

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Phonsongkham v. Guzman

Phonsongkham · No. 24-cv-01566-LL-MMP · Decided June 6, 2025

SUMMARY

The United States District Court for the Southern District of California denied a state prisoner’s motion to reconsider the denial of appointed counsel in a 28 U.S.C. § 2254 habeas proceeding. The court held that the petitioner had not identified a basis for Rule 60(b) relief or shown exceptional circumstances warranting appointment of counsel, but extended the deadline for filing an opposition or traverse and ordered respondents to re-serve case documents.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Michelle M. Pettit
JURISDICTION	United States District Court for the Southern District of California
DECIDED	June 6, 2025
DOCKET	24-cv-01566-LL-MMP
DISPOSITION	other
PROCEDURAL POSTURE	A state prisoner proceeding pro se moved under Federal Rule of Civil Procedure 60(b) for reconsideration of an order denying his motion for appointment of counsel in his federal habeas proceeding.
STANDARD OF REVIEW	Reconsideration under Federal Rule of Civil Procedure 60(b) is an extraordinary remedy used sparingly; appointment of counsel for an indigent civil litigant is committed to the district court's discretion and requires exceptional circumstances.
PRECEDENTIAL VALUE	Unknown; district-court order with no published reporter citation.
PARTIES	Andy Phonsongkham v. Fidenzio N. Guzman, et al.

TOPICS

- motion for reconsideration
- federal habeas corpus
- post-conviction relief
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Petitioner established a basis under Federal Rule of Civil Procedure 60(b) for reconsideration of the order denying appointment of counsel.
2. Whether Petitioner's alleged indigency and limited English-language ability constituted exceptional circumstances warranting appointment of counsel under 28 U.S.C. § 1915(e)(1).
3. Whether Petitioner's assertion that he had not received Respondents' filings warranted re-service and an extension of the deadline to file an opposition or traverse.

HOLDINGS

1. Reconsideration was not warranted because Petitioner did not identify a traditional Rule 60(b) ground or any other reason justifying relief, and the grounds he asserted could have been raised in his original motion for appointment of counsel.
2. Petitioner did not establish exceptional circumstances warranting appointment of counsel because alleged indigency and limited English-language ability, without more, were insufficient, and his coherent filings demonstrated an ability to articulate his claims.

KEY QUOTATIONS

“Reconsideration of an order is an extraordinary remedy to be “used sparingly.” (at 1)

“Reconsideration motions may not be used to raise new arguments or introduce new evidence if, with reasonable diligence, the arguments and evidence could have been presented during consideration of the original ruling.” (at 1)

“But Petitioner’s alleged indigency and inexpert knowledge of the English language do not constitute exceptional circumstances.” (at 2)

FACTUAL BACKGROUND

Petitioner, a state prisoner proceeding without counsel, filed a § 2254 petition and litigated the matter for approximately nine months, filing the petition, two motions for leave to proceed in forma pauperis, a motion for appointment of counsel, and the motion for reconsideration. The court had previously denied appointment of counsel because there is no absolute right to counsel in civil proceedings and Petitioner had not shown exceptional circumstances. In seeking reconsideration, Petitioner asserted indigency and difficulty speaking or writing English, but supplied no affidavit or documentary evidence. The court found his filings coherent and noted that he had missed the opposition deadline without requesting an extension.

PROCEDURAL HISTORY

Petitioner filed a 28 U.S.C. § 2254 habeas petition on September 3, 2024. Respondents answered and lodged the state-court record. After the court denied Petitioner's motion for appointment of counsel, Petitioner moved for reconsideration. The court denied reconsideration, construed the motion alternatively as a renewed motion for

appointment of counsel, ordered Respondents to re-serve the answer and state-court record, and extended Petitioner's deadline to file an opposition or traverse.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. Respondents were ordered to re-serve the answer and state-court record and file a declaration confirming service by June 13, 2025. Petitioner was permitted to file an opposition or traverse by July 18, 2025.

CASES CITED

- Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008)
- Latshaw v. Trainer Wortham & Co., Inc., 452 F.3d 1097, 1103 (9th Cir. 2006)
- Berman v. Freedom Fin. Network, LLC, 30 F.4th 849, 859 (9th Cir. 2022)
- Kona Enters. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir. 2000)
- Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009)
- Torres v. Jorrin, No. 20-cv-891-AJB-BLM, 2020 WL 5909529, at *1 (S.D. Cal. Oct. 6, 2020)

OPINION

Phonsongkham v. Moore

PER CURIAM.

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2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF CALIFORNIA

4 5 ANDY PHONSONGKHAM, Case No.: 24-cv-01566-LL-MMP 6 Petitioner,

ORDER DENYING MOTION TO

7 v. RECONSIDER ORDER DENYING

APPOINTMENT OF COUNSEL

8 FIDENZIO N. GUZMAN, et al., 9 Respondents. [ECF No. 18] 10 11 Before the Court is
Petitioner's motion to reconsider the Court's denial of his motion 12 to appoint counsel. ECF No.
18. 13 On September 3, 2024, Petitioner, a state prisoner proceeding pro se, filed a petition 14 for
a writ of habeas corpus pursuant to 28 U.S.C. § 2254. ECF No. 1. Since then, 15 Respondents
have answered the petition and lodged the state court record. ECF Nos. 13, 16 14, 15. The Court's
briefing schedule has concluded, with the last action item being 17 Petitioner's deadline to file his
opposition or traverse no later than April 18, 2025. ECF

