

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**

CURT MCLELLAN,
Petitioner,
v.
RENEE BAKER, et al.,
Respondents.

Case No. 2:16-cv-03038-JCM-CWH

ORDER


This is a counseled, closed habeas corpus action under 28 U.S.C. § 2254. On August 23, 2018, the court determined that petitioner Curt McLellan had not exhausted his state-court remedies for ground E of the petition. ECF No. 15. The court directed McLellan to decide what to do, with the provision that if he did not respond then the court would dismiss the action. Id. McLellan did not respond, and the court dismissed the action on November 14, 2018. ECF No. 16. On March 9, 2020, McLellan filed a motion to reopen the case and a motion to stay the case. ECF No. 18, 19. On April 10, 2020, the court denied the motion, ruling that McLellan had not demonstrated extraordinary circumstances under Rule 60(b)(6) of the Federal Rules of Civil Procedure for relief from the judgment. ECF No. 25.

McLellan now has filed in this action a new petition for a writ of habeas corpus. ECF No. 26. McLellan put the case number of this action on the petition, but for several reasons the court concludes that the filing in this action was an error. First, McLellan has not again sought relief

1 from the judgment, and the court denied his earlier request to reopen the action. Second,
2 McLellan has paid the \$5.00 filing fee, which he would not have done if he had intended to seek
3 relief from the judgment. Third, the title of the petition is "Petition for Writ of Habeas Corpus,"
4 without any indication that McLellan intended to file an amended petition in this action. All
5 those factors indicate that the petition should have been filed in a new action. The court will take
6 steps accordingly.

7 IT THEREFORE IS ORDERED that the clerk of the court **STRIKE** the petition for a writ
8 of habeas corpus (ECF No. 26) in this action, open a new civil action, and file the petition for a
9 writ of habeas corpus in that action.

10 DATED: February 14, 2022.

11 
12 JAMES C. MAHAN
13 United States District Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28