

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

* * *

ALEXANDER B. BAYOT,

v.
ISIDRO BACA, *et al.*,

Petitioner,

Respondents.

Case No. 3:14-cv-00179-MMD-VPC

ORDER

Petitioner has submitted an application (dkt. no. 1) to proceed *in forma pauperis* and a habeas petition.

The matter has not been properly commenced because petitioner submitted incomplete financial documentation with the pauper application. Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, petitioner must attach both a properly executed financial certificate and an inmate account statement for the past six months. Petitioner submitted only a financial certificate with the application without also attaching an inmate account statement for the past six (6) months. Without the complete printout showing daily account activity over the full six-month period, the Court is unable to assess whether the current balance on the financial certificate is representative of petitioner's ability to pay.

The pauper application therefore will be denied without prejudice, and the present action will be dismissed without prejudice to the filing of a new petition in a new action with a pauper application with all required attachments. It does not appear that a

1 dismissal without prejudice would result in a promptly-filed new petition being untimely
2 or otherwise result in substantial prejudice.¹ Petitioner at all times remains responsible
3 for calculating the running of the federal limitation period as applied to his case, properly
4 commencing a timely-filed federal habeas action, and properly exhausting his claims in
5 the state courts.

6 It is therefore ordered that the application (dkt. no. 1) to proceed *in forma*
7 *pauperis* is denied and that this action shall be dismissed without prejudice to the filing
8 of a new petition in a new action with a properly completed pauper application with all
9 required — and new — financial documents.

10 It is further ordered that a certificate of appealability is denied. Jurists of reason
11 would not find the dismissal of the improperly-commenced action without prejudice to be
12 debatable or wrong, as the dismissal will not result in a promptly-filed new action being
13 untimely or otherwise result in substantial prejudice. See text at 1-2 and n.1, *supra*.

14 It is further ordered the Clerk of Court shall send petitioner two (2) copies each of
15 a pauper form for an incarcerated person, a noncapital § 2254 habeas petition form,
16 one (1) copy of the instructions for each form, and a copy of the papers that he
17 submitted.

18
19
20

¹The papers on file and the online docket records of the state courts reflect the following.

21 Petitioner Alexander Bayot challenges his Nevada state conviction, pursuant to a
22 jury verdict, of eleven counts of forgery and one count of conspiracy to commit forgery
23 and his adjudication as a habitual criminal. The state supreme court affirmed the
24 conviction in a November 15, 2012, order. The ninety-day time period for filing a petition
25 for a writ of *certiorari* in the Supreme Court expired on February 13, 2013. Approximately 64 days later, on or about April 18, 2013, petitioner filed a state post-conviction petition. The state supreme court thereafter affirmed the denial of state post-conviction relief in a March 12, 2014, order, such that the remittitur likely will issue on or about Monday, April 6, 2014. It thus would appear that substantial time remains in the one-year federal limitation period at the filing of the present action.

26 Petitioner should note, for any new action filed, that he should not interweave
27 pages from state court record materials within the petition itself. He may attach such
28 materials with the petition, after the signature page, but he may not incorporate such materials within the body of the federal petition itself. He instead must state his claims within the body of the federal petition without incorporation of and/or reliance on state court record or other materials to state his claims.

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 of Court shall enter final judgment accordingly,
dismissing this action without prejudice.

DATED THIS 7th day of April 2014.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE