

1
2
3
4
5
6
7
8
9

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

4 Robert Fitzgerald Smith,
5 Petitioner
6 v.
7 Brian Williams, et al.,
8 Respondents

2:15-cv-00465-JAD-PAL

**Order Granting in Part and Denying in
Part Motion for Enlargement of Time
and Denying Ex Parte Motion for
Appointment of Counsel**

[ECF Nos. 37, 38]

10 Section 2254 petitioner Robert Fitzgerald Smith requests a second extension of time to
11 respond to respondents' motion to dismiss.¹ He explains that he needs additional time to obtain
12 medical records, police reports, police statements, crime-scene reports, police photographs, 911
13 recordings, witness statements, a statement of a bed-side interview, and a letter from an informant to
14 properly respond to respondents' dismissal challenge. Smith is incorrect. Respondents argue in their
15 dismissal motion that the bulk of Smith's claims are unexhausted, and the evidence Smith seeks is
16 irrelevant to their exhaustion argument.

17 Respondents do argue that Smith is presenting different facts in ground 6—a claim that the
18 evidence was insufficient to sustain the conviction, and in ground 12—a claim in part that the trial
19 court erred in admitting into evidence a letter from a jailhouse informant. But Smith does not need
20 the actual records or letter to argue that he exhausted these claims and the facts supporting them. To
21 show exhaustion, he must show that he alerted the Nevada Supreme Court to these facts in his
22 appellate briefs. Smith can do that simply by reading the appellate briefs, which the respondents
23 have provided in their exhibits to the dismissal motion. The four-month extension that Smith
24 requests is unnecessary for the completion of this task. I therefore grant in part and deny in part
25 Smith's motion and give him only until **November 5, 2016**, to file his response.

26 Smith has also filed an ex parte motion for appointment of counsel. But Smith provides no
27

28

¹ ECF No. 23.

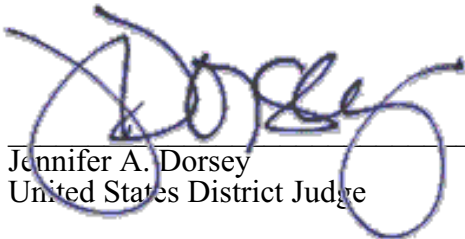
1 new argument that would cause me to reconsider and reverse my previous ruling denying his request
2 for counsel, so I deny the motion.

3 **Conclusion**

4 Accordingly, IT IS HEREBY ORDERED that Smith’s motion for enlargement of time [ECF
5 No. 37] is **GRANTED in part and DENIED in part: Smith’s response is due by November 5,**
6 **2016.**

7 IT IS FURTHER ORDERED that Smith’s ex parte motion for appointment of counsel [ECF
8 No. 38] is **DENIED.**

9 Dated this 5th day of October, 2016

10 
11 _____
12 Jennifer A. Dorsey
13 United States District Judge

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28