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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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OSSIRIS DIZON LYNCH,

v.

STATE OF NEVADA,

Respondent.

Case No. 2:17-cv-01897-RFB-NJK

ORDER

Petitioner Ossiris Dizon Lynch has submitted a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has now paid the filing fee (*see* ECF No. 5), and therefore, his application to proceed *in forma pauperis* (ECF No. 1) shall be denied as moot. The court has reviewed the petition pursuant to Habeas Rule 4, and it shall be docketed and served on respondents.

The court notes that Lynch submitted what he titled a petition as well as an amended petition (ECF Nos. 1-1, 1-2). However, he clearly states in the amended petition that he seeks to add those claims to the original petition. Accordingly, in the interests of judicial efficiency, the court shall construe the two filings together as the petition.

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. §2254(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.

1 Petitioner has also submitted a motion for appointment of counsel (ECF No. 4).
2 There is no constitutional right to appointed counsel for a federal habeas corpus
3 proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999
4 F.2d 425, 428 (9th Cir.1993). The decision to appoint counsel is generally discretionary.
5 *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986), *cert. denied*, 481 U.S. 1023 (1987);
6 *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), *cert. denied*, 469 U.S. 838 (1984).
7 However, counsel must be appointed if the complexities of the case are such that denial
8 of counsel would amount to a denial of due process, and where the petitioner is a person
9 of such limited education as to be incapable of fairly presenting his claims. *See Chaney*,
10 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir.1970). Here,
11 Lynch's petition is clear in presenting the issues that he wishes to raise, and the legal
12 issues are not particularly complex. Therefore, counsel is not justified at this time.
13 Lynch's motion is denied.

14 **IT IS THEREFORE ORDERED** that petitioner's application to proceed *in forma*
15 *pauperis* (ECF No. 1) is **DENIED** as moot.

16 **IT IS FURTHER ORDERED** that the Clerk **shall file** ECF Nos. 1-1 and 1-2 together
17 as the petition. The Clerk shall **ELECTRONICALLY SERVE** the petition on the
18 respondents.

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

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

26 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents in this
27 case shall be raised together in a single consolidated motion to dismiss. In other words,
28 the court does not wish to address any procedural defenses raised herein either *in*

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

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

15 **IT IS FURTHER ORDERED** that petitioner shall have **forty-five (45) days** from
16 service of the answer, motion to dismiss, or other response to file a reply or opposition,
17 with any other requests for relief by respondents by motion otherwise being subject to the
18 normal briefing schedule under the local rules.

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

23 **IT IS FURTHER ORDERED** that the parties SHALL SEND courtesy copies of all
24 exhibits in this case to the Clerk of Court, 400 S. Virginia St., Reno, NV, 89501, directed
25 to the attention of "Staff Attorney" on the outside of the mailing address label. Additionally,
26 in the future, all parties shall provide courtesy copies of any additional exhibits submitted
27 to the court in this case, in the manner described above.
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IT IS FURTHER ORDERED that petitioner's motion for appointment of counsel (ECF No. 4) is **DENIED**.

DATED: 7 December 2017.



RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE