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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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BRIAN KERRY O'KEEFE,

No. 3:14-cv-00477-RCJ-VPC

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Petitioner,

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vs.

ORDER

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ROBERT LEGRAND,

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Respondent.

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Brian Kerry O'Keefe, a Nevada prisoner, has submitted a second application to proceed *in forma pauperis* (ECF #5) and an amended petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (ECF #7). The court has reviewed the petition pursuant to Habeas Rule 4, and the petition shall be dismissed as discussed below.

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This court dismissed petitioner's previous petition, filed pursuant to 28 U.S.C. § 2241, for failure to exhaust state remedies. 2:11-cv-02109-JCM-VCF. Petitioner appealed, and that appeal is pending before the Ninth Circuit Court of Appeals. In that case, petitioner challenged his upcoming third trial for murder as a violation of double jeopardy. It appears from the instant petition that the third trial was subsequently held, and petitioner was convicted of second-degree murder, with a judgment of conviction entered on August 28, 2014 (ECF #7, p. 1).

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In the instant petition, petitioner complains that this court wrongly dismissed his first petition, in violation of his Fourteenth Amendment equal protection and due process rights. Clearly, these challenges must be raised with the Ninth Circuit in his appeal of the dismissal of the first petition. Moreover, it is clear from the face of the instant petition that petitioner has not exhausted his available

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1 state remedies with respect to the judgment of conviction entered on August 28, 2014. Accordingly,
2 the instant petition is dismissed for failure to exhaust available state remedies.

3 **IT THEREFORE IS ORDERED** that petitioner's second application to proceed *in forma*
4 *pauperis* (ECF #5) is **GRANTED**.

5 **IT FURTHER IS ORDERED** that the petitioner's amended petition (ECF #7) is **DISMISSED**
6 without prejudice for failure to exhaust available state remedies.

7 **IT FURTHER IS ORDERED** that petitioner's motions for appointment of counsel (ECF #s
8 6, 9) are both **DENIED** as moot.

9 **IT FURTHER IS ORDERED** that the Clerk shall enter judgment accordingly and close this
10 case.

11 DATED: This 11th day of February, 2015

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14 UNITED STATES DISTRICT JUDGE
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