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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 RANDALL CLARK WALL,  
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Petitioner,  
v.  
RONALD DAVIS, Warden of San  
Quentin State Prison  
Respondent.

Case No.: 18CV0858 CAB (PCL)

**DEATH PENALTY CASE**

**ORDER:**

**(1) GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS;**

**(3) DENYING REQUEST FOR APPOINTMENT OF COUNSEL WITHOUT PREJUDICE; AND**

**(3) DISMISSING CASE WITHOUT PREJUDICE**

21 On May 3, 2018, Petitioner Randall Clark Wall filed a request for appointment of  
22 counsel to represent him in federal habeas corpus proceedings, a civil case cover sheet, and  
23 an accompanying declaration. (ECF No. 1.) Petitioner has also filed a motion for leave to  
24 proceed in forma pauperis [“IFP”]. (ECF No. 2.) For the reasons discussed below, the  
25 Court **GRANTS** the motion for leave to proceed IFP, **DENIES** the request for appointment  
26 of counsel without prejudice as premature, and **DISMISSES** the case without prejudice.  
27 Petitioner may refile his habeas action and renew his request for appointment of counsel  
28 after the conclusion of his pending proceedings.

1 **I. BACKGROUND**

2 Petitioner pleaded guilty to first degree murder, four special circumstances (multiple  
3 murder, murders in the commission of a robbery, murders committed while lying in wait,  
4 and murders in the commission of first degree burglary), in addition to robbery, conspiracy  
5 to commit robbery, burglary, and conspiracy to commit burglary, and was sentenced to  
6 death. On November 13, 2017, the California Supreme Court affirmed the convictions and  
7 sentence on direct appeal. People v. Wall, 3 Cal. 5th 1048 (2017). According to the  
8 California Supreme Court’s case information for Petitioner’s direct appellate proceeding  
9 (Case No. S044693), on April 16, 2018, that Court received a “Letter from U.S.S.C., dated  
10 April 10, 2018, advising the application for an extension of time within which to file a  
11 petition for writ of certiorari in this case has been presented to Justice Kennedy, who on  
12 April 10, 2018, extended the time to and including June 22, 2018.” (See Case No. S044693  
13 at <http://appellatecases.courtinfo.ca.gov/search.cfm?dist=0>, last visited May 9, 2018.) The  
14 United States Supreme Court’s website similarly reflects that Petitioner’s current deadline  
15 for filing a petition for writ of certiorari is June 22, 2018. (See  
16 [https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/17](https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/17a1085.html)  
17 [a1085.html](https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/17a1085.html), last visited May 9, 2018.)

18 On May 19, 2015, Petitioner filed a habeas petition (Case No. S226530) in the  
19 California Supreme Court accompanied by exhibits. An informal response was filed on  
20 January 19, 2016, and a reply was filed on March 24, 2017, also accompanied by exhibits.  
21 The state habeas petition remains pending before the California Supreme Court. (See Case  
22 No. S226530 at <http://appellatecases.courtinfo.ca.gov/search.cfm?dist=0>, last visited May  
23 9, 2018.)

24 **II. REQUEST TO PROCEED IFP**

25 With respect to the motion for leave to proceed in forma pauperis, Petitioner has  
26 attached a declaration and trust account statement which reflects that Petitioner has \$0.00  
27 in his account at San Quentin State Prison where he is presently confined. (ECF No. 2 at  
28 4.) Petitioner cannot afford the \$5.00 filing fee. Accordingly, the Court **GRANTS**

1 Petitioner’s motion and allows Petitioner to proceed in the above-referenced matter without  
2 being required to prepay fees or costs and without being required to post security.

### 3 **III. REQUEST FOR APPOINTMENT OF COUNSEL**

4 In a signed declaration dated March 21, 2018, Petitioner states that his direct appeal  
5 case is “closed” but notes that: “I believe that my appellate lawyer plans to file a petition  
6 for a writ of certiorari in the United States Supreme Court in the near future.” (ECF No.  
7 1-2 at 1.) Petitioner also states that: “The California Supreme Court has not yet ruled on  
8 my habeas corpus petition. If the California Supreme Court denies my habeas corpus  
9 petition, the time for seeking federal habeas review will begin running.” (*Id.* at 2.)  
10 Petitioner states that: “I am submitting a request for federal habeas corpus counsel now in  
11 anticipation of this contingency,” and states that he intends to file a federal habeas petition  
12 and needs the assistance of counsel to prepare and litigate a federal petition. (*Id.*) Petitioner  
13 indicates that: “I have been advised that the attorneys who represented me in the state direct  
14 appeal, the Office of the State Public Defender, and in the state habeas corpus proceedings,  
15 the Habeas Corpus Resource Center, are not able to represent me in these federal habeas  
16 corpus proceedings,” and states: “I am indigent and do not have the assets to retain an  
17 attorney to represent me in these federal habeas corpus proceedings.” (*Id.*)

