UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RENE F. FERNANDEZ,

Petitioner,

vs.

JAMES GREG COX, et al.,

Respondents.

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

ORDER

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

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

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

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

court grants this motion.

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED this 13th day of June, 2014.

Gloria M. Navarro, Chief Judge
United States District Court