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2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

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5 JOAQUIN BROUSHON HILL,

Case No. 3:16-cv-00694-MMD-WGC

6 Petitioner,

ORDER

7 v.

8 TIMOTHY FILSON, et al.,

9 Respondents.

10 This pro se 28 U.S.C. § 2254 habeas petition by Joaquin Broushon Hill is before
11 the Court on Hill's declaration regarding unexhausted claims. The Court denied Hill's
12 motion to stay (ECF No. 33). The Court further directed Hill to either (1) inform this Court
13 in a sworn declaration that he wishes to formally and forever abandon the unexhausted
14 grounds for relief in his federal habeas petition and proceed on the exhausted ground; or
15 (2) inform this Court in a sworn declaration that he wishes to dismiss this petition without
16 prejudice in order to return to state court to exhaust his unexhausted claims.

17 Hill filed a timely response, which he styled as a declaration and titled "A
18 Declaration Appropriate Public Notice Make and Amend Rules Governing if Prejudice and
19 to Dismiss without Prejudice to Return to State Court to Exhaust the Unexhausted
20 Publication" (ECF No. 34). Respondents note that Hill's declaration is ambiguous: Hill (1)
21 states he wishes to voluntarily dismiss his Petition so that he can pursue his unexhausted
22 claims in state court; (2) seeks a hearing on the motion for stay and being forced to
23 dismiss his Petition; (3) argues the state district court judge is biased; (4) argues his actual
24 innocence; (5) argues prosecutorial misconduct; and (6) seeks an extension of time to
25 exhaust his claims without prejudice (ECF No. 35).

26 Thus, Respondents appropriately seek an order from the Court directing Hill to file
27 a declaration that clearly chooses between the two options set out in the first paragraph
28 of this order.

1 Hill has also filed a motion for new copies (ECF No. 38). He states that he has
2 been transferred and that some of his “legal mail and other records” are missing. He notes
3 that he believes prison personnel are retaliating against him and also states that he is
4 pursuing a grievance on the matter. Hill’s motion is denied without prejudice. If Hill does
5 not recover the material that he believes he needs pursuant to the grievance process, he
6 may file a new motion that specifically identifies what filing or exhibit he is missing and
7 why he needs it to litigate this Petition.

8 It is therefore ordered that Petitioner shall have 20 days to either: (1) inform this
9 Court in a sworn declaration that he wishes to formally and forever abandon the
10 unexhausted grounds for relief in his federal habeas petition and proceed on the
11 exhausted ground; or (2) inform this Court in a sworn declaration that he wishes to dismiss
12 this Petition without prejudice in order to return to state court to exhaust his unexhausted
13 claims.

14 It is further ordered that if Petitioner elects to abandon his unexhausted grounds,
15 Respondents will have 30 days from the date Petitioner serves his declaration of
16 abandonment in which to file an answer to Petitioner’s remaining ground—ground 5(a)—
17 for relief. The answer must contain all substantive and procedural arguments as to the
18 surviving ground and comply with Rule 5 of the Rules Governing Proceedings in the
19 United States District Courts under 28 U.S.C. §2254.

20 It is further ordered that Petitioner will have 30 days following service of
21 Respondents’ answer in which to file a reply.

22 It is further ordered that if Petitioner fails to respond to this order within the time
23 permitted, this case may be dismissed without further notice.

24 It is further ordered that Petitioner’s motion for new copy of records (ECF No. 38)
25 is denied without prejudice as set forth in this order.

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It is further ordered that no further courtesy copies of any filings or exhibits are required at this time.

DATED THIS 15th day of April 2019.


MIRANDA M. DU
UNITED STATES DISTRICT JUDGE