18 Nos. 8, 11.

19 A few days before Petitioner's opposition deadline, he filed a motion for 20 appointment of

counsel. ECF No. 16. The Court denied Petitioner's motion, explaining that 21 there is no absolute right to counsel in civil proceedings and Petitioner had not met his 22 burden of showing exceptional circumstances. ECF No. 17 at 1–2. In its Order, the Court 23 noted the current posture of the case would likely undermine Petitioner's alleged reasons 24 for requiring counsel because Petitioner missed his deadline to file his opposition or 25 traverse and not had not requested additional time to file. ECF No. 17 at 2. The Court 26 further noted Petitioner's indigency status is unclear, and he is not "unable to articulate his 27 claims" because Petitioner's petition included grounds for relief drafted by counsel. ECF

28 No. 17 at 2–3.

1 Fed. R. Civ. P. 60(b) authorizes a court to grant relief from an order for several 2 enumerated reasons, including mistake, inadvertence, surprise, excusable neglect, newly 3 discovered evidence, fraud, misrepresentation, misconduct, or the catch-all "any other 4 reason that justifies relief." Reconsideration of an order is an extraordinary remedy to be 5 "used sparingly." *Harvest v. Castro*, 531 F.3d 737, 749 (9th Cir. 2008) (quoting *Latshaw 6 v. Trainer Wortham & Co., Inc.*, 452 F.3d 1097, 1103 (9th Cir. 2006)). "Reconsideration 7 motions may not be used to raise new arguments or introduce new evidence if, with 8 reasonable diligence, the arguments and evidence could have been presented during 9 consideration of the original ruling." *Berman v. Freedom Fin. Network, LLC*, 30 F.4th 849, 10 859 (9th Cir. 2022) (citing *Kona Enters. v. Estate of Bishop*, 229 F.3d 877, 229 F.3d 877, 11 890 (9th Cir. 2000)). 12 Petitioner does not allege any of the traditional Rule 60 reasons why the Court should 13 reconsider its prior Order, so the Court looks for "any other reason that justifies relief." 14 Fed. R. Civ. P. 60(b)(6). Petitioner has not provided the Court "any other reason." In his 15 motion for reconsideration, without including an affidavit or documentary evidence, 16 Petitioner offers he is indigent and says he "cannot speak or write [E]nglish well." ECF

17 No. 18 at 1–2. These are grounds he could have raised in his first motion to appoint counsel 18 and are therefore inappropriate grounds for reconsideration. For that reason alone, the 19 Court could deny Petitioner's motion for reconsideration. 20 However, Petitioner is pro se, so the Court has liberally construed Petitioner's 21 motion as though it were Petitioner's first motion for appointment of counsel rather than a 22 motion for reconsideration. District courts have discretion to appoint counsel for indigent 23 civil litigants in "exceptional circumstances." *Palmer v. Valdez*, 560 F.3d 965, 970 (9th

24 Cir. 2009); 28 U.S.C. § 1915(e)(1). But Petitioner's alleged indigency and inexpert 25 knowledge of the English language do not constitute exceptional circumstances. 26 Circumstances common to prisoner civil rights plaintiffs, such as lack of education, are not 27 "exceptional." See *Torres v. Jorin*, No. 20-cv-891-AJB-BLM, 2020 WL 5909529, at *1 28 (S.D. Cal. Oct. 6, 2020) (finding a pro se plaintiff's learning disability and lack of legal 1 knowledge insufficient to satisfy the "exceptional circumstances" standard because "these 2 claims are typical of almost every pro se prisoner civil rights plaintiff"). Moreover, 3 Petitioner has litigated this case

without counsel for approximately nine months, filing a 4 petition, two motions for leave to file IFP, a motion for appointment of counsel, and a 5 motion for reconsideration. ECF No. 1, 2, 4, 16, 18. These filings are coherent and do not 6 suggest illiteracy. Id. 7 Because Petitioner has not presented any reason for relief from the Court's prior 8 Order, nor offered an exceptional circumstance which could newly justify appointment of 9 counsel, it is not in the interest of justice to appoint Petitioner counsel. Accordingly, for 10 the reasons set forth in this Order and the Court's prior Order Denying Motion for 11 Appointment of Counsel (ECF No. 17), Petitioner's motion for reconsideration (ECF No. 12 18) is DENIED. 13 As a final matter, Petitioner includes in his motion for reconsideration that he has 14 not received "any filings of Respondents, such as the Answer," nor has he received some 15 documents mailed to him by the Court. ECF No. 18 at 2. As noted on the docket with 16 Petitioner's motion, the Clerk has mailed these items—specifically ECF Nos. 8, 11, and 17 13—to Petitioner again. ECF No. 18. The Court ORDERS Respondents to re-serve a copy 18 their Answer and the State Court Record on Petitioner and file a declaration on the docket 19 indicating completion of service on or before June 13, 2025. 20 The Court construes Petitioner's contention that he has not received the Court's 21 orders setting deadlines as a request to extend Petitioner's deadline to file his opposition 22 or traverse. ECF No. 18 at 2. Accordingly, the Petitioner shall file his opposition or traverse 23 no later than July 18, 2025. 24 IT IS SO ORDERED. 25 Dated: June 6, 2025

HON. MICHELLE M. PETTIT

26 United States Magistrate Judge 27 28