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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DANIEL J. PAYNE,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF NEVADA, *et al.*,)
)
 Respondents.)
 _____)

3:10-cv-00104-HDM-VPC

ORDER

Petitioner submitted a Notice of Appeal from an Order of Affirmance issued by the Nevada Supreme court on February 4, 2010, which the court interprets as notice of petitioner’s intent to bring a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has now paid the \$5 filing fee, but has not submitted a petition for writ of habeas corpus. Rather he has filed a Motion for Abeyance (docket #4) in which he notes his lack of counsel and legal training and the purported refusal of the “State” to provide legal assistance. Petitioner requests the court to “hold this case in abeyance until he receives leave from the Ninth Circuit to file a second petition for a Writ of Habeas Corpus challenging his conviction due to newly discovered ruling by Federal Court...” Petitioner further contends that his claims are substantial. However, he has not provided a petition setting forth

1 those claims. 28 U.S.C. § 2241(c) provides that the writ of habeas corpus shall not extend to a
2 prisoner unless--

3 (1) he is in custody under or by color of the authority of the United States
4 or is committed for trial before some court thereof; or

5 (2) He is in custody for an act done or omitted in pursuance of an Act of
6 Congress, or an order process, judgment or decree of a court or judge of the
7 United States; or


8 (3) He is in custody in violation of the Constitution or laws or treaties of
9 the United States;...

10 Nothing presently before the Court demonstrates it has any jurisdiction to entertain a
11 "case" filed by petitioner. Because petitioner was advised of the need to file a petition and he has
12 failed to do so, the court must dismiss the matter.

13 If, in fact, petitioner obtains the order from the Ninth Circuit which he anticipates, he
14 can then submit it and his fully prepared petition for writ of habeas corpus for the Court's review.

15 **IT IS THEREFORE ORDERED** that the Motion for Abeyance (docket #4) is
16 **DENIED**. This matter shall be **DISMISSED WITHOUT PREJUDICE**. The Clerk shall enter
17 Judgment accordingly.

18 Dated this 7th day of April, 2010.

19 

20

UNITED STATES DISTRICT JUDGE