UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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SHAYLON SMITH, Petitioner, v. STATE OF NEVADA, *et al.*, Respondents.	Case No. 3:17-cv-00288-MMD-VPC ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by a Nevada state prisoner. Neither a filing fee nor an application to proceed *in forma pauperis* was submitted with the petition. When filing a habeas action, petitioner must either submit the $5.00 filing fee for habeas petition or an application to proceed *in forma pauperis*. Due to the lack of an *in forma pauperis* application or filing fee, the present action will be dismissed without prejudice to the filing of a new petition in a new action with a pauper application with all required attachments. It does not appear from the papers presented that a dismissal without prejudice would result in a promptly filed new petition being untimely. In this regard, petitioner at all times remains responsible for calculating the running of the limitations period as applied to his case and properly commencing a timely filed habeas corpus action.

It therefore is ordered that this action is dismissed without prejudice to the filing of a new petition in a new action.

It is further ordered that the Clerk of the Court send petitioner two (2) copies of an *in forma pauperis* application form for a prisoner and one copy of the instructions for the

same, two (2) copies of a blank 28 U.S.C. § 2254 habeas petition form and one (1) copy of instructions for the same; and one (1) copy of the petition.

It is further ordered that petitioner may file a new petition in a new action, but may not file further documents in this action.

It is further ordered that a certificate of appealability is denied. Reasonable jurists would not find the dismissal of the improperly commenced action without prejudice to be debatable or wrong.

It is further ordered that the Clerk of the Court enter judgment accordingly.

DATED THIS 12th day of May 2017.

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE