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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 CURTIS LUNDY DOWNING,

10 Petitioner,

11 vs.

12 BRIAN E. WILLIAMS, et al.,

13 Respondents.
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Case No. 2:10-CV-00833-KJD-(LRL)

ORDER

15 Petitioner has submitted a motion for relief from judgment (#5). Although the court
16 did not enter a final judgment in this action, it did dismiss two grounds before directing respondents
17 to file an answer or other response. The court determines that the motion (#5) is without merit and
18 denies it.

19 Regarding the dismissal of ground 1, petitioner continues to argue that the state is
20 required to award him credits toward an earlier release for performance of work even though he has
21 not performed any work. Petitioner's contention is without merit for the reasons stated in the
22 court's earlier order (#4).

23 Regarding the dismissal of ground 2, petitioner continues to argue that the accrual of
24 his good-time credits is governed by Nev. Rev. Stat. § 209.4465. This court, and the state courts,
25 have explained to petitioner that § 209.4465 applies to crimes committed on or after July 17, 1997.
26 Petitioner committed his crimes in 1993 and earlier, and thus § 209.4465 does not apply to him.

27 Although the court has dismissed two grounds from the petition, one ground does
28 remain, and respondents will need to respond to it.

1 IT IS THEREFORE ORDERED that petitioner's motion for relief from judgment
2 (#5) is **DENIED**.

3 IT IS FURTHER ORDERED that the clerk of the court shall file the petition.

4 IT IS FURTHER ORDERED that respondents shall have forty-five (45) days from
5 the date of entry of this order to answer or otherwise respond to the petition. If respondents file and
6 serve an answer, then they shall comply with Rule 5 of the Rules Governing Section 2254 Cases in
7 the United States District Courts, and then petitioner shall have forty-five (45) days from the date on
8 which the answer is served to file a reply.

9 DATED: October 5, 2010



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11 KENT J. DAWSON
12 United States District Judge
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