UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WAYNE SIMS,

Petitioner,

vs.

BRIAN WILLIAMS, et al.,

Respondents.

Case No. 2:08-cv-00393-JCM-GWF

ORDER

On July 15, 2014, the court denied petitioner's motion to reopen (#22). Order (#25). On July 17, 2014, the court received a document that has been docketed as another motion to reopen (#26). It appears actually to be an untimely reply to respondents' opposition to motion to reopen (#24). Respondents have filed an opposition (#28), and petitioner has filed a reply (#30). Petitioner also has submitted a motion for reconsideration (#27) of the denial of petitioner's motion to reopen, and respondents have filed an opposition (#29).

Petitioner complains that the court denied his motion to reopen without first considering his reply. He is incorrect. The briefing schedule for his motion to reopen (#22) expired at least ten (10) days before the court received his reply. At any rate, nothing in what has been docketed as another motion to reopen (#26) would change the court's decision. Petitioner asked the court to dismiss the action without prejudice. The court granted that request, and the court warned petitioner that nothing in the order affected the running of the one-year period of limitation of 28 U.S.C. § 2244(d)(1). Order (#17).

In the motion for reconsideration (#27), petitioner states that his intention all along was to commence a new action. If true, then he does not need the court's permission in this action to commence a new action, because the dismissal of this action was without prejudice. He just needs to commence a new action. However, the court makes no promises whether the new action would be timely pursuant to 28 U.S.C. § 2244(d)(1). The court also makes no statement on what other procedural defenses to the petition in the new action might apply.

IT IS THEREFORE ORDERED that petitioner's motion to reopen (#26) is **DENIED**.

IT IS FURTHER ORDERED that petitioner's motion for reconsideration (#27) is **DENIED**.

DATED: August 28, 2014.

JAMES C. MAHAN
United States District Judge