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2 **UNITED STATES DISTRICT COURT**3 **DISTRICT OF NEVADA**

4 Courtney Motley,

Case No.: 2:24-cv-01567-APG-NJK

5 Petitioner

Order

6 v.

7 State of Nevada, et al.,

8 Respondents
9

10 This action is a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 filed
11 by Courtney Motley, a Nevada state prisoner.

12 I. In Forma Pauperis Application

13 Motley has filed an *in forma pauperis* application with his petition. ECF No. 1. Based on
14 the information provided with his application, he is unable to pay the filing fee. Thus, I will grant
15 the application and direct the Clerk to file Motley's petition. *See* 28 U.S.C. § 1915.

16 II. Review of Petition

17 I have conducted a preliminary review of the petition under Rule 4 of the Rules
18 Governing Section 2254 Cases in the United States District Courts. Rule 4 requires me to
19 examine the habeas petition and order a response unless it "plainly appears" that the petitioner is
20 not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019). The rule
21 allows courts to screen and dismiss petitions that are patently frivolous, vague, conclusory,
22 palpably incredible, false, or plagued by procedural defects. *See Boyd v. Thompson*, 147 F.3d
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1 1124, 1128 (9th Cir. 1998). Because I conclude that it is plagued by procedural defects, the
2 petition is dismissed without prejudice for the reasons discussed below.

3 Motley seeks federal habeas relief from a judgment of conviction entered in the Eighth
4 Judicial District Court for the State of Nevada adjudicating him guilty of numerous crimes,
5 including three counts of sexual assault, burglary, two counts of battery, two counts of coercion,
6 robbery, and first-degree kidnapping. ECF No. 1-1 at 2. In his petition, Motley alleges several
7 defects in the state criminal proceeding that resulted in his convictions.

8 A review of Motley's case in the electronic filing database for the Eighth Judicial District
9 Court reveals that his judgment of conviction was entered on May 6, 2024, and that he filed a
10 notice of appeal on May 29, 2024. *See* Register of Actions, Case No. C-21-360475-1,
11 www.clarkcountycourts.us. Not surprisingly, a review of the Supreme Court of Nevada's
12 electronic filing database shows that Motley's appeal is pending with briefing in progress. *See*
13 C-Track Appellate Case Management System, Case No. 88757,
14 www.caseinfo.nvsupremecourt.us.

15 This action must be dismissed because all of Motley's federal habeas claims are
16 unexhausted in state court. A federal court will not grant a state prisoner's petition for habeas
17 relief until the prisoner has exhausted his available state remedies for all claims raised. *Rose v.*
18 *Lundy*, 455 U.S. 509 (1982); *see also* 28 U.S.C. § 2254(b)(1)(A). A petitioner must give the
19 state courts a fair opportunity to act on each of his claims before he presents those claims in a
20 federal habeas petition. *O'Sullivan v. Boerckel*, 526 U.S. 838, 844 (1999); *see also* *Duncan v.*
21 *Henry*, 513 U.S. 364, 365 (1995). A claim remains unexhausted until the petitioner has given the
22 highest available state court the opportunity to consider the claim through direct appeal or state
23 collateral review proceedings. *See* *Casey v. Moore*, 386 F.3d 896, 916 (9th Cir.2004). Because

1 Motley has not exhausted his federal habeas corpus claims in state court, his petition must be
2 dismissed without prejudice under Rule 4.

3 In addition, dismissal is appropriate under the abstention doctrine. Under principles of
4 comity and federalism, a federal court should not interfere with ongoing state criminal
5 proceedings by granting injunctive or declaratory relief absent extraordinary circumstances.
6 *Younger v. Harris*, 401 U.S. 37, 44 (1971); *Middlesex County Ethics Comm'n v. Garden State*
7 *Bar Ass'n*, 457 U.S. 423, 431 (1982). Claims raised in federal habeas corpus proceedings are
8 included within the *Younger* abstention doctrine. *Edelbacher v. Calderon*, 160 F.3d 582, 587 (9th
9 Cir.1998); *Carden v. State of Montana*, 626 F.2d 82, 83–85 (9th Cir.1980), *cert. denied*, 449
10 U.S. 1014 (1980). The doctrine applies when: (1) state judicial proceedings are pending; (2) the
11 state proceedings involve important state interests; and (3) the state proceedings afford adequate
12 opportunity to raise the constitutional issue. *Middlesex County*, 457 U.S. at 432; *Dubinka v.*
13 *Judges of the Superior Court*, 23 F.3d 218, 223 (9th Cir. 1994). Only in cases of proven
14 harassment or prosecutions undertaken by state officials in bad faith without hope of obtaining a
15 valid conviction, and perhaps in other special circumstances where irreparable injury can be
16 shown, is federal injunctive relief against pending state prosecutions appropriate. *Carden*, 626
17 F.2d at 83–84 (citing *Perez v. Ledesma*, 401 U.S. 82, 85 (1971)).

18 In this case, all three elements of the *Younger* abstention doctrine are present. First,
19 Motley’s state criminal proceeding is ongoing and has not reached final adjudication. *See*
20 *Roberts v. Dicarolo*, 296 F. Supp. 2d 1182, 1185 (C.D. Cal. 2003) (finding the first *Younger* prong
21 satisfied because petitioner was awaiting the state court of appeal’s decision at the time he filed
22 his petition). Second, the State of Nevada has an important interest in passing upon and
23 correcting violations of a defendant’s rights. Third, the state court criminal proceedings afford

1 an opportunity for Motley to raise the constitutional claims asserted in his federal habeas
2 petition. Finally, Motley has not advanced any extraordinary circumstance why I should not
3 abstain from entertaining the petition.

4 **IV. Conclusion**

5 I THEREFORE ORDER that Motley’s motion to proceed *in forma pauperis* (ECF No. 1)
6 is GRANTED. Motley need not pay the \$5.00 fee for filing this habeas corpus action. The
7 Clerk is directed to file Motley’s habeas petition (ECF No. 1-1) and motion for appointment of
8 counsel (ECF No. 1-2) as separate docket entries.

9 I FURTHER ORDER that the petition is DISMISSED without prejudice. The Clerk will
10 enter judgment accordingly and close this case.

11 I FURTHER ORDER that the motion for appointment of counsel is DENIED as moot.

12 I FURTHER ORDER that a certificate of appealability is DENIED as jurists of reason
13 would not find this decision debatable.

14 Dated: August 27, 2024



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16 U.S. District Judge Andrew P. Gordon
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