

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 * * *

4 DELARIAN K. WILSON,

Case No. 2:16-cv-02989-JAD-GWF

5 Petitioner

6 v.

ORDER

7 NEVADA DEPARTMENT OF
8 CORRECTIONS, et al.,

9 Respondents

10 Pro se petitioner Delarian K. Wilson brings this habeas petition under 28 U.S.C. §
11 2254 to challenge his 2008 state-court convictions pursuant to a guilty plea for robbery
12 with the use of a weapon and sexual assault. The court has reviewed the amended
13 petition (ECF No. 4) in accordance with Habeas Rule 4, and now orders that the petition
14 be docketed and served on the respondents.

15 A petition for federal habeas corpus should include all claims for relief of which
16 petitioner is aware. If petitioner fails to include such a claim in his petition, he may be
17 forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C.
18 §2254(b) (successive petitions). If petitioner is aware of any claim not included in his
19 petition, he should notify the court of that as soon as possible, perhaps by means of a
20 motion to amend his petition to add the claim.

21 **IT IS THEREFORE ORDERED** that the Clerk **shall ELECTRONICALLY SERVE**
22 the amended petition (ECF No. 4) on the respondents and **add Adam Paul Laxalt,**
23 **Nevada Attorney General, as counsel for respondents.**

24 **IT IS FURTHER ORDERED** that **the respondents have until September 24,**
25 **2017, to file a response to the petition**—including any motion to dismiss.¹ **Any**

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27 ¹ Any other request by petitioner for relief by motion is subject to the normal briefing
28 schedule under the local rules.

1 response filed must comply with these requirements imposed under Habeas Rule
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3 4:

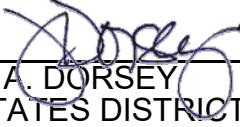
- 5 1. Any procedural defenses raised by respondents in this case must be raised
6 together in a single, consolidated motion to dismiss. In other words, the court
7 does not wish to address any procedural defenses raised herein either in
8 *seriatum* fashion in multiple successive motions to dismiss or embedded in the
9 answer. Procedural defenses omitted from the motion to dismiss will be subject
10 to potential waiver.
- 11 2. Respondents must not file a response in this case that consolidates their
12 procedural defenses, if any, with their response on the merits, except pursuant to
13 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
14 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a)
15 they must do so within the single motion to dismiss, not in the answer; and (b)
16 they must specifically direct their argument to the standard for dismissal under §
17 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005).
18 In short, no procedural defenses, including exhaustion, should be included with
19 the merits in an answer. All procedural defenses, including exhaustion, instead
20 must be raised by motion to dismiss.
- 21 3. In any answer filed on the merits, respondents must specifically cite to and address
22 the applicable state-court written decision and state-court record materials, if any,
23 regarding each claim within the response as to that claim.

24 **IT IS FURTHER ORDERED that petitioner has 45 days from service of the
25 answer, motion to dismiss, or other response to file his reply or opposition;** any
26 other requests for relief by respondents by motion are subject instead to the normal
27 briefing schedule under the local rules.

28 **IT IS FURTHER ORDERED that any additional state-court record exhibits filed in
this case by any party must be filed with a separate index of exhibits identifying the
exhibits by number. The CM/ECF attachments that are filed must be identified by the**

1 number or numbers of the exhibits in the attachment. The hard copy of any additional
2 state court record exhibits (and all future courtesy copies of exhibits) must be forwarded
3 to the Clerk of Court, 400 S. Virginia St., Reno, NV, 89501, directed to the attention of
4 "Staff Attorney" on the outside of the mailing address label.

5 DATED: June 26, 2017.
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8 JENNIFER A. DORSEY
9 UNITED STATES DISTRICT JUDGE
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