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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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JESSE CALVIN GILBERT,

Case No. 3:24-cv-00245-MMD-CLB

Petitioner,

ORDER

v.

HENLEY, *et al.*,

Respondents.

Jesse Calvin Gilbert submitted a *pro se* 28 U.S.C. § 2254 petition for writ of habeas corpus and has now paid the filing fee. (ECF Nos. 1-1, 6.) The Court has reviewed the petition pursuant to Habeas Rule 4 and directs that it be 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.

Gilbert has also submitted a motion for appointment of counsel. (ECF No. 1-2.) There is no constitutional right to appointed counsel in a federal habeas corpus proceeding. See *Luna v. Kernan*, 784 F.3d 640, 642 (9th Cir. 2015) (citing *Lawrence v. Florida*, 549 U.S. 327, 336-37 (2007)). An indigent petitioner may request appointed counsel to pursue habeas relief. See 18 U.S.C. § 3006A(a)(2)(B). The decision to appoint counsel is generally discretionary. See *id.* § 3006A(a)(2) (authorizing appointment of counsel “when the interests of justice so require”). However, counsel is appropriate if the complexities of the case are such that denial of counsel would amount to a denial of due

1 process, and where the petitioner is so uneducated that he is incapable of fairly presenting
2 his claims. See *LaMere v. Risley*, 827 F.2d 622, 626 (9th Cir. 1987); *Brown v. United*
3 *States*, 623 F.2d 54, 61 (9th Cir. 1980). Here, Gilbert pleaded guilty to felon in possession
4 of a firearm and was sentenced to 16 to 54 months. (See ECF No. 1-1 at 2.) The Nevada
5 Supreme Court affirmed his conviction, holding that the search of Gilbert's vehicle was
6 reasonable. His petition sets forth his single claim clearly. Both his petition and his motion
7 for counsel demonstrate that he is capable of fairly presenting his claim. Gilbert hasn't
8 shown that counsel is necessary to ensure due process. The Court concludes that
9 counsel is not warranted and denies the motion.

10 It is therefore ordered that the Clerk of Court detach, file, and electronically serve
11 the petition (ECF No. 1-1) on Respondents.

12 It is further ordered that that the Clerk add Aaron D. Ford, Nevada Attorney
13 General, as counsel for Respondents and provide Respondents an electronic copy of all
14 items previously filed in this case by regenerating the Notice of Electronic Filing to the
15 office of the AG only.

16 It is further ordered that the Clerk of Court detach and file Petitioner's motion for
17 counsel (ECF No. 1-2).

18 It is further ordered that Petitioner's motion for counsel is denied.

19 It is further ordered that Respondents file a response to the petition, including
20 potentially by motion to dismiss, within 90 days of service of the petition, with any requests
21 for relief by Petitioner by motion otherwise being subject to the normal briefing schedule
22 under the local rules. Any response filed is to comply with the remaining provisions below,
23 which are entered pursuant to Habeas Rule 5.

24 It is further ordered that any procedural defenses raised by Respondents in this
25 case be raised together in a single consolidated motion to dismiss. In other words, the
26 Court does not wish to address any procedural defenses raised herein either in seriatum
27 fashion in multiple successive motions to dismiss or embedded in the answer. Procedural
28 defenses omitted from such motion to dismiss will be subject to potential waiver.

1 Respondents should not file a response in this case that consolidates their procedural
2 defenses, if any, with their response on the merits, except pursuant to 28 U.S.C. §
3 2254(b)(2) as to any unexhausted claims clearly lacking merit. If Respondents do seek
4 dismissal of unexhausted claims under § 2254(b)(2): (a) they will do so within the single
5 motion to dismiss not in the answer; and (b) they will specifically direct their argument to
6 the standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d
7 614, 623-24 (9th Cir. 2005). In short, no procedural defenses, including exhaustion,
8 should be included with the merits in an answer. All procedural defenses, including
9 exhaustion, instead must be raised by motion to dismiss.

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

13 It is further ordered that Petitioner has 45 days from service of the answer, motion
14 to dismiss, or other response to file a reply or opposition, with any other requests for relief
15 by Respondents by motion otherwise being subject to the normal briefing schedule under
16 the local rules.

17 It is further ordered that any additional state court record exhibits filed herein by
18 either Petitioner or Respondents be filed with a separate index of exhibits identifying the
19 exhibits by number. The parties will identify filed CM/ECF attachments by the number of
20 the exhibit in the attachment. Each exhibit must be filed as a separate attachment.

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It is further ordered that, at this time, the parties send courtesy copies of any responsive pleading or motion and all indices of exhibits only to the Reno Division of this court. Courtesy copies must be mailed to the Clerk of Court, 400 S. Virginia St., Reno, NV, 89501, and directed to the attention of "Staff Attorney" on the outside of the mailing address label. No further courtesy copies are required unless and until requested by the Court.

DATED THIS 30th Day of August 2024.



MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE