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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DEREK LOWELL KIRK,

Petitioner,

v.

NEVADA DEPARTMENT OF
CORRECTIONS, *et al.*,

Respondents.

Case No. 3:16-cv-00079-MMD-VPC

ORDER

On November 14, 2017, this Court denied habeas petitioner Derek Lowell Kirk's renewed motion for appointment of counsel (ECF No. 32). Kirk filed a notice of appeal with the Ninth Circuit Court of Appeals (ECF No. 33). Kirk has filed a motion for certificate of appealability with this Court and also asks this Court to stay these proceedings pending the outcome of his appeal of the denial of his motion for appointment of counsel (ECF No. 35).

This Court may issue a certificate of appealability for final orders. 28 U.S.C. § 2253(c). However, as respondents point out, Kirk appeals an interlocutory order, not a final order. *See* 28 U.S.C. § 1291. The motion for certificate of appealability is, therefore, denied. Moreover, it appears that an interlocutory order denying a motion for appointment of counsel in a habeas proceeding is not appealable under 28 U.S.C. § 1291. *See Weygandt v. Look*, 718 F.2d 952 (9th Cir. 1983). Thus, there does not appear to be any basis to stay these proceedings. Accordingly, Kirk must file his opposition to the motion to dismiss, if any, within thirty (30) days of the date of this order.

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It is therefore ordered that petitioner's motion for certificate of appealability and for a stay (ECF No. 35) is denied.

It is further ordered that petitioner must, within thirty (30) days from the date of this order, file his opposition to respondents' motion to dismiss, if any.

DATED THIS 9th day of January 2018.


MIRANDA M. DU
UNITED STATES DISTRICT JUDGE