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UNITED STATES DISTRICT COURT

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DISTRICT OF NEVADA

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8 MONTRAIL D. SMITH,

9 Petitioner,

2:15-cv-00487-KJD-VCF

10 vs.

ORDER11 RENEE BAKER, *et al.*,

12 Respondents.

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15 This action is a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, by
16 Montrail D. Smith, a Nevada prisoner.

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Smith initiated the case by filing a motion requesting permission to file his petition with
more than three claims (ECF No. 1); a request for leave to proceed *in forma pauperis* (ECF No. 2),
a motion for appointment of counsel (ECF No. 3), and another motion for appointment of counsel
with a request for an evidentiary hearing (ECF No. 4).

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The court denied the request for leave to proceed *in forma pauperis*, and required Smith to
pay the \$5.00 filing fee (ECF No. 5). Smith paid the filing fee. (ECF Nos. 6, 7).

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There is no rule limiting federal habeas corpus petitions to three claims; therefore, Smith's
motion requesting permission to file his petition with more than three claims (ECF No. 1) is
unnecessary, and it will be denied on that ground. Smith may file his habeas corpus petition.

1 In light of the severity of the crime for which Smith was convicted, and the prison sentence
2 that Smith is serving (two consecutive sentences of 20 years to life), and considering the information
3 provided with his request to proceed *in forma pauperis* and in his motion for appointment of
4 counsel, the court will grant Smith's motion for appointment of counsel (ECF No. 3). The court will
5 deny Smith's motion for an evidentiary hearing (ECF No. 4), without prejudice.

6 Therefore, the Federal Public Defender for the District of Nevada (FPD) will be appointed to
7 represent Smith in this case. If the FPD is unable to represent Smith, due to a conflict of interest or
8 other reason, then alternate counsel will be located and appointed. In either case, counsel will
9 represent petitioner in all future federal proceedings relating to this matter, unless allowed to
10 withdraw.

11 **IT IS THEREFORE ORDERED** that petitioner's motion for permission to file his petition
12 with more than three claims (ECF No. 1) is **DENIED**, as it is unnecessary. The court will direct the
13 clerk of the court to separately file petitioner's habeas petition.

14 **IT IS FURTHER ORDERED** that the clerk of the court shall separately file petitioner's
15 petition for writ of habeas corpus, which is currently attached to his request for leave to proceed
16 *in forma pauperis* (ECF No. 2).

17 **IT IS FURTHER ORDERED** that petitioner's motion for evidentiary hearing (ECF No. 4)
18 is **DENIED** without prejudice.

19 **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel (ECF
20 No. 3) is **GRANTED**. The Federal Public Defender for the District of Nevada (FPD) is appointed to
21 represent petitioner.

22 **IT IS FURTHER ORDERED** that the clerk of the court shall electronically serve on the
23 FPD a copy of this order, together with a copy of the petition for writ of habeas corpus. The FPD
24 shall have **30 days** from the date of entry of this order to file a notice of appearance, or to indicate to
25 the court its inability to represent the petitioner in these proceedings.
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IT IS FURTHER ORDERED that the clerk of the court shall electronically serve a copy of this order, together with a copy of the petition for writ of habeas corpus, on the respondents. Counsel shall appear on behalf of the respondents within **30 days** of the entry of this order. Respondents need take no further action in this case until otherwise ordered.

IT IS FURTHER ORDERED that, after counsel has appeared for petitioner, and for respondents, the court will issue a scheduling order, which will, among other things, set a deadline for the filing of a first amended petition for writ of habeas corpus.

Dated this 26 day of May, 2015.



UNITED STATES DISTRICT JUDGE