

1

2

3

1

5

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DUSHON NICHALOS GREEN,

Case No. 2:14-cv-01388-APG-NJK

Petitioner,

ORDER

11 | VS.

12 ROBERT LEGRAND, *et al.*

Respondents.

16 This pending habeas action by a Nevada state inmate comes before the Court on petitioner's
17 motion or application (ECF No. 42) for a certificate of appealability (COA).

18 Petitioner seeks to appeal the interlocutory order (ECF No. 41) denying his motion for
19 reconsideration of the Court's orders denying appointment of counsel.

With deference to the final authority of the Court of Appeals in determining its own jurisdiction, it does not appear that there is appellate jurisdiction over this interlocutory order. It is established law that an interlocutory order denying a motion for appointment of counsel in a noncapital habeas case is not appealable. *E.g., Weygandt v. Look*, 718 F.2d 952, 953-54 (9th Cir. 1983).

24 In any event, a certificate of appealability is not required to pursue an interlocutory appeal,
25 assuming, *arguendo*, the existence of appellate jurisdiction. See *Harbison v. Bell*, 556 U.S. 180, 183
26 (2009)(a COA is required only to appeal a final order in a habeas proceeding, and a COA thus is not
27 required to appeal an appealable interlocutory order).

28 The application for a COA therefore will be denied as unnecessary.

1 **IT THEREFORE IS ORDERED** that petitioner's motion or application (ECF No. 42) for a
2 certificate of appealability is DENIED as unnecessary.

3 The Clerk of Court shall provide electronic notice of this order to the Court of Appeals in the
4 customary manner, in connection with No. 16-16596 in that Court.

5 DATED: October 6, 2016.

6
7 
8 ANDREW P. GORDON
9 United States District Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28