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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DE'MARIAN CLEMONS,)
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 Petitioner,)
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 vs.)
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 BRIAN E. WILLIAMS, SR., *et al.*,)
)
 Respondents.)
 _____)

2:11-cv-01442-PMP-GWF

ORDER

This is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in which petitioner, a state prisoner, is proceeding *pro se*.

On October 20, 2011, the petition was filed in this action. (ECF No. 4.) On December 19, 2011, respondents filed a motion to dismiss. (ECF No. 7.) On March 9, 2012, petitioner moved for leave to amend his petition. (ECF No. 16.) Respondents oppose petitioner's motion to amend, arguing that the right to amend is not unlimited and that the new ground petitioner seeks to assert is clearly unexhausted. (ECF No. 18.)

Under 28 U.S.C. § 2254 R. 11, the Federal Rules of Civil Procedure are applicable to habeas petitions to the extent they are not inconsistent with the Habeas Rules. *Morrison v. Mahoney*, 399 F.3d 1042, 1046 n. 5 (9th Cir. 2005). A party may amend its pleading at any time during a proceeding either

1 with the opposing party's written consent or with the court's leave. Fed. R. Civ. P. 15(a)(2). "The court
2 should freely give leave when justice so requires." *Id.* In considering whether to grant or deny leave
3 to amend, a court may "take into consideration such factors as 'bad faith, undue delay, prejudice to the
4 opposing party, futility of the amendment, and whether the party has previously amended his
5 pleadings.'" *In re Morris*, 363 F.3d 891, 894 (9th Cir. 2004) (quoting *Bonin v. Calderon*, 59 F.3d 815,
6 845 (9th Cir. 1995)).

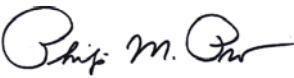
7 In this case, it does not appear that petitioner seeks leave to amend in bad faith or with undue
8 delay. Additionally, petitioner has not previously filed an amended pleading and the prejudice to
9 respondents is minimal. Accordingly, the court grants petitioner's motion to amend his petition.
10 Because respondents' motion to dismiss is predicated only on the grounds asserted in the earlier filed
11 petition, the court denies the motion without prejudice so that respondents may bring a subsequent
12 motion to dismiss based on all grounds asserted by petitioner, if they so choose.

13 **IT IS THEREFORE ORDERED** that petitioner's motion to amend the petition (ECF No. 15)
14 is **GRANTED**. The clerk shall **DETACH and FILE** the amendment and entitle it "Supplement to
15 Petition for Writ of Habeas Corpus."

16 **IT IS FURTHER ORDERED** that respondents' motion to dismiss (ECF No. 7) is **DENIED**
17 **without prejudice**. Respondents shall have **forty-five (45)** days from the date of service of this order
18 to file their answer or other response to the petition and supplement.

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DATED this _ 3rd day of May, 2012.


UNITED STATES DISTRICT JUDGE