

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

\* \* \*

CHARLES WIRTH,  v.  ROBERT LEGRAND, et al.,  Respondents.	Petitioner,    Respondents.	Case No. 2:17-cv-00027-RFB-VCF  ORDER
---	---	---

Petitioner Charles Wirth has submitted a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. His application to proceed *in forma pauperis* (ECF No. 1) shall be granted. The court has reviewed the petition pursuant to Habeas Rule 4, and it shall be docketed and served on respondents.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C. §2244(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

Wirth has also filed a motion for appointment of counsel (ECF No. 2). There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425,

1 428(9th Cir. 1993). The decision to appoint counsel is generally discretionary. *Chaney*  
2 *v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Bashor*  
3 *v. Risley*, 730 F.2d 1228, 1234 (9th Cir. 1984), *cert. denied*, 469 U.S. 838 (1984).  
4 However, counsel must be appointed if the complexities of the case are such that denial  
5 of counsel would amount to a denial of due process, and where the petitioner is a person  
6 of such limited education as to be incapable of fairly presenting his claims. *See Chaney*,  
7 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970). Here, the  
8 legal issues that petitioner raises pursuant to his guilty plea do not appear to be  
9 particularly complex, and he demonstrates in his petition the ability to fairly present his  
10 claims. Therefore, the motion for counsel shall be denied at this time.

11 **IT IS THEREFORE ORDERED** that petitioner's application to proceed *in forma*  
12 *pauperis* (ECF No. 1) is **GRANTED**.

13 **IT IS FURTHER ORDERED** that the Clerk **shall file and ELECTRONICALLY**  
14 **SERVE** the petition (ECF No. 1-1) on the respondents.

15 **IT IS FURTHER ORDERED** that the Clerk **shall send** to petitioner one copy of the  
16 petition.

17 **IT IS FURTHER ORDERED** that the Clerk shall add Adam Paul Laxalt, Nevada  
18 Attorney General, as counsel for respondents.

19 **IT IS FURTHER ORDERED** that respondents shall file a response to the petition,  
20 including potentially by motion to dismiss, within **ninety (90) days** of service of the  
21 petition, with any requests for relief by petitioner by motion otherwise being subject to the  
22 normal briefing schedule under the local rules. Any response filed shall comply with the  
23 remaining provisions below, which are entered pursuant to Habeas Rule 5.

24 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents  
25 in this case shall be raised together in a single consolidated motion to dismiss. In other  
26 words, the court does not wish to address any procedural defenses raised herein either  
27 *in seriatum* fashion in multiple successive motions to dismiss or embedded in the answer.  
28 Procedural defenses omitted from such motion to dismiss will be subject to potential

1 waiver. Respondents shall not file a response in this case that consolidates their  
2 procedural defenses, if any, with their response on the merits, except pursuant to 28  
3 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If respondents  
4 do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall do so within  
5 the single motion to dismiss not in the answer; and (b) they shall specifically direct their  
6 argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*,  
7 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses, including  
8 exhaustion, shall be included with the merits in an answer. All procedural defenses,  
9 including exhaustion, instead must be raised by motion to dismiss.

10 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents  
11 shall specifically cite to and address the applicable state court written decision and state  
12 court record materials, if any, regarding each claim within the response as to that claim.

13 **IT IS FURTHER ORDERED** that petitioner shall have **sixty (60) days** from service  
14 of the answer, motion to dismiss, or other response to file a reply or opposition, with any  
15 other requests for relief by respondents by motion otherwise being subject to the normal  
16 briefing schedule under the local rules.

17 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed  
18 herein by either petitioner or respondents shall be filed with a separate index of exhibits  
19 identifying the exhibits by number. The CM/ECF attachments that are filed further shall  
20 be identified by the number of the exhibit in the attachment.

21 **IT IS FURTHER ORDERED** that the parties SHALL SEND courtesy copies of all  
22 exhibits in this case to the Clerk of Court, 400 S. Virginia St., Reno, NV, 89501, directed  
23 to the attention of "Staff Attorney" on the outside of the mailing address label. Additionally,  
24 in the future, all parties shall provide courtesy copies of any additional exhibits submitted  
25 to the court in this case, in the manner described above.

26 **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel  
27 (ECF No. 2) is **DENIED**.

28

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

**IT IS FURTHER ORDERED** that petitioner's two motions for copies of filings (ECF Nos. 6 and 7) are both **DENIED** as moot.

DATED: 29 September 2017.

  
\_\_\_\_\_  
RICHARD F. BOULWARE, II  
UNITED STATES DISTRICT JUDGE