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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DEMEITRUS WAYNE PATTERSON,

Case No. 3:15-cv-00392-HDM-WGC

Petitioner,

ORDER

v.

BRIAN WILLIAMS, et al.,

Respondents.

This *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is before the court on petitioner Demeitrus Patterson's second motion for appointment of counsel (ECF No. 11).

This court denied Patterson's first motion for appointment of counsel on the basis that the petition appears sufficiently clear in presenting the issues that he wishes to raise, and the legal issues do not appear to be particularly complex. Patterson now argues that because respondents have filed a motion to dismiss and argue that his petition contains both exhausted and unexhausted claims counsel should be appointed (ECF No. 11). However, a petition with some unexhausted claims does not, in and of itself, justify the appointment of counsel. The legal issues are not complex, and counsel is not warranted here. The motion is denied.

Patterson, therefore, shall have forty-five (45) days from the date this order is entered to file his opposition to the motion to dismiss. The court notes that, while respondents have filed a motion to dismiss certain grounds, arguing that they are unexhausted and while petitioner appears to agree that at least some of the grounds

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are unexhausted, the court has not made a decision on the motion to dismiss. Moreover, should the court find that some grounds are unexhausted, petitioner would have the opportunity to voluntarily abandon those federal claims and proceed on any exhausted claims or have the opportunity to file a motion for this court's consideration to stay the federal proceedings in this court while he returns to state court to exhaust any unexhausted claims. See, e.g., *Rose v. Lundy*, 455 U.S. 509, 510 (1982); *Rhines v. Weber*, 544 U.S. 269, 276, (2005).

IT IS THEREFORE ORDERED that petitioner's second motion for appointment of counsel (ECF No. 11) is **DENIED**.

IT IS FURTHER ORDERED that within **forty-five (45) days** of the date of this order, petitioner shall file his opposition to the motion to dismiss. Respondents shall file their reply, if any, in accordance with the normal briefing schedule under the local rules.

DATED: July 14, 2016.



HOWARD D. MCKIBBEN
UNITED STATES DISTRICT JUDGE