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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ROBERT A. SMITH,

Petitioner,

v.

RENEE BAKER, *et al.*,

Respondents.

Case No. 3:15-cv-00234-MMD-VPC

ORDER

In this habeas corpus action, Nevada prisoner Robert A. Smith, the petitioner, is due to file his reply by April 29, 2016. See Order entered January 22, 2016 (dkt. no. 25).

On February 4, 2016, Smith filed a "Motion for Court Order," in which he requests that the Court "grant a court order instructing [Ely State Prison (ESP)] officials [to] assist in the return of Mr. Smith's legal documents from inmate Cross." Motion for Court Order (dkt. no. 27) at 2. As the Court understands Smith's motion, he gave certain materials to Anthony Cross, who is also a prisoner at ESP, so that Cross could assist him with this case, and now he wishes to have Cross return those documents to him so that he, or another prisoner assisting him, may use the documents in drafting his reply. See *id.* at 1-2. In support of the motion, Smith attaches what appear to be copies of written requests he made to unnamed prison officers regarding his desire to have his legal documents returned from Cross. See *id.* at 5-6. There is no indication that the requests have been resolved. The Court will deny Smith's motion.

"[T]he fundamental constitutional right of access to the courts requires prison authorities to assist inmates with the preparation and filing of meaningful legal papers

1 by providing prisoners with adequate law libraries or adequate assistance from persons
2 trained in the law.” *Bounds v. Smith*, 430 U.S. 817, 828 (1977); *see also Lewis v.*
3 *Casey*, 518 U.S. 343, 346 (1996). To show a violation of his constitutional right of
4 access to the courts, a prisoner must establish that he suffered an actual injury. *Lewis*,
5 518 U.S. 348. “Actual injury” is defined as “actual prejudice with respect to
6 contemplated or existing litigation, such as inability to meet a filing deadline or present a
7 claim.” *Id.* (citation and internal quotation marks omitted). There is no showing that the
8 difficulty Smith has allegedly had with respect to retrieving his legal documents from
9 Cross has approached the level of a violation of his constitutional right of access to the
10 courts.

11 Moreover, federal courts are reticent to micro-manage state prison officers'
12 decisions regarding the day-to-day handling of prison administration. “[F]ederal courts
13 ought to afford appropriate deference and flexibility to state officials trying to manage a
14 volatile environment.... Such flexibility is especially warranted in the fine-tuning of the
15 ordinary incidents of prison life....” *Sandin v. Conner*, 515 U.S. 472, 482 (1995). In
16 *Procunier v. Martinez*, 416 U.S. 396 (1974), overruled in part on other grounds,
17 *Thornburgh v. Abbott*, 490 U.S. 401 (1989), the Supreme Court explained this
18 deference:

19 Traditionally, federal courts have adopted a broad hands-off
20 attitude toward problems of prison administration. In part this policy is the
21 product of various limitations on the scope of federal review of conditions
22 in state penal institutions. More fundamentally, this attitude springs from
23 complementary perceptions about the nature of the problems and the
24 efficacy of judicial intervention. Prison administrators are responsible for
25 maintaining internal order and discipline, for securing their institutions
26 against unauthorized access or escape, and for rehabilitating, to the
27 extent that human nature and inadequate resources allow, the inmates
28 placed in their custody. The Herculean obstacles to effective discharge of
these duties are too apparent to warrant explication. Suffice it to say that
the problems of prisons in America are complex and intractable, and,
more to the point, they are not readily susceptible of resolution by decree.
Most require expertise, comprehensive planning, and the commitment of
resources, all of which are peculiarly within the province of the legislative
and executive branches of government. For all of those reasons, courts
are ill equipped to deal with the increasingly urgent problems of prison
administration and reform. Judicial recognition of that fact reflects no more
than a healthy sense of realism.

1 *Procunier*, 416 U.S. at 404-05 (footnote omitted). The Court will deny Smith's motion.
2 The Court will, however, direct the Clerk of the Court to send Smith copies of his
3 habeas petition and respondents' answer, and the Court will *sua sponte* extend the time
4 for Smith to file his reply.

5 It is therefore ordered that petitioner's Motion for Court Order (dkt. no. 27) is
6 denied.

7 It is further ordered that the Clerk of the Court send to petitioner, along with a
8 copy of this order, copies of his petition for writ of habeas corpus (dkt. no. 7) and
9 respondents' answer (dkt. no. 24).

10 It is further ordered that the time for petitioner to file a reply to respondents'
11 answer is extended to June 10, 2016.

12 DATED THIS 2nd day of March 2016.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

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