

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**

PHILLIP SHARPE,
Petitioner,
vs.
NEVIN, *et al.,*
Respondents.

2:16-cv-01841-JCM-VCF

ORDER

Petitioner has submitted an application to proceed *in forma pauperis* and a habeas petition. ECF No. 1.

The matter has not been properly commenced because the pauper application does not include all required attachments. Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, a petitioner must attach both an inmate account statement for the past six months and a properly executed financial certificate. Petitioner did not attach a financial certificate or an inmate account statement for the past six months. The application therefore is incomplete.

The application for leave to proceed *in forma pauperis* therefore will be denied, and the present action will be dismissed without prejudice to the filing of a new petition in a new action with a pauper application on the proper form with all required attachments.

It does not appear from the papers presented that a dismissal without prejudice will materially affect a later analysis of any timeliness issue with regard to a *promptly* filed new action.¹

¹With regard to timeliness, the online docket records of the state courts indicate that the Nevada Supreme Court (continued...)

1 **IT THEREFORE IS ORDERED** that the application to proceed *in forma pauperis* is DENIED
2 and that this action shall be DISMISSED without prejudice to the filing of a new petition in a new
3 action with a properly completed pauper application.

4 **IT FURTHER IS ORDERED** that a certificate of appealability is DENIED, as jurists of reason
5 would not find the court's dismissal of this improperly commenced action without prejudice to be
6 debatable or incorrect.

7 **IT FURTHER IS ORDERED** that the clerk shall send petitioner two copies each of an
8 application form to proceed *in forma pauperis* for incarcerated persons and a noncapital section 2254
9 habeas petition form, one copy of the instructions for each form, and a copy of the papers that he
10 submitted in this action.

11 **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel (ECF No.
12 2) is DENIED as moot.

13 **IT FURTHER IS ORDERED** that the clerk of court shall enter judgment accordingly and
14 close this case.

15 DATED: August 11, 2016.

16
17
18 *James C. Mahan*
 UNITED STATES DISTRICT JUDGE

19
20
21
22
23
24
25
26 _____
27 ¹(...continued)
28 affirmed petitioner's conviction on June 4, 2015, denied his petition for rehearing on July 31, 2015, and denied his
 petition for en banc reconsideration on September 3, 2015. Petitioner at all times remains responsible for properly
 exhausting his claims, for calculating the running of the federal limitation period as applied to his case, and for properly
 commencing a timely-filed federal habeas action.