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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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SHAYLON SMITH,

Petitioner,

Case No. 3:17-cv-00579-MMD-VPC

v.

ORDER

WARDEN BAKER, *et al.*,

Respondents.

Following upon the Federal Public Defender's notice of conflict, which the Clerk has redocketed as a motion to withdraw as counsel (ECF No. 13), it is ordered that the notice redocketed as a motion to withdraw as counsel (ECF No. 13) is granted and that the provisional appointment of the Federal Public Defender as counsel for the petitioner is withdrawn.

It is further ordered that Mary Lou Wilson, Esq., Law Office of Mary Lou Wilson, 2064 Regent Street, Reno, NV 89509, (775) 771-8620, is appointed as counsel for petitioner pursuant to 18 U.S.C. § 3006A(a)(2)(B). Counsel will represent petitioner in all federal proceedings related to this matter, including any appeals or *certiorari* proceedings, unless allowed to withdraw.

It is further ordered that petitioner will have until up to and including one hundred twenty (120) days from entry of this order within which to file an amended petition and/or seek other appropriate relief. Neither the foregoing deadline nor any extension thereof signifies or will signify any implied finding as to the expiration of the federal limitation

1 period and/or of a basis for tolling during the time period established. Petitioner at all times
2 remains responsible for calculating the running of the federal limitation period and timely
3 asserting claims, without regard to any deadlines established or extensions granted
4 herein. That is, by setting a deadline to amend the petition and/or by granting any
5 extension thereof, the Court makes no finding or representation that the petition, any
6 amendments thereto, and/or any claims contained therein are not subject to dismissal as
7 untimely. *See Sossa v. Diaz*, 729 F.3d 1225, 1235 (9th Cir. 2013).

8 It is further ordered that respondents must file a response to the amended petition,
9 including potentially by motion to dismiss, within sixty (60) days of service of an amended
10 petition and that petitioner may file a reply thereto within thirty (30) days of service of the
11 answer. The response and reply time to any motion filed by either party, including a
12 motion filed in lieu of a pleading, will be governed instead by Local Rule LR 7-2(b).

13 It is further ordered that any procedural defenses raised by respondents to the
14 counseled amended petition must be raised together in a single consolidated motion to
15 dismiss. In other words, the Court does not wish to address any procedural defenses
16 raised herein either in *seriatum* fashion in multiple successive motions to dismiss or
17 embedded in the answer. Procedural defenses omitted from such motion to dismiss will
18 be subject to potential waiver. Respondents must not file a response in this case that
19 consolidates their procedural defenses, if any, with their response on the merits, except
20 pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
21 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall
22 do so within the single motion to dismiss not in the answer; and (b) they shall specifically
23 direct their argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett*
24 *v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses,
25 including exhaustion, shall be included with the merits in an answer. All procedural
26 defenses, including exhaustion, instead must be raised by motion to dismiss.

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It is further ordered that, in any answer filed on the merits, respondents must specifically cite to and address the applicable state court written decision and state court record materials, if any, regarding each claim within the response as to that claim.

It is further ordered that the hard copy of any record exhibits filed shall be sent — for this case — to the Reno Clerk’s Office.

Following entry of Ms. Wilson as counsel of record on the docket, the Clerk of Court will provide counsel, upon her request, with a single set of electronic copies of all prior filings herein in a manner consistent with the Clerk’s current practice, such as regeneration of notices of electronic filing.

The Clerk further will send a copy of this order to the petitioner in proper person at the last institutional address in the record and reflect said transmittal either via the notice of electronic filing or on the docket, in a manner consistent with the Clerk’s current practice.

DATED THIS 8th day of February 2018.


MIRANDA M. DU
UNITED STATES DISTRICT JUDGE