

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Chief Judge Marcia S. Krieger

Civil Action No. 13-cv-00494-MSK

ANTONIO AGUILAR,

Applicant,

v.

RAE TAMME, and  
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

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**ORDER**

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This matter is before the Court on three motions filed by Applicant Antonio Aguilar on September 19, 2013. In a motion captioned “Stay/Dismissal” (ECF No. 29), Mr Aguilar renews his request to stay this habeas corpus action so that he may return to state court to exhaust state remedies for unspecified claims. The other two motions are a motion for an extension of time (ECF No. 30) to file a reply to Respondents’ Answer to Application (ECF No. 28) and a motion for appointment of counsel (ECF No. 31).

The operative pleading in this action is an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 7) (“the Application”) in which Mr. Aguilar challenges the validity of his state court criminal conviction and sentence. On August 28, 2013, the Court entered an Order to Dismiss in Part (ECF No. 25) in which the Court denied Mr. Aguilar’s amended motion for a stay, dismissed four of Mr. Aguilar’s nine claims in the Application as procedurally barred, directed Respondents to file an answer that fully addresses the merits of Mr. Aguilar’s remaining claims, and directed Mr. Aguilar to file any reply to the answer within thirty

days after the answer is filed. Respondents filed their Answer to Application on September 12, 2013.

Mr. Aguilar's renewed motion for a stay will be denied for the same reasons specified in the Order to Dismiss in Part. It still is not clear that a stay is necessary because Mr. Aguilar does not identify the claims he intends to exhaust. In addition, even assuming Mr. Aguilar does intend to pursue a claim that is not exhausted, he still fails to demonstrate good cause for failing to exhaust state remedies prior to filing this action or that any unexhausted claim potentially is meritorious. *See Rhines v. Weber*, 544 U.S. 269, 277-78 (2005).

The Court next will address Mr. Aguilar's motion for appointment of counsel. The Court notes initially that "[t]here is no constitutional right to counsel beyond the direct appeal of a criminal conviction." *Coronado v. Ward*, 517 F.3d 1212, 1218 (10<sup>th</sup> Cir. 2008). Furthermore, decisions regarding appointment of counsel in habeas corpus proceedings generally are "left to the court's discretion." *Swazo v. Wyo. Dep't of Corr. State Penitentiary Warden*, 23 F.3d 332, 333 (10<sup>th</sup> Cir. 1994). "However, there is a right to counsel in a habeas case when the district court determines that an evidentiary hearing is required." *Id.* More specifically, Rule 8(c) of the Rules Governing Section 2254 Cases in the United States District Courts provides that "[i]f an evidentiary hearing is warranted, the judge must appoint an attorney to represent a petitioner who qualifies to have counsel appointed under 18 U.S.C. § 3006A."

The Court has made no determination regarding whether an evidentiary hearing is warranted in this action. Therefore, Mr. Aguilar is not entitled to appointment of counsel and the Court exercises its discretion in considering his motion for appointment of counsel.

The Court is not persuaded that appointment of counsel is necessary in the interests of

justice at this stage of the proceedings. It does not appear that the remaining claims in this action are complex or that Mr. Aguilar lacks the ability to express his position with respect to those claims. Therefore, Mr. Aguilar's motion for appointment of counsel will be denied.

Finally, the Court will grant Mr. Aguilar an extension of time to file a reply to Respondents' Answer to Application. Accordingly, it is

**ORDERED** that Applicant's renewed motion for a stay (ECF No. 29) and motion for appointment of counsel (ECF No. 31) are DENIED. It is further

**ORDERED** that Applicant's motion for an extension of time (ECF No. 30) is GRANTED and Applicant shall have up to and including November 1, 2013, to file a reply to Respondents' Answer to Application.

DATED this 25<sup>th</sup> day of September, 2013.

**BY THE COURT:**



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Marcia S. Krieger  
Chief United States District Judge