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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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9 CHARLES A. SUMMERS,

10 Petitioner,

11 vs.

12 E. K. MCDANIELS, et al.,

13 Respondents.

Case No. 3:09-cv-00613-LRH-(RAM)

ORDER

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The Court dismissed this action because Petitioner had not submitted a petition for a writ of habeas corpus within the allotted time. Order (#4). Petitioner has submitted a Motion for Reconsideration (#6). Petitioner argues that the time given was too short because he does not have a complete copy of what the Court assumes is his state post-conviction petition for a writ of habeas corpus, and because he cannot afford to make photocopies. The Court's dismissal was without prejudice. Petitioner may commence a new action at any time, subject to the period of limitation of 28 U.S.C. § 2244(d). Furthermore, merely having an action open without a petition does not make a subsequently filed petition timely, because the relevant date for calculating the timeliness of the action is when Petitioner mails the actual petition. See Stillman v. Lamarque, 319 F.3d 1199, 1201 (9th Cir. 2003).

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Reasonable jurists would not disagree with the Court's conclusion, and the Court denies a certificate of appealability.

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IT IS THEREFORE ORDERED that Petitioner's Motion for Reconsideration (#6) is **DENIED.**

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED.**

DATED this 28th day of December, 2009.



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE