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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ALEX MARQUEZ,

Petitioner,

v.

E.K. MCDANIEL, *et al.*,

Respondents.

Case No. 3:15-cv-00492-MMD-CLB

ORDER

Petitioner Alex Marquez brought this habeas corpus action under 28 U.S.C. § 2254. (ECF No. 14.) The Court found that Petitioner had not exhausted his state-court remedies for parts of Grounds One, Three, and Seven. (ECF No. 77 at 3, 4, 5–6.) The Court also found that Petitioner had not exhausted his state-court remedies for all of Grounds Four, Five, Ten, and Eleven. (*Id.* at 4, 5, 6–7.) Petitioner has filed a motion to dismiss in part unexhausted grounds and proceed on exhausted grounds or subparts thereof. (ECF No. 78.) The Court grants the motion.

Ground Eleven is a claim that the cumulative effect of the errors alleged in Grounds One through Ten warrant relief. (ECF No. 14 at 32.) The Court found that Ground Eleven was unexhausted because Grounds One, Three, Four, Five, and Ten were not exhausted, in whole or in part. (ECF No. 77 at 6–7.) The Court had determined that it would not parse through what is left to find a claim of cumulative error. (*Id.*) Upon further reflection, the Court will consider the exhausted portions of Ground Eleven, which is how Petitioner presented the claim in his appeal from the denial of his state post-conviction habeas corpus petition.

It is therefore ordered that Petitioner's motion to dismiss in part unexhausted grounds and proceed on exhausted grounds or subparts thereof (ECF No. 78) is granted.

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The following claims are dismissed from this action: Ground One as to rights other than the Fifth Amendment; Ground Three as to a violation equal protection or the Sixth Amendment; Ground Four; Ground Five; Ground Seven as to the five new claims of ineffective assistance of counsel; Ground Ten; Ground Eleven as to the unexhausted claims.

It is further ordered that that Respondents will have 45 days from the date of entry of this order to file and serve an answer, which must comply with Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts. Petitioner will have 45 days from the date on which the answer is served to file a reply.

DATED THIS 7th day of April 2020.



MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE