections on or before **September 25, 2017**.

21
22 **IT IS SO ORDERED.**

23
24 Dated: August 21, 2017

25 
26 Hon. Mitchell D. Dembin
27 United States Magistrate Judge