UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MARCUS BURRELL,

Petitioner,

v.

WARDEN, HIGH DESERT STATE PRISON, et al.,

Respondents.

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

ORDER

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

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

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

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

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

Dated: June 6, 2023.

James C. Mahan

JAMES C. MAHAN
UNITED STATES DISTRICT JUDGE

[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.").