

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FREDERICK W. ADKINS,
Petitioner,
vs.
DWIGHT NEVEN, et al.,
Respondents.

Case No. 2:15-cv-00119-RFB-VCF

ORDER

Petitioner has submitted an application to proceed in forma pauperis (#1) and a petition for a writ of habeas corpus. The court finds that petitioner is unable to pay the filing fee.

Petitioner has invoked 28 U.S.C. § 2241 as the basis for his petition, but he is in custody pursuant to a judgment of conviction of a state court. The correct governing statute is 28 U.S.C. § 2254. The court has reviewed the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, and the court will dismiss the action.

This action is redundant. Petitioner already is challenging the same judgment of conviction in this court in Adkins v. Neven, Case No. 2:13-cv-02170-JCM-PAL. Petitioner's sole ground for relief in this action is that he was adjudicated as a habitual criminal improperly because the notice of intent to seek habitual-criminal treatment was not filed timely. Petitioner raises the same claim in ground 5 of the petition in his other action. The only difference is an allegation in the instant petition that petitioner is actually innocent of being a habitual criminal because of the untimely filing of the notice. If petitioner wants to add an actual-innocence claim—and the court makes no statement whether such

1 a claim is addressable in federal habeas corpus—then he needs to seek leave to amend his petition in
2 his other action.

3 Reasonable jurists would not find this conclusion to be debatable or wrong, and the court will
4 not issue a certificate of appealability.

5 Petitioner has filed a motion for a status check (#4). The dismissal of this action makes the
6 motion moot.

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

9 IT IS FURTHER ORDERED that the clerk of the court shall file the petition for a writ of habeas
10 corpus.

11 IT IS FURTHER ORDERED that this action is **DISMISSED** without prejudice to petitioner
12 pursuing his claims in Adkins v. Neven, Case No. 2:13-cv-02170-JCM-PAL. The clerk of the court
13 shall enter judgment accordingly.

14 IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

15 IT IS FURTHER ORDERED that petitioner’s motion for a status check (#4) is **DENIED**.

16 IT IS FURTHER ORDERED that the clerk shall add Adam Paul Laxalt, Attorney General for
17 the State of Nevada, as counsel for respondents.

18 IT IS FURTHER ORDERED that the clerk shall electronically serve upon respondents a copy
19 of the this order. No response is necessary.

20 DATED: July 20, 2015.

21
22
23 
24 RICHARD F. BOULWARE, II
25 United States District Judge
26
27
28