

1

2

3

4

5

6

7

UNITED STATES DISTRICT COURT

8

DISTRICT OF NEVADA

9

* * *

10 MICHAEL-STEVE COX,

Case No. 3:12-cv-00659-MMD-WGC

11

Petitioner,

ORDER

12

v.

13

STATE OF NEVADA, et al.,

14

Respondents.

15

16

The petitioner has presented the Court with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, and an application to proceed *in forma pauperis* (dkt. nos. 1 and 1-1).

19

The petitioner's application to proceed *in forma pauperis*, including the financial certificate, establishes that the petitioner qualifies for *in forma pauperis* status. He will be granted leave to proceed *in forma pauperis*, and will not be required to pay the filing fee for his habeas corpus petition.

23

The Court has reviewed the petition pursuant to Rule 4 of the Federal Rules Governing Section 2254 Cases. According to the petition, the claims presented are still pending before the state district court. In fact, petitioner admits that he has only just filed his state court action. See petition, p. 1, item 4.

27

A federal court will not grant a state prisoner's petition for habeas relief until the prisoner has exhausted his available state remedies for all claims raised.

28

1 *Rose v. Lundy*, 455 U.S. 509 (1982); 28 U.S.C. § 2254(b).¹ State remedies have not
2 been exhausted unless the claim has been fairly presented to the state courts.
3 *Carothers v. Rhay*, 594 F.2d 225, 228 (9th Cir. 1979); *O'Sullivan v. Boerckel*, 526 U.S.
4 838, 845, 119 S.Ct. 1728 (1999)(“[S]tate prisoners must give the state courts one full
5 opportunity to resolve any constitutional issues by invoking one complete round of the
6 State’s established appellate review process.”); *Greene v. Lambert*, 288 F.3d 1081,
7 1086 (9th Cir. 2002).

8 In many instances, the federal court might permit a similar action to be stayed to
9 allow the petitioner to exhaust his state remedies, if the petitioner can show good cause
10 for his failure to exhaust. *Rhines v. Weber*, 544 U.S. 269, 277, 125 S.Ct. 1528, 1535
11 (2005). In this instance, however, petitioner has approached the federal court
12 prematurely, while his state court proceedings are still pending. His one-year limitations
13 period is, therefore, tolled and it does not appear that dismissal of this action without
14 prejudice will prejudice petitioner’s attempts to obtain relief. Therefore, the petition shall
15 be dismissed.

16 IT IS THEREFORE ORDERED that petitioner’s application to proceed *in forma*
17 *pauperis* (dkt. no. 1) is GRANTED. Petitioner shall not be required to pay a filing fee to
18 file his habeas corpus petition.

19 ///

20 _____
21 ¹28 U.S.C. § 2254(b) states, in pertinent part:

22 An application for a writ of habeas corpus on behalf of a person in
23 custody pursuant to the judgment of a State court shall not be granted
24 unless it appears that: (A) the applicant has exhausted the remedies
25 available in the courts of the State; or (B)(i) there is an absence of
26 available state corrective process; or (ii) circumstances exist that
27 render such process ineffective to protect the rights of the applicant.


28 * * *

(c) An applicant shall not be deemed to have exhausted the
remedies available in the courts of the State, within the
meaning of this section, if he has the right under the law of
the State to raise, by any available procedure, the question
presented.

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

IT IS FURTHER ORDERED that the Clerk shall file and electronically serve the petition (dkt. no. 1-1) and a copy of this order upon the respondents. The petition is DISMISSED WITHOUT PREJUDICE as unexhausted and premature. The Clerk shall enter judgment accordingly.

DATED THIS 17th day of June 2013.


MIRANDA M. DU
UNITED STATES DISTRICT JUDGE