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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TONY L. CUNNINGHAM,
Petitioner,
vs.
JO GENTRY, et al.,
Respondents.

Case No. 2:17-cv-01094-JCM-VCF

ORDER

Petitioner has submitted a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner did not pay the filing fee, nor did he file an application to proceed in forma pauperis. The court will not require petitioner to correct that problem. Instead, the court will dismiss the action because it already has ruled upon the merits of petitioner's claim.

Petitioner challenges three judgments of conviction of the Second Judicial District Court of the State of Nevada. He challenged the same judgments of conviction in Cunningham v. Williams, 2:16-cv-00388-APG-CWH (Cunningham I). In Cunningham I, petitioner's only ground for relief was counsel provided ineffective assistance because counsel failed to challenge the validity of the Nevada Revised Statutes under the doctrine of separation of powers. The court ruled that the ground was without merit, and the court denied the petition. Petitioner did not appeal, and the court's judgment has become final.

The body of the current petition in this action contains only a note that this is a protective petition filed to comply with the one-year time limit of 28 U.S.C. § 2244(d). Attached to the petition is an order of the state district court that denied his post-conviction habeas corpus petition.

1 The state district court noted that petitioner presented only one claim, which is exactly the same as
2 the claim that this court rejected in Cunningham I. The state district court ruled that the claim was
3 without merit. The court assumes that petitioner is trying to present that claim, and no other claim,
4 in the current petition. However, the court must dismiss the petition because petitioner already has
5 presented the same claim in Cunningham I, which the court denied because it was without merit.
6 See 28 U.S.C. § 2244(b)(1).¹

7 Reasonable jurists would not find the court's conclusion to be debatable or wrong, and the
8 court will not issue a certificate of appealability.

9 IT IS THEREFORE ORDERED that the clerk of the court file the petition for a writ of
10 habeas corpus.

11 IT IS FURTHER ORDERED that this action is **DISMISSED** with prejudice. The clerk of
12 the court shall enter judgment accordingly and close this action.

13 IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

14 DATED: May 5, 2017.

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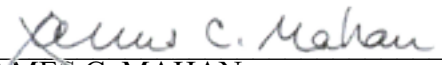
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JAMES C. MAHAN
United States District Judge

¹Even if petitioner wanted to present other claims in the current action, the court still would dismiss this action because it denied Cunningham I on the merits, and petitioner has not obtained authorization from the court of appeals to file a second or successive petition. See 28 U.S.C. § 2244(b)(2), (3).