

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

VALLIER WILLIAM TOMPKINS,

Case No. 3:16-cv-00444-MMD-WGC

Petitioner,

ORDER

v.

WARDEN BACA, *et al.*,

Respondents.

This action is a petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254, by Vallier William Tompkins, a Nevada prisoner. On July 26, 2016, Tompkins initiated this action by filing an application to proceed *in forma pauperis* (ECF No. 1), along with his habeas corpus petition (attached to the application to proceed *in forma pauperis*), and a motion for appointment of counsel (also attached to the application to proceed *in forma pauperis*).

The financial information provided with Tompkins' application to proceed *in forma pauperis* indicates that he is unable to pay the filing fee for this action. Therefore, the application to proceed *in forma pauperis* will be granted, and Tompkins will not be required to pay the filing fee.

The Court has reviewed Tompkins' habeas petition, pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, and determines that it merits service upon the respondents. Respondents will not be required to respond to the petition at this time, however, as the Court anticipates that, with counsel, Tompkins will likely file an amended petition.

1 The Court will grant Tompkins' motion for appointment of counsel. "Indigent state
2 prisoners applying for habeas corpus relief are not entitled to appointed counsel unless
3 the circumstances of a particular case indicate that appointed counsel is necessary to
4 prevent due process violations." *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986)
5 (citing *Kreiling v. Field*, 431 F.2d 638, 640 (9th Cir. 1970) (per curiam). The court may,
6 however, appoint counsel at any stage of the proceedings "if the interests of justice so
7 require." See 18 U.S.C. § 3006A; see also Rule 8(c), Rules Governing § 2254 Cases;
8 *Chaney*, 801 F.2d at 1196. It appears that there may be statute of limitations issues to
9 be addressed at the outset of this case, and it appears that Tompkins may not be able
10 to adequately litigate those issues without counsel. Therefore, the Court finds that
11 appointment of counsel is in the interests of justice.

12 It is therefore ordered that petitioner's Application to Proceed *In Forma Pauperis*
13 (ECF No. 1) is granted. Petitioner is granted leave to proceed *in forma pauperis*.
14 Petitioner will not be required to pay the filing fee for this action.

15 It is further ordered that the Clerk of the Court separately file the petition for writ
16 of habeas corpus, and the motion for appointment of counsel, both of which are
17 currently attached to the *in forma pauperis* application, at ECF No. 1.

18 It is further ordered that the Clerk of the Court add Adam Paul Laxalt, Attorney
19 General of the State of Nevada, as counsel for respondents.

20 It is further ordered that the Clerk of the Court electronically serve upon
21 respondents a copy of the petition for writ of habeas corpus, and a copy of this order.

22 It is further ordered that respondents will have twenty (20) days from the date on
23 which the petition is served upon them to appear in this action. Respondents will not be
24 required to respond to the habeas petition at this time.

25 It is further ordered that petitioner's Motion for Appointment of Counsel is
26 granted. The Federal Public Defender for the District of Nevada (FPD) is appointed to
27 represent petitioner. If the FPD is unable to represent the petitioner, due to a conflict of
28 interest or other reason, then alternate counsel will be appointed. In either case,


1 counsel will represent the petitioner in all federal-court proceedings relating to this
2 matter, unless allowed to withdraw.

3 It is further ordered that the Clerk of the Court electronically serve upon the FPD
4 a copy of this order, together with a copy of the petition for writ of habeas corpus.

5 It is further ordered that the FPD will have twenty (20) days from the date of entry
6 of this order to file a notice of appearance, or to indicate to the Court its inability to
7 represent the petitioner in this case.

8 It is further ordered that the Court will establish a schedule for further
9 proceedings after counsel appear for the petitioner and the respondents.

10 DATED THIS 27th day of July 2016.

11 
12 _____
13 MIRANDA M. DU
14 UNITED STATES DISTRICT JUDGE
15
16
17
18
19
20
21
22
23
24
25
26
27
28