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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 JOHN MICHAEL BALE,
11 Petitioner,

12 v.

13 DONALD HOLBROOK,
14 Respondent.

CASE NO. 3:17-CV-05188-RBL-JRC
ORDER DENYING MOTION

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16 The District Court has referred this petition for a writ of habeas corpus to United
17 States Magistrate Judge, J. Richard Creatura. The authority for the referral is 28 U.S.C. §
18 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR3 and MJR4. Petitioner
19 seeks relief from a state conviction, thus, the petition is filed pursuant to 28 U.S.C. §
20 2254.

21 Before the Court is petitioner's motion that the Court require the State to address
22 his habeas petition on the merits; that he be allowed to appear at a hearing by telephone,
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24

1 and that he be appointed counsel. Having reviewed the motions and the balance of the
2 record, the Court concludes that the motions should be denied.

3 **DISCUSSION**

4 **I. Call to Address the Merits**

5 Petitioner invokes his right to reply to the State's answer and appears to ask the
6 Court to instruct the State to respond to his arguments on the merits. Dkt. 19. In a
7 previous order, the Court declined to dismiss the petition and instructed the State to file a
8 supplemental answer addressing petitioner's arguments. Dkt. 22. Because of this, the
9 Court denies petitioner's first request as moot.
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11 **II. Motion for Telephonic Hearing**

12 Petitioner moves the Court to enter an order allowing him to appear by telephone
13 on July 30, 2017. Dkt. 19. Since the proposed date has already passed, the motion is
14 moot. Even if the motion was not moot, oral argument is not generally conducted on
15 motions submitted to the Court. Local Rule 7(b)(4). Occasionally, the Court may order
16 oral argument. *Id.* The Court has not ordered oral argument in this case and the parties do
17 not need to appear for a hearing or status conference. Further, petitioner does not
18 demonstrate that a telephonic conference is necessary to discuss his petition. Petitioner's
19 motion for a telephonic conference on this matter is denied.
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21 **III. Motion for Appointed Counsel**

22 Petitioner requests that the Court appoint him counsel. Dkt. 19. There is no right to
23 appointed counsel in cases brought under 28 U.S.C. § 2554 unless an evidentiary hearing
24 is required or appointed counsel is necessary for the effective utilization of discovery

1 | procedures. *See Pennsylvania v. Finney*, 481 U.S. 551, 555 (1987); *U.S. v. Duarte-*
2 | *Higareda*, 68 F.3d 369, 370 (9th Cir. 1995). The Court may also appoint counsel “at any
3 | stage of the case if the interest of justice so require.” *Weygandt v. Look*, 718 F.2d 952,
4 | 954 (9th Cir. 1983) (citing Rule Governing Section 2254 Cases in the United States
5 | District Courts 8(c)). In deciding whether to appoint counsel, the Court “must evaluate
6 | the likelihood of success on the merits as well as the ability of petitioner to articulate his
7 | claims *pro se* in light of the complexity of the legal issues involved.” *Id.*

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9 | Petitioner has not yet requested that he be allowed to conduct discovery nor does
10 | the Court find good cause for granting him leave to do so at this stage in the proceedings.
11 | *See* Rule Governing Section 2254 Cases in the United States District Courts 6(a). In
12 | addition, the Court has not determined that an evidentiary hearing will be required, nor
13 | does it appear that one is needed at this time. *See* Rule Governing Section 2254 Cases in
14 | the United States District Courts 8(c). Petitioner has not shown that his particular
15 | conditions of confinement are such that “the interests of justice” require appointment of
16 | counsel.

17 | Furthermore, petitioner effectively articulated his grounds for relief raised in the
18 | petition and the grounds are not factually or legally complex. Finally, it is difficult to
19 | determine the likelihood of success on the merits without an answer on the merits from
20 | respondent. The Court recently ordered respondent to file a supplemental Answer on the
21 | merits. *See* Dkt. 22.

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23 | Accordingly, petitioner’s motion for appointment of counsel is denied without
24 | prejudice.

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2 **CONCLUSION**

3 For the reasons stated, the Court hereby **ORDERS** as follows:

4 The Court denies petitioner's request that the Court instruct the State to respond to
5 his arguments on the merits as moot (Dkt. 19);

6 Petitioner's motion for a telephonic conference on this matter is denied (Dkt. 19);
7 and,

8 Petitioner's motion for appointment of counsel is denied without prejudice (Dkt.
9 19).
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11 Dated this 4th day of August, 2017.

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13 J. Richard Creatura
14 United States Magistrate Judge
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