

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

JOHN LEE,

Petitioner,

vs.

WARDEN DAVIS,

Respondent.

Case No. 1:22-cv-00378-BLW

INITIAL REVIEW ORDER

Petitioner John Lee (Petitioner) has filed a Petition for Writ of Habeas Corpus challenging his state court conviction. (Dkt. 3.) Federal habeas corpus relief is available to petitioners who are held in custody under a state court judgment that violates the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2254(a).

The Court is required to review each newly-filed habeas corpus petition to determine whether it should be served upon the respondent, amended, or summarily dismissed. *See* 28 U.S.C. § 2243. If “it plainly appears from the face of the petition and any attached exhibits that the petitioner is not entitled to relief in the district court,” the petition will be summarily dismissed. Rule 4 of the Rules Governing Section 2254 Cases.

Having reviewed the Petition, the Court concludes that Petitioner may proceed.

REVIEW OF PETITION

1. Background

Petitioner was convicted of three counts of first degree murder and one count of aggravated battery with a weapon in a criminal case in the Second Judicial District Court in Latah County, Idaho. On May 24, 2016, he was sentenced to a fixed life term of imprisonment. He pursued a direct appeal and a post-conviction action in state court, but received no relief.

2. Discussion

In this action, Petitioner brings three Sixth Amendment ineffective assistance of counsel claims upon which he may proceed. He also brings a claim that “the district court abused its discretion when it denied Mr. Lee’s motion to withdraw his guilty plea.” Dkt. 3, p. 10. An abuse of discretion theory is a state law cause of action that cannot be pursued on federal habeas corpus review. However, if Petitioner presented a federal basis for this claim to the state courts in a procedurally proper manner, then this Court will liberally construe the claim as a federal claim. Otherwise, the claim will be considered procedurally defaulted, and Petitioner may attempt to show cause and prejudice for its default if Respondent raises that defense.

The Court will order the Clerk of Court to serve the Petition upon Respondent, who will be permitted to file an answer or a pre-answer motion for summary dismissal

and who will be ordered to provide a copy of relevant portions of the state court record to this Court.

ORDER

IT IS ORDERED:

1. The Clerk of Court shall serve (via ECF) a copy of the Petition (Dkt. 3), together with a copy of this Order, on L. LaMont Anderson, on behalf of Respondent, at counsel's registered ECF address.
2. Petitioner's request for appointment of counsel, contained in the Petition, is DENIED without prejudice. After reviewing the state court record, the Court may reconsider the ruling without the need for Petitioner to file a new motion for appointment of counsel. Should an evidentiary hearing be required, or other extraordinary circumstances exist to require appointment of counsel, the Court also will reconsider its ruling.
3. Petitioner's Motion to Proceed in Forma Pauperis (Dkt. 1) is DENIED without prejudice. Within **30 days** after entry of this Order, Petitioner must file a completed prisoner trust account statement from the prison accounting department or pay the \$5.00 filing fee.
4. Within **120 days** after entry of this Order, Respondent shall have the option of filing either of the following: (1) a motion for summary dismissal or partial summary dismissal on procedural grounds (which may be followed by an answer

if the motion is unsuccessful); or (2) an answer and brief on the claims that were adjudicated on the merits by the Idaho Supreme Court, that also includes a brief summary (between one paragraph and several pages) of any procedural defenses for any claims (which may be argued in the alternative). If Respondent files an answer and brief, the Court first will determine the claims that were adjudicated on the merits by the Idaho Supreme Court; for any claims that appear to warrant relief or for any claims not disposed of on the merits that appear subject to procedural defenses, the Court next will determine whether those claims are barred by any procedural defenses and will call for additional briefing, evidence, or a hearing, if necessary.

5. Respondent shall file with the responsive pleading or motion, or within a reasonable time period thereafter, a copy of all portions of the state court record previously transcribed that are relevant to a determination of the issues presented. Any presentence investigation reports or evaluations shall be filed under seal. The lodging of the remainder of the state court record, to the extent that it is lodged in paper format, is exempt from the redaction requirements, as provided in District of Idaho Local Civil Rule 5.5(c).
6. If the response to the habeas petition is an answer, Petitioner shall prepare a reply (formerly called a traverse), containing a brief rebutting Respondent's answer and brief, which shall be filed and served **within 30 days** after service of the answer.

Respondent has the option of filing a sur-reply **within 14 days** after service of the reply. At that point, the case shall be deemed ready for a final decision.

7. If the response to the habeas petition is a motion, Petitioner's response to the motion shall be filed and served **within 30 days** after service of the motion, and Respondent's reply, if any, shall be filed and served **within 14 days** thereafter.
8. No party shall file supplemental responses, replies, affidavits or other documents not expressly authorized by the Local Rules without first obtaining leave of Court.
9. No discovery shall be undertaken in this matter unless a party obtains prior leave of Court, pursuant to Rule 6 of the Rules Governing Section 2254 Cases.
10. The parties may, but need not, file the following in this matter: (1) notices of non-objections to motions to which they do not object; (2) responses to motions for appointment of counsel; (3) responses to motions that are meritless, frivolous, or filed in contravention of this Order; or (4) notices of intent not to file a reply. If additional briefing is required on any issue, the Court will order it.
11. Each party shall ensure that all documents filed with the Court are simultaneously served via the ECF system or by first-class mail upon the opposing party (through counsel if the party has counsel), pursuant to Federal Rule of Civil Procedure 5. Each party shall sign and attach a proper mailing certificate to each document filed with the court, showing the manner of service, date of service, address of service, and name of the person upon whom service was made, or as specified by the

applicable ECF rules. The Court will not consider ex parte requests unless a motion may be heard ex parte according to the rules and the motion is clearly identified as requesting an ex parte order, pursuant to Local Rule 7.2. (“Ex parte” means that a party has provided a document to the court, but that the party did not provide a copy of the document to the other party to the litigation.)

12. All Court filings requesting relief or requesting that the Court make a ruling or take an action of any kind must be in the form of a pleading or motion, with an appropriate caption designating the name of the pleading or motion, served on all parties to the litigation, pursuant to Federal Rules of Civil Procedure 7, 10 and 11, and Local Rules 5.2 and 7.1. The Court will not consider requests made in the form of letters.
13. Petitioner shall at all times keep the Court and Respondent advised of any changes in address.
14. If Petitioner’s custodian changes at any point during this litigation, counsel for Respondent shall file a Notice of Substitution of Respondent within 30 days of such change, identifying the person who is substituted as Respondent. *See* Fed. R. Civ. P. 25(d); Rule 2(a) of the Rules Governing Section 2254 Cases.



DATED: December 1, 2022

B. Lynn Winmill

B. Lynn Winmill
U.S. District Court Judge