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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CHANCE B. CARDEN,

Petitioner,

v.

NEVADA DEPARTMENT OF
CORRECTIONS, *et al.*,

Respondents.

Case No. 3:16-cv-00684-MMD-VPC

ORDER

This case was initiated on November 23, 2016, by Chance B. Carden, a Nevada prisoner. On that date, Carden submitted an application to proceed *in forma pauperis* (ECF No. 1) for a habeas action, without also submitting a habeas petition. The Court has reviewed its records, and it does not appear that Carden has filed a petition separately in another action without a pauper application.

A petitioner may not commence a federal action by filing only a pauper application unaccompanied by a pleading. Under Rule 12 of the Rules Governing Section 2254 Proceedings, the Federal Rules of Civil Procedure generally apply to the extent not inconsistent with the habeas rules. Under Rule 3 of the Federal Rules of Civil Procedure, “[a] civil action is commenced by filing a complaint with the court.” Accordingly, Carden must submit a pleading to properly commence an action.

Therefore, Carden's pauper application will be denied without prejudice, and the action will be dismissed without prejudice. This dismissal, in and of itself, is without

1 prejudice to the filing of a new action. However, nothing in this dismissal precludes the
2 dismissal of a later-filed action on the basis of, if applicable, untimeliness, lack of
3 exhaustion, procedural default, or any other basis.

4 It is therefore ordered that the Application to Proceed *in Forma Pauperis* (ECF No.
5 1) is denied without prejudice.


6 It is further ordered that this action is dismissed without prejudice to the filing of a
7 petition in a new action, accompanied by a new and properly completed application to
8 proceed *in forma pauperis* with all required attachments.

9 It is further ordered that petitioner is denied a certificate of appealability.

10 It is further ordered that the Clerk of the Court send petitioner two (2) copies of the
11 form application to proceed *in forma pauperis* for incarcerated persons, two (2) copies of
12 the form petition for writ of habeas corpus pursuant to 28 U.S.C. section 2254, the
13 instructions for both forms, and a copy of the papers that he submitted in this case.

14 It is further ordered that the Clerk of the Court enter final judgment accordingly,
15 dismissing this action without prejudice.

16 DATED THIS 1st day of December 2016.

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20 _____
21 MIRANDA M. DU
22 UNITED STATES DISTRICT JUDGE
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