

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 MARCUS BURRELL,

Case No. 2:18-cv-00037-JCM-CWH

4 Petitioner,

ORDER

5 v.

6 WARDEN, HIGH DESERT STATE

7 PRISON, et al.,

8 Respondents.

9 Petitioner Marcus Burrell initiated his *pro se* petition for a writ of habeas corpus on or
10 about January 8, 2018. (ECF No. 6.) This court screened the petition, denied his request for the
11 appointment of counsel, and instructed the clerk to serve the petition on respondents. (ECF No. 5.)
12 Before respondents filed a response, Burrell moved for a stay. (ECF No. 8.) On September 21,
13 2018, this court granted the motion, ordering Burrell to “return to this court with a motion to reopen
14 within forty-five (45) days of issuance of the remittitur by the Nevada Supreme Court at the
15 conclusion of the state court proceedings.” (ECF No. 11 at 2.) On April 3, 2023, respondents
16 moved to reopen this case and dismiss it based on Burrell’s failure to prosecute, Burrell’s failure
17 to comply with this court’s order staying these proceedings, and the conclusory nature of his claim.
18 (ECF Nos. 16, 17.) In their motions, respondents explained that (1) there has been no action from
19 Burrell in either state or federal court in over two years, and (2) Burrell has not filed a state habeas
20 petition challenging his conviction and/or sentence since the stay was ordered. (ECF No. 17.) On
21 April 25, 2023, the court reopened this matter and ordered Burrell to show cause within 30 days

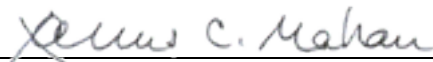
1 why this action should not be dismissed for failure to prosecute¹ and/or failure to comply with the
2 court's September 21, 2018, order. (ECF No. 18.) The 30-day deadline expired on May 25, 2023.
3 To date, Burrell has not filed a response to the order to show cause, requested an extension of time,
4 or taken any other action to prosecute this case. Based on Burrell's failure to comply with this
5 court's order, this matter will be dismissed.

6 IT IS THEREFORE ORDERED that the motion to dismiss [ECF No. 17] is **GRANTED**
7 based on Petitioner Marcus Burrell's failure to comply with the court's order [ECF No. 18].

8 IT IS FURTHER ORDERED that Burrell is denied a certificate of appealability, as jurists
9 of reason would not find dismissal of the petition for the reasons stated herein to be debatable or
10 wrong.

11 IT IS FURTHER ORDERED that the Clerk of Court is directed to enter final judgment
12 accordingly and close this case.

13 Dated: June 6, 2023.

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16 JAMES C. MAHAN
17 UNITED STATES DISTRICT JUDGE
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22 _____
23 ¹ See Fed. R. Civ. P. 41(b) (“If the plaintiff fails to prosecute or to comply with these rules or a
court order, a defendant may move to dismiss the action or any claim against it. Unless the
dismissal order states otherwise, a dismissal under this subdivision . . . operates as an adjudication
on the merits.”).