

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

4 RENE F. FERNANDEZ,
5 Petitioner,
6 vs.
7 JAMES GREG COX, et al.
8 Respondents.

Case No. 2:13-cv-02158-GMN-VCF

ORDER

10 Petitioner has submitted an application to proceed in forma pauperis (#1) and a petition for a
11 writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court finds that petitioner is unable to pay
12 the filing fee. The court has reviewed the petition pursuant to Rule 4 of the Rules Governing
13 Section 2254 Cases in the United States District Courts. The court will dismiss one ground. The
14 court will serve the petition upon respondents for a response to the remaining grounds.

15 Petitioner was convicted of trafficking, conspiracy, and transport of cocaine, a controlled
16 substance. In ground 6, petitioner alleges that he was sentenced under the wrong trafficking statute.
17 He was sentenced pursuant to Nev. Rev. Stat. § 453.3385, for trafficking in a schedule I controlled
18 substance, and he argues that he should have been sentenced pursuant to Nev. Rev. Stat. § 453.3395,
19 for trafficking in a schedule II controlled substance, because cocaine is listed in schedule II of the
20 federal schedules of controlled substance. Petitioner's argument is incorrect because he was not
21 convicted of violating federal law. Petitioner was convicted of violating state law. Nevada's State
22 Board of Pharmacy has the duty to classify controlled substances into schedules. Nev. Rev. Stat. §
23 453.146. The board has classified cocaine as a schedule I controlled substance, with an exception
24 that is not applicable to petitioner's case. Nev. Admin. Code § 453.510(8). Petitioner was
25 convicted of violating the correct statute.

26 Ground 6 contains an associated claim of ineffective assistance of counsel for not raising this
27 claim either at trial or on direct appeal. This claim is without merit, too.

28 Petitioner has submitted a request for admission of longer than usual petition (#2). The

1 court grants this motion.

2 Petitioner has submitted a motion to extend prison copywork limit (#5). Petitioner does not
3 have a right to free photocopying. Johnson v. Moore, 948 F.2d 517 (9th Cir. 1991). However, a
4 court can order a prison to provide limited photocopying when it is necessary for an inmate to
5 provide copies to the court and other parties.

6 The court is not convinced that even limited photocopying is necessary at this time. In
7 addition to the indigent inmate photocopying allowance, Nevada prisons also make carbon paper
8 available for copies. Administrative Regulation 722. Petitioner has not alleged how carbon paper is
9 inadequate for any pleadings, motions, or responses which he might file and serve. Furthermore,
10 pursuant to Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts,
11 respondents need to provide with their answer appellate briefs and orders, as well as pertinent
12 portions of the transcripts. If, after respondents file and serve their answer or other response with
13 their supporting exhibits, it becomes necessary for petitioner to file and serve his own exhibits, the
14 court will then entertain a motion for petitioner to exceed the prison's limit on indigent photocopy
15 work.

16 **IT IS THEREFORE ORDERED** that the application to proceed in forma pauperis (#1) is
17 **GRANTED**. Petitioner need not pay the filing fee of five dollars (\$5.00).

18 **IT IS FURTHER ORDERED** that the clerk of the court shall file the petition for a writ of
19 habeas corpus pursuant to 28 U.S.C. § 2254.

20 **IT IS FURTHER ORDERED** that ground 6 of the petition is **DISMISSED**.

21 **IT IS FURTHER ORDERED** that petitioner's request for admission of longer than usual
22 petition (#2) is **GRANTED**.

23 **IT IS FURTHER ORDERED** that the clerk shall add Catherine Cortez Masto, Attorney
24 General for the State of Nevada, as counsel for respondents.

25 **IT IS FURTHER ORDERED** that the clerk shall electronically serve upon respondents a
26 copy of the petition and this order. In addition, the clerk shall return to petitioner a copy of the
27 petition.

28 **IT IS FURTHER ORDERED** that respondents shall have forty-five (45) days from the

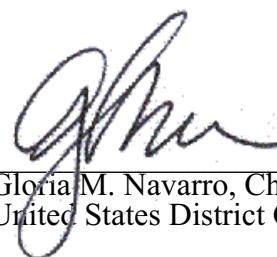
1 date on which the petition was served to answer or otherwise respond to the petition. If respondents
2 file and serve an answer, then they shall comply with Rule 5 of the Rules Governing Section 2254
3 Cases in the United States District Courts, and then petitioner shall have forty-five (45) days from
4 the date on which the answer is served to file a reply.

5 **IT IS FURTHER ORDERED** that any exhibits filed by the parties shall be filed with a
6 separate index of exhibits identifying the exhibits by number or letter. The CM/ECF attachments
7 that are filed further shall be identified by the number or numbers (or letter or letters) of the exhibits
8 in the attachment. The hard copy of any additional state court record exhibits shall be
9 forwarded—for this case—to the staff attorneys in Las Vegas.

10 **IT IS FURTHER ORDERED** that henceforth, petitioner shall serve upon respondents or, if
11 appearance has been entered by counsel, upon the attorney(s), a copy of every pleading, motion or
12 other document submitted for consideration by the court. Petitioner shall include with the original
13 paper submitted for filing a certificate stating the date that a true and correct copy of the document
14 was mailed to the respondents or counsel for the respondents. The court may disregard any paper
15 received by a district judge or magistrate judge that has not been filed with the clerk, and any paper
16 received by a district judge, magistrate judge, or the clerk that fails to include a certificate of service.

17 **IT IS FURTHER ORDERED** that petitioner's motion to extend prison copywork limit
18 (#5) is **DENIED**.

19 **DATED** this 13th day of June, 2014.



20
21
22
23
24
25
26
27
28

Gloria M. Navarro, Chief Judge
United States District Court