

1

2

3

4

5

## UNITED STATES DISTRICT COURT

6

## DISTRICT OF NEVADA

7

8 CHRISTOPHER BOULWARE,

9           Petitioner,

2:17-cv-02496-APG-GWF

10 vs.

**ORDER**11 WARDEN WILLIAMS, *et al.*,

12           Respondents.

13 \_\_\_\_\_ /

14

15           This action is a petition for writ of habeas corpus by Christopher Boulware, a Nevada  
16 prisoner. The Court received Boulware's habeas petition, with an application to proceed  
17 *in forma pauperis*, on September 25, 2017.

18           Based on the representations in Boulware's application to proceed *in forma pauperis*  
19 (ECF No. 1), the Court finds that Boulware qualifies for *in forma pauperis* status. The Court will  
20 grant Boulware leave of court to proceed *in forma pauperis*.

21           The Court has examined Boulware's habeas corpus petition (ECF No. 1-1), pursuant to  
22 Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. It appears to  
23 the Court that the petition may be defective, because Boulware has not exhausted any claim in state  
24 court. The Court will order Boulware to show cause why this action should not be dismissed.

25           A federal court may not grant habeas corpus relief on a claim not exhausted in state court.  
26 28 U.S.C. § 2254(b). The exhaustion doctrine is based on the policy of federal-state comity, and is

1 intended to allow state courts the initial opportunity to correct constitutional deprivations. *See*  
2 *Picard v. Conner*, 404 U.S. 270, 275 (1971). To exhaust a claim, a petitioner must fairly present the  
3 claim to the highest available state court -- in Nevada, either the Nevada Court of Appeals or  
4 Nevada Supreme Court, depending on the nature of the case -- and must give that court the  
5 opportunity to address and resolve it. *See Duncan v. Henry*, 513 U.S. 364, 365 (1995) (*per curiam*);  
6 *Keeney v. Tamayo-Reyes*, 504 U.S. 1, 10 (1992).

7         It appears from Boulware's petition that he challenges a May 26, 2016, grand larceny  
8 conviction, on which he was sentenced to 12 to 48 months in prison. Petition for Writ of Habeas  
9 Corpus (ECF No. 1-1), pp. 1-2. Boulware states in the petition that he appealed from that  
10 conviction, and that the appeal was decided on June 22, 2017. *See id.* at 1. However, it appears  
11 from Boulware's entire petition, and the attachments to it, that Boulware may not have appealed to  
12 either the Nevada Court of Appeals or the Nevada Supreme Court. The only documents attached to  
13 his petition relate to a motion for modification of sentence that Boulware filed in the state district  
14 court and that was heard in that court on June 22, 2017. *See Attachments to Petition for Writ of*  
15 *Habeas Corpus* (ECF No. 1-1). It appears that the motion for modification of sentence in the state  
16 district court may be the "appeal" that Boulware refers to. There is nothing in the petition to  
17 indicate that Boulware has ever presented any claim to either the Nevada Court of Appeals or the  
18 Nevada Supreme Court, or that any such appeal has been completed.

19         The Court will grant Boulware an opportunity to show cause why this action should not be  
20 dismissed on account of his failure to exhaust any of his claims in state court. The question is  
21 whether Boulware has presented any of his federal constitutional claims to either the Nevada Court  
22 of Appeals or the Nevada Supreme Court, and whether any such appeal has been completed. To  
23 show that this case should not be dismissed, Boulware must describe his appeal to either the Nevada  
24 Court of Appeals or Nevada Supreme Court, and state how such appeal was resolved. Boulware  
25 should do this by filing in this case a document entitled "Response to Order to Show Cause," within  
26 the time allowed. Boulware should attach to that filing copies of any documents showing that he

1 pursued such an appeal; this may include copies of any briefs Boulware filed in the appellate court  
2 or copies of any written orders of the appellate court regarding his appeal.

3 If Boulware fails, within the time allowed, to make a showing that he has exhausted, in state  
4 court, one or more of the claims he asserts in this federal habeas corpus action, this case will be  
5 dismissed. *See Rose v. Lundy*, 455 U.S. 509 (1982).

6 **IT IS THEREFORE ORDERED** that petitioner’s “Application to Proceed *in Forma*  
7 *Pauperis* (ECF No. 1) is **GRANTED**. Petitioner is granted leave of court to proceed *in forma*  
8 *pauperis*. Petitioner need not pay the \$5 filing fee for this action.

9 **IT IS FURTHER ORDERED** that the Clerk of the Court shall separately file the petition  
10 for writ of habeas corpus, which is currently attached as an exhibit to the application to proceed  
11 *in forma pauperis*, at ECF No. 1-1.

12 **IT IS FURTHER ORDERED** that the petitioner shall have **45 days** from the date of entry  
13 of this order to show cause why the Court should not dismiss this action for failure to exhaust any of  
14 his claims in state court, as explained above. Failure to respond to this order within the time  
15 allowed, or failure to make the required showing, will result in the dismissal of this action.

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

18 **IT IS FURTHER ORDERED** that the Clerk of the Court shall electronically serve upon  
19 respondents a copy of the habeas corpus petition in this case, and a copy of this order. Respondents’  
20 counsel shall enter a notice of appearance within **20 days** of the entry of this order, but need take no  
21 further action in this case unless and until the Court so orders.

22 Dated: September 29, 2017.

23  
24   
25 \_\_\_\_\_  
26 UNITED STATES DISTRICT JUDGE