

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RODNEY LAUDERDALE,

Petitioner,

vs.

J.A. KELLER, *et al.*,

Respondents.

3:12-cv-00470-LRH-VPC

ORDER

Petitioner has filed a habeas petition under 28 U.S.C. § 2241 without either paying the filing fee or filing an application to proceed *in forma pauperis*.

It does not appear that a dismissal without prejudice of this improperly-commenced action will materially affect the analysis of the timeliness issue or other issues in a promptly filed and properly commenced new action. If petitioner is correct that he may proceed under § 2241 rather than 28 U.S.C. § 2255, then the one-year limitation period under the latter apparently would not apply. If he instead is subject to the requirements of § 2255, then the one-year limitation period following the April 19, 2007, judgment of conviction long since has expired, absent tolling or delayed accrual. The Court therefore will dismiss the improperly-commenced action without prejudice. In dismissing the action without prejudice, the Court makes no determination with regard to whether § 2241 is the correct procedural vehicle in this context or with regard to the proper district in which the action must be brought. Petitioner first must properly commence an action by satisfying the filing fee requirement.

IT THEREFORE IS ORDERED that this action is DISMISSED without prejudice to the filing of a new petition in a new action under a new docket number accompanied by either the required filing fee or a properly completed application to proceed *in forma pauperis*.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The Clerk shall SEND petitioner two copies of a pauper application for an inmate, one copy of the instructions for same, and a copy of the papers that he filed.

The Clerk shall enter final judgment accordingly, dismissing this action without prejudice.

DATED this 29th day of November, 2012.



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE