

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  
28

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

JONATHAN WAYNE MUNDO,  
Petitioner,  
vs.  
DIRECTOR OF N.D.O.C., et al.,  
Respondents.

Case No. 3:17-cv-00322-HDM-VPC

**ORDER**

Petitioner has paid the filing fee. The court has reviewed the petition for a writ of habeas corpus pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.

This action appears to be untimely under 28 U.S.C. § 2244(d)(1). However, the court wants more of the state-court record before making that determination. Therefore, the court will serve the petition upon respondents for a response.

Petitioner has filed a motion for appointment of counsel (ECF No. 6). Whenever the court determines that the interests of justice so require, counsel may be appointed to any financially eligible person who is seeking habeas corpus relief. 18 U.S.C. § 3006A(a)(2)(B). “[T]he district court must evaluate the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims pro se in light of the complexity of the legal issues involved.” Weygandt v. Look, 718 F.2d 952 (9th Cir. 1983). There is no constitutional right to counsel in federal habeas proceedings. McCleskey v. Zant, 499 U.S. 467, 495 (1991). The factors to consider are not separate from the underlying claims, but are intrinsically enmeshed with them. Weygandt, 718 F.2d

1 at 954. After reviewing the petition, the court concludes that appointment of counsel is not  
2 warranted.

3 IT IS THEREFORE ORDERED that the clerk of the court shall file the petition for a writ of  
4 habeas corpus pursuant to 28 U.S.C. § 2254.

5 IT IS FURTHER ORDERED that the clerk shall add Adam Paul Laxalt, Attorney General  
6 for the State of Nevada, as counsel for respondents.

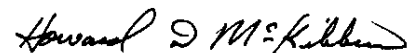
7 IT IS FURTHER ORDERED that the clerk shall electronically serve upon respondents a  
8 copy of the petition and this order. In addition, the clerk shall return to petitioner a copy of the  
9 petition.

10 IT IS FURTHER ORDERED that respondents shall have forty-five (45) days from the date  
11 on which the petition was served to answer or otherwise respond to the petition. Respondents shall  
12 raise all potential affirmative defenses in the initial responsive pleading, including untimeliness,  
13 lack of exhaustion, and procedural default. Successive motions to dismiss will not be entertained.  
14 If respondents file and serve an answer, then they shall comply with Rule 5 of the Rules Governing  
15 Section 2254 Cases in the United States District Courts, and then petitioner shall have forty-five  
16 (45) days from the date on which the answer is served to file a reply. If respondents file a motion,  
17 then the briefing schedule of Local Rule LR 7-2 shall apply.

18 IT IS FURTHER ORDERED that any exhibits filed by the parties shall be filed with a  
19 separate index of exhibits identifying the exhibits by number or letter. The CM/ECF attachments  
20 that are filed further shall be identified by the number or numbers (or letter or letters) of the exhibits  
21 in the attachment. The hard copy of any additional state court record exhibits shall be  
22 forwarded—for this case—to the staff attorneys in Las Vegas.

23 IT IS FURTHER ORDERED that the motion for appointment of counsel (ECF No. 6) is  
24 **DENIED.**

25 DATED: October 11, 2017.

26  
27 

28  
\_\_\_\_\_  
HOWARD D. MCKIBBEN  
United States District Judge