18 Yet, upon review, it is evident that in addition to his pending state habeas  
19 proceedings, Petitioner’s direct appellate proceedings do not appear to be concluded.  
20 Petitioner acknowledges that his appellate counsel intends to file a petition for a writ of  
21 certiorari, and both the California Supreme Court’s and United States Supreme Court’s  
22 dockets reflect that the deadline for that filing was recently extended to June 22, 2018. 28  
23 U.S.C. § 2244(d)(1)(A) provides in relevant part that the 1-year statute of limitations for  
24 filing a federal habeas petition “shall run from the latest of” several dates, one of which is  
25 “the date on which the judgment became final by the conclusion of direct review or the  
26 expiration of the time for seeking such review.” The Supreme Court has noted that: “The  
27 Courts of Appeal have uniformly interpreted ‘direct review’ in § 2244(d)(1)(A) to  
28 encompass review of a state conviction by this Court.” Clay v. United States, 537 U.S.

1 522, 528 n. 3 (2003) (collecting cases); see Bowen v. Roe, 188 F.3d 1157, 1158-59 (9th  
2 Cir. 1999) (“We hold that the period of ‘direct review’ in 28 U.S.C. § 2244(d)(1)(A)  
3 includes the period within which a petitioner can file a petition for a writ of certiorari from  
4 the United States Supreme Court, whether or not the petitioner actually files such a  
5 petition.”) Because the United States Supreme Court has neither affirmed Petitioner’s  
6 conviction, denied a petition for writ of certiorari, nor has time expired for Petitioner to  
7 seek such review, Petitioner’s judgment is not yet final. See Gonzalez v. Thaler, 565 U.S.  
8 134, 150 (2012) (“For petitioners who pursue direct review all the way to this Court, the  
9 judgment becomes final at the ‘conclusion of direct review’- when this Court affirms a  
10 conviction on the merits or denies a petition for certiorari. For all other petitioners, the  
11 judgment becomes final at the ‘expiration of the time for seeking such review’- when the  
12 time for pursuing direct review in this Court, or in state court, expires.”)

13 While the Local Rule concerning capital habeas corpus proceedings indicates that  
14 “counsel must be appointed in every such case at the earliest practicable time,” it also  
15 appears to acknowledge that the process of appointing counsel will typically take place  
16 after the completion of state proceedings. See CivLR HC.3(d)(1) (“When a death judgment  
17 is affirmed by the California Supreme Court and any subsequent proceedings in the state  
18 courts have concluded, . . .”) Given that neither Petitioner’s direct review nor state habeas  
19 proceedings are completed, the Court is not persuaded that appointment of counsel is  
20 appropriate at this time.

### 21 **III. CONCLUSION AND ORDER**

22 For the reasons discussed above, Petitioner’s motion for leave to proceed IFP is  
23 **GRANTED**. Petitioner’s request for appointment of counsel is **DENIED** without  
24 prejudice as premature. The instant habeas case is **DISMISSED** without prejudice.  
25 Petitioner may refile the action and renew his request for appointment of counsel after the  
26 conclusion of his pending proceedings.

27 The Clerk of the Court shall serve a certified copy of this order on Petitioner Randall  
28 Clark Wall; Attorney Andrea Asaro, Office of the State Public Defender; Attorney Miro

1 Cizin, Habeas Corpus Resource Center; Respondent Ronald Davis, Warden of San Quentin  
2 Prison; the Clerk of the San Diego County Superior Court; Xavier Becerra, Attorney  
3 General of the State of California; Teresa Torreblanca, Deputy Attorney General of the  
4 State of California; Summer Stephan, District Attorney of San Diego County; Joseph  
5 Schlesinger, California Appellate Project San Francisco; and Elaine Alexander, Appellate  
6 Defenders, Inc.

7 **IT IS SO ORDERED.**

8 Dated: May 9, 2018



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Hon. Cathy Ann Bencivengo  
United States District Judge

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