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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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CODIE MS WALKER,

Petitioner,

Case No. 3:18-cv-00154-MMD-VPC

ORDER

v.

RENEE BAKER, *et al.*,

Respondents.

Petitioner Codie MS Walker submitted a petition for a writ of habeas corpus and a statement of additional claims and has now paid the filing fee. (See ECF Nos. 1-1, 3, 9.) The Court has reviewed the Petition and the statement of additional claims pursuant to Habeas Rule 4 and it will be docketed and served on Respondents.

A petition for federal habeas corpus should include all claims for relief of which a 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.

Walker has also filed a motion for appointment of counsel. (ECF No. 5.) 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); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th

1 Cir. 1984). However, counsel must be appointed if the complexities of the case are such  
2 that denial of counsel would amount to a denial of due process, and where the petitioner  
3 is a person of such limited education as to be incapable of fairly presenting his claims.  
4 *See Chaney*, 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir.1970).  
5 Here, Walker points out that he is serving a sentence of twenty to fifty years. However,  
6 his Petition clearly presents the issues that he wishes to raise, and the legal issues do  
7 not appear to be particularly complex. Therefore, counsel is not justified. Walker's motion  
8 is denied.

9 It is therefore ordered that the Clerk file and electronically serve the Petition (ECF  
10 No. 1-1) and the statement of additional claims (ECF No. 3) on Respondents. The Petition  
11 and the statement of additional claims shall together constitute the Petition.

12 It is further ordered that Respondents file a response to the Petition, including  
13 potentially by motion to dismiss, within ninety (90) days of service of the Petition, with any  
14 requests for relief by Petitioner by motion otherwise being subject to the normal briefing  
15 schedule under the local rules. Any response filed must comply with the remaining  
16 provisions below, which are entered pursuant to Habeas Rule 5.

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

1 exhaustion, should be included with the merits in an answer. All procedural defenses,  
2 including exhaustion, instead must be raised by motion to dismiss.

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

6 It is further ordered that Petitioner will have forty-five (45) days from service of the  
7 answer, motion to dismiss, or other response to file a reply or opposition, with any other  
8 requests for relief by Respondents by motion otherwise being subject to the normal  
9 briefing schedule under the local rules.

10 It is further ordered that any additional state court record exhibits filed herein by  
11 either Petitioner or Respondents must be filed with a separate index of exhibits identifying  
12 the exhibits by number. The CM/ECF attachments that are filed further must be identified  
13 by the number or numbers of the exhibits in the attachment.

14 It is further ordered that the parties must send paper courtesy copies of all exhibits  
15 to Clerk of Court, Attn: Staff Attorney, 400 S. Virginia St., Reno, NV, 89501. Additionally,  
16 in the future, all parties must provide courtesy copies of any additional exhibits submitted  
17 to the Court in this case, in the manner described above.

18 It is further ordered that Petitioner's motion for appointment of counsel (ECF No.  
19 5) is denied.

20 It is further ordered that Petitioner's motion for enlargement of time to pay the filing  
21 fee (ECF No. 7) is granted *nunc pro tunc*.

22 DATED THIS 22<sup>nd</sup> day of June 2018.

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26 MIRANDA M. DU  
27 UNITED STATES DISTRICT JUDGE  
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