

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MITCHELL DZIK,

Petitioner,

v.

STATE OF NEVADA, et al.,

Respondents.

Case No. 2:22-cv-02113-GMN-EJY

ORDER

Petitioner has submitted a *pro se* petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254 (ECF No. 1-1). However, petitioner has submitted an incomplete application to proceed *in forma pauperis*. He has failed to include a signed financial certificate or inmate account statements. Accordingly, this matter has not been properly commenced. 28 U.S.C. § 1915(a)(2) and Local Rule LSR1-2.

This action therefore is subject to dismissal without prejudice as improperly commenced. However, the court will give petitioner 30 days to either (1) pay the \$5.00 filing fee or (2) submit a completed and signed financial certificate and the required inmate account statements. Failure to do so may result in the dismissal of this action without prejudice.

The court notes that Dzik's petition is not on the court's form as required by the local rules, and it also appears to be unexhausted.¹ A federal court will not grant a state prisoner's petition for habeas relief until the prisoner has exhausted his available state

¹ Petitioner states on the face of his petition that his appeal of the denial of his motion to correct illegal sentence is pending in state court. (ECF No. 1-1 at 5.)

1 remedies for all claims raised. *Rose v. Lundy*, 455 U.S. 509 (1982); 28 U.S.C. §
2 2254(b). A petitioner must give the state courts a fair opportunity to act on each of his
3 claims before he presents those claims in a federal habeas petition. *O'Sullivan v.*
4 *Boerckel*, 526 U.S. 838, 844 (1999); *see also Duncan v. Henry*, 513 U.S. 364, 365
5 (1995). A claim remains unexhausted until the petitioner has given the highest available
6 state court the opportunity to consider the claim through direct appeal or state collateral
7 review proceedings. *See Casey v. Moore*, 386 F.3d 896, 916 (9th Cir. 2004); *Garrison*
8 *v. McCarthy*, 653 F.2d 374, 376 (9th Cir. 1981).

9 **IT IS THEREFORE** ordered that within **30 days** of the date of this order petitioner
10 must either pay the \$5.00 filing fee or submit a financial certificate and inmate account
11 statements.

12 **IT IS FURTHER ORDERED** that if petitioner fails to comply with this order, this
13 action may be dismissed without prejudice.

14 **IT IS FURTHER ORDERED** that the Clerk of Court **SEND** to petitioner one copy
15 of the application to proceed *in forma pauperis* for incarcerated persons, with
16 instructions and one copy of the form 28 U.S.C. § 2254 habeas petition.

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18 DATED: 18 January 2023.

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22 GLORIA M. NAVARRO
23 UNITED STATES DISTRICT JUDGE
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