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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

RYAN PATRICK DAVIDSON,  Petitioner,  v.  W.J. SULLIVAN,  Respondent.
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Case No.: 17cv421-H (MDD)

**ORDER DENYING PETITIONER'S  
MOTION FOR APPOINTMENT OF  
COUNSEL**

**[ECF No. 3]**

Petitioner, proceeding *pro se* and *in forma pauperis* (“IFP”) with a Petition for Writ of Habeas Corpus [ECF No. 1] filed pursuant to 28 U.S.C. § 2254, and currently incarcerated at the California Correctional Institute State Prison in Tehachapi, California, has submitted a motion in which he requests that the Court appoint counsel for him [Doc. No. 3]. In support, Petitioner argues counsel should be appointed to assist him in the case because Petitioner “is a layperson, indigent, and as expressed by the lower courts, the success of this petition is hinged on factual development which will require an expert witness, and other resources currently outside of the incarcerated petitioner’s means.” (ECF No. 3 at 1).

1           Having considered the request submitted by Petitioner and the  
2 applicable law, and for the reasons set forth below, Petitioner’s Motion for  
3 Appointment of Counsel is **DENIED** without prejudice.

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

17           A court’s discretion to appoint counsel may be exercised only under  
18 “exceptional circumstances.” *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir.  
19 1991). “A finding of exceptional circumstances requires an evaluation of both  
20 the ‘likelihood of success on the merits and the ability of the petitioner to  
21 articulate his claims *pro se* in light of the complexity of the legal issues  
22 involved.’ Neither of these issues is dispositive and both must be viewed  
23 together before reaching a decision.” *Id.* (quoting *Wilborn v. Escalderon*, 789  
24 F.2d 1238, 1331 (9th Cir. 1986)).

25           Petitioner has failed to demonstrate to the Court that appointment of  
26 counsel is warranted in this case. Having reviewed Petitioner’s filings in this  
27 case, the Court finds that Petitioner has sufficient grasp of his claims for

1 habeas relief and the legal issues involved in those claims, and also is able to  
2 articulate those claims adequately without assistance. *See LaMere v. Risley*,  
3 827 F.2d 622, 626 (9th Cir. 1987) (affirming district court’s denial of request  
4 for appointment of counsel where pleadings demonstrated petitioner had a  
5 “good understanding of the issues and the ability to present forcefully and  
6 coherently his contentions”). The Court also finds that Petitioner has not  
7 established a likelihood of success on the merits. *See Terrell*, 935 F.2d at  
8 1017. Under these circumstances, the Court concludes that this habeas  
9 proceeding does not present “exceptional circumstances” justifying the  
10 appointment of legal counsel. *Id.* Accordingly, Petitioner’s Motion for  
11 Appointment of Counsel is **DENIED** without prejudice.

12 **IT IS SO ORDERED.**

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14 Dated: March 24, 2017

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16 Hon. Mitchell D. Dembin  
17 United States Magistrate Judge  
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