

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CHRISTOPHER O. SMITH,

Petitioner

v.

JERRY HOWELL, et al.,

Respondents

Case No.: 2:20-cv-01108-JAD-DJA

**Order Setting Schedule for Further
Proceedings**

[ECF Nos. 7, 9]

On August 4, 2020, I entered an order directing the Clerk of Court to serve Christopher O. Smith's pro se 28 U.S.C. § 2254 petition for writ of habeas corpus on respondents.¹ I also granted his motion to appoint counsel and directed the Federal Public Defender (FPD) to enter a notice of appearance or indicate their inability to represent Smith. On October 6, 2020, Martin Novillo of the FPD's office filed a notice of appearance.² By this order, I now set a schedule for further proceedings in this action.

IT IS THEREFORE ORDERED that counsel for petitioner must meet with petitioner as soon as reasonably possible to: (a) review the procedures applicable in cases under 28 U.S.C. § 2254; (b) discuss and explore with petitioner, as fully as possible, the potential grounds for habeas corpus relief in petitioner's case; and (c) advise petitioner that all possible grounds for habeas corpus relief must be raised at this time and that the failure to do so will likely result in the omitted grounds being barred from future review under the rules regarding abuse of writ.

¹ ECF No. 5.

² ECF No. 10.

1 **IT IS FURTHER ORDERED** that counsel for petitioner must file an amended petition
2 for writ of habeas corpus within **90 days**, which includes all known grounds for relief (both
3 exhausted and unexhausted).

4 **IT IS FURTHER ORDERED** that respondents must file a response to the petition
5 within **90 days** of service of the petition. Petitioner will then have **45 days** from service of the
6 answer, motion to dismiss, or other response to file a reply or opposition. Any other motions
7 will be subject to the normal briefing schedule under the local rules.

8 Any response to the petition must comport with Habeas Rule 5. Additionally:

- 9 1. Any procedural defenses raised by respondents in this case must be raised together in a
10 single, consolidated motion to dismiss. In other words, the court does not wish to address
11 any procedural defenses raised herein either in seriatum fashion in multiple successive
12 motions to dismiss or embedded in the answer. Procedural defenses omitted from the
13 motion to dismiss will be subject to potential waiver.
- 14 2. Respondents must not file a response in this case that consolidates their procedural
15 defenses, if any, with their response on the merits, except under 28 U.S.C.
16 § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If respondents do seek
17 dismissal of unexhausted claims under § 2254(b)(2): (a) they must do so within the single
18 motion to dismiss, not in the answer, and (b) they must specifically direct their argument
19 to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d
20 614, 623–24 (9th Cir. 2005). In short, no procedural defenses, including exhaustion,
21 should be included with the merits in an answer. All procedural defenses, including
22 exhaustion, must instead be raised by motion to dismiss.
- 23 3. In any answer filed on the merits, respondents must specifically cite to and address the

1 applicable state-court written decision and state-court record materials, if any, regarding
2 each claim within the response as to that claim; and

- 3 4. Respondents must file a set of state court exhibits relevant to the response filed to the
4 petition. Those exhibits must be filed chronologically and be accompanied by a separate
5 index of exhibits identifying the exhibits by number. The CM/ECF attachments that are
6 filed must be identified by the number or numbers of the exhibits in the attachment. The
7 purpose of this provision is to allow the court and any reviewing court thereafter to
8 quickly determine from the face of the electronic docket sheet which numbered exhibits
9 are filed in which attachments. Respondents must send a hard copy of all pleadings and
10 indices of exhibits **ONLY** filed for this case to the Clerk of Court, 400 S. Virginia St.,
11 Reno, NV, 89501, directed to the attention of “Staff Attorney” on the outside of the
12 mailing address label.

13 IT IS FURTHER ORDERED that petitioner’s second motion for appointment of counsel
14 **[ECF No. 7] is DENIED** as moot.

15 IT IS FURTHER ORDERED that petitioner’s motion for extension of time to file a
16 notice of representation **[ECF No. 9] is GRANTED *nunc pro tunc***.

17 Dated: October 16, 2020

18 
19 _____
20 U.S. District Judge Jennifer A. Dorsey
21
22
23