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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

WAYNE A. JACKSON,

Petitioner,

v.

HAROLD WICKHAM, et al.,

Respondents.

Case No. 3:17-cv-00098-LRH-WGC

ORDER

Petitioner Wayne A. Jackson has submitted a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has now paid the filing fee (see ECF No. 6). The court has reviewed the petition pursuant to Habeas Rule 4, and it shall be docketed and served on respondents.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C. §2254(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

Petitioner has also submitted a motion for appointment of counsel (ECF No. 1-3). There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir.1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986), cert. denied, 481

1 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469  
2 U.S. 838 (1984). However, counsel must be appointed if the complexities of the case  
3 are such that denial of counsel would amount to a denial of due process, and where the  
4 petitioner is a person of such limited education as to be incapable of fairly presenting his  
5 claims. See *Chaney*, 801 F.2d at 1196; see also *Hawkins v. Bennett*, 423 F.2d 948 (8th  
6 Cir.1970). Here, Jackson's petition is clear in presenting the issues that he wishes to  
7 raise, and the legal issues are not particularly complex. Therefore, counsel is not  
8 justified at this time. Jackson's motion is denied.

9 **IT IS THEREFORE ORDERED** that the Clerk **shall file and ELECTRONICALLY**  
10 **SERVE** the petition (ECF No. 1-1) on the respondents.

11 **IT IS FURTHER ORDERED** that the Clerk shall add Adam Paul Laxalt, Nevada  
12 Attorney General, as counsel for respondents.

13 **IT IS FURTHER ORDERED** that respondents shall file a response to the petition,  
14 including potentially by motion to dismiss, within **ninety (90) days** of service of the  
15 petition, with any requests for relief by petitioner by motion otherwise being subject to  
16 the normal briefing schedule under the local rules. Any response filed shall comply with  
17 the remaining provisions below, which are entered pursuant to Habeas Rule 5.

18 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents  
19 in this case shall be raised together in a single consolidated motion to dismiss. In other  
20 words, the court does not wish to address any procedural defenses raised herein either  
21 *in seriatum* fashion in multiple successive motions to dismiss or embedded in the  
22 answer. Procedural defenses omitted from such motion to dismiss will be subject to  
23 potential waiver. Respondents shall not file a response in this case that consolidates  
24 their procedural defenses, if any, with their response on the merits, except pursuant to  
25 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If  
26 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall  
27 do so within the single motion to dismiss not in the answer; and (b) they shall  
28 specifically direct their argument to the standard for dismissal under § 2254(b)(2) set

1 forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no  
2 procedural defenses, including exhaustion, shall be included with the merits in an  
3 answer. All procedural defenses, including exhaustion, instead must be raised by  
4 motion to dismiss.

5 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents  
6 shall specifically cite to and address the applicable state court written decision and state  
7 court record materials, if any, regarding each claim within the response as to that claim.

8 **IT IS FURTHER ORDERED** that petitioner shall have **forty-five (45) days** from  
9 service of the answer, motion to dismiss, or other response to file a reply or opposition,  
10 with any other requests for relief by respondents by motion otherwise being subject to  
11 the normal briefing schedule under the local rules.

12 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed  
13 herein by either petitioner or respondents shall be filed with a separate index of exhibits  
14 identifying the exhibits by number. The CM/ECF attachments that are filed further shall  
15 be identified by the number of the exhibit in the attachment.

16 **IT IS FURTHER ORDERED** that the parties SHALL SEND courtesy copies of all  
17 exhibits in this case to the Clerk of Court, 400 S. Virginia St., Reno, NV, 89501, directed  
18 to the attention of "Staff Attorney" on the outside of the mailing address label. Additionally,  
19 in the future, all parties shall provide courtesy copies of any additional exhibits submitted  
20 to the court in this case, in the manner described above.

21 **IT IS FURTHER ORDERED** that the Clerk **shall file** petitioner's motion for  
22 appointment of counsel (ECF No. 1-3).

23 **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel  
24 (ECF No. 1-3) is **DENIED**.

25 DATED this 13th day of October, 2017.

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27   
28 LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE