

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Reynaldo Gardner v. N. Breitenbach

Gardner · No. 3:26-cv-00014-ART-CSD · Decided January 13, 2026

SUMMARY

The United States District Court for the District of Nevada screened Reynaldo Gardner’s petition for a writ of habeas corpus under 28 U.S.C. § 2254. The court granted his application to proceed in forma pauperis, directed service of the petition, and concluded that a response was warranted because the timeliness of the petition depended on the status of his pending state habeas proceedings. The court also advised that appointment of counsel appeared to be in the interests of justice and allowed Gardner until January 30, 2026, to request counsel.

OPINION

1 2 UNITED STATES DISTRICT COURT 3 DISTRICT OF NEVADA 4 REYNALDO
GARDNER, Case No. 3:26-cv-00014-ART-CSD 5 Petitioner, SCREENING ORDER 6 v. 7 N.
BREITENBACH, 8 Respondent. 9 Pro se Petitioner Reynaldo Gardner has filed a Petition for
Writ of Habeas 10 Corpus under 28 U.S.C. § 2254, an application for leave to proceed in forma 11
pauperis (“IFP”), and a Financial Certificate.

(ECF Nos. 1-1 (“Petition”), 1 (“IFP 12 Application”), 4.) The Court finds good cause exists to
grant Gardner’s IFP 13 application. As such, this matter comes before the Court for initial review
of the 14 Petition under the Rules Governing Section 2254 Cases (“Habeas Rules”).

For the 15 reasons discussed below, the Court directs service of the Petition and sua sponte 16
raises the issue of counsel. 17 I. BACKGROUND1 18 Gardner challenges a conviction and
sentence imposed by the Eighth 19 Judicial District Court for Clark County (“state court”). State
of Nevada v. 20 Reynaldo Gardner, C-20-345979-1.

On June 7, 2023, the state court entered a 21 judgment of conviction, convicting Gardner of
burglary while in possession of a 22 deadly weapon, robbery with the use of a deadly weapon on a
victim 60 years of 23 age or older, battery with the use of a deadly weapon on a victim 60 years of
age 24 or older, and possession of a firearm by a prohibited person. Gardner was 25 sentenced to
life with the possibility of parole after 10 years for the burglary 26 27 1 The Court takes judicial
notice of the online docket records of the Eighth Judicial District Court
(<https://www.clarkcountycourts.us/portal>) and Nevada 28 appellate courts
(<http://caseinfo.nvsupremecourt.us/public/caseSearch.do>).

1 conviction, life with the possibility of parole after 10 years for the robbery 2 conviction, 4 to 10 years for the battery conviction plus a consecutive term of 1 3 to 3 years for the elderly victim enhancement, and 12 to 30 months for the 4 possession conviction. Gardner appealed, and the Nevada Supreme Court 5 affirmed on August 14, 2024. *Reynaldo Gardner v. State of Nevada*, No. 86735.

6 Remittitur issued on September 10, 2024. 7 Gardner filed a state habeas petition on July 25, 2023. *Reynaldo Gardner v. Bryan Williams*, A-23-874559-W. The state court denied Gardner’s petition on 9 April 29, 2024. It does not appear that Gardner appealed this order. 10 Gardner filed a second state habeas petition on July 17, 2025. *Reynaldo 11 Gardner v. State of Nevada*, A-25-923404-W.

The state court denied Gardner’s 12 petition on October 29, 2025. Gardner’s appeal of this order is currently pending. 13 *Reynaldo Gardner v. State*, No. 91792. 14 II. DISCUSSION 15 Habeas Rule 4 requires the assigned judge to examine the habeas petition 16 and order a response unless it “plainly appears” that the petition is not entitled 17 to relief. See *Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir.

2019). This rule 18 allows courts to screen and dismiss petitions that are patently frivolous, vague, 19 conclusory, palpably incredible, false, or plagued by procedural defects. *Boyd v. 20 Thompson*, 147 F.3d 1124, 1128 (9th Cir. 1998); *Hendricks v. Vasquez*, 908 F.2d 21 490, 491 (9th Cir. 1990) (collecting cases). 22 The Antiterrorism and Effective Death Penalty Act (“AEDPA”) establishes a 23 1-year period of limitations for state prisoners to file a federal habeas petition 24 pursuant to 28 U.S.C. § 2254.

The 1-year limitation period begins to run from 25 the latest of four possible triggering dates, with the most common being the date 26 on which the petitioner’s judgment of conviction became final by either the 27 conclusion of direct appellate review or the expiration of the time for seeking such 28 review. 28 U.S.C. § 2244(d)(1)(A).

For a Nevada prisoner pursuing a direct appeal, 1 a conviction becomes final when the 90-day period for filing a petition for 2 certiorari in the Supreme Court of the United States expires after a Nevada 3 appellate court has entered judgment or the Nevada Supreme Court has denied 4 discretionary review. *Harris v. Carter*, 515 F.3d 1051, 1053 n.1 (9th Cir. 2008); 5 *Shannon v. Newland*, 410 F.3d 1083, 1086 (9th Cir.

2005); Sup. Ct. R. 13. The 6 federal limitations period is tolled while “a properly filed application for State 7 post-conviction or other collateral review with respect to the pertinent judgment 8 or claim is pending.” 28 U.S.C. § 2244(d)(2). But no statutory tolling is allowed 9 for the period between finality of a direct appeal and the filing of a petition for 10 post-conviction relief in state court because no state court proceeding is pending 11 during that time.

Nino v. Galaza, 183 F.3d 1003, 1006–07 (9th Cir. 1999); 12 *Rasberry v. Garcia*, 448 F.3d 1150, 1153 n.1 (9th Cir. 2006). 13 Gardner’s direct appellate review concluded on August 14, 2024, with the 14 Nevada Supreme Court’s affirmation of his judgment of conviction.

As such, 15 Gardner’s conviction became final when the time expired for filing a petition for 16 writ of certiorari with the United States Supreme Court 90 days later on 17 November 12, 2024. The federal statute of limitations began to run the following 18 day: November 13, 2024.

Because Gardner’s first state habeas proceedings 19 commenced and concluded during his direct appeal proceedings, any tolling 20 associated with Gardner’s first state habeas petition is mooted. As such, 21 Gardner’s 1-year federal statute of limitations started to run on November 13, 22 2024, and would have expired 365 days later on November 13, 2025, absent any 23 other statutory or equitable tolling.

24 Based on the limited record before this Court, it is unclear whether 25 Gardner’s second state habeas petition, filed on July 17, 2025, will be deemed 26 successive under state law. Indeed, because Gardner’s first state habeas petition 27 was filed simultaneously with the appeal of his judgment of conviction, his first 28 state habeas petition may have been dismissed without prejudice.

If Gardner’s 1 second state habeas petition is found to be properly filed, then his AEDPA statute 2 of limitations has yet to expire because his second state habeas proceedings 3 would allow for tolling. However, if Gardner’s second state habeas petition is 4 found to be improperly filed, then his AEDPA statute of limitations appears to 5 have expired approximately 57 days (the difference between November 13, 2025, 6 and January 9, 2026) prior to the filing of his Petition.

In sum, given that 7 Gardner’s Petition does not patently suffer from a procedural default, it finds that 8 a response is warranted in the instant case.² 9 Further, it appears that counsel may be helpful in this case.

The Criminal 10 Justice Act authorizes the court to appoint counsel “when the interests of justice 11 so require.” 18 U.S.C. § 3006A(a)(2). Although this Court finds that the 12 appointment of counsel is in the interests of justice given the apparent 13 complexities of this case, the procedural history of this case, and Gardner’s 14 lengthy sentence, this Court is cognizant of the fact that Gardner has not moved 15 for the appointment of counsel.

As such, this Court gives Gardner until January 16 30, 2026, to file a motion for the appointment of counsel. If Gardner does not file 17 such a motion or otherwise indicate that he does not wish for counsel to be 18 appointed, this Court will not appoint counsel and will issue a scheduling order 19 on the Petition. 20 III. CONCLUSION 21 It is therefore ordered that the IFP Application (ECF No. 1) is granted.

22 It is further kindly ordered that the Clerk of Court (1) file the Petition (ECF 23 No. 1-1), (2) add Aaron Ford, Attorney General of the State of Nevada, as counsel 24 for Respondents, and (3) electronically provide Respondents' counsel a copy of 25 the Petition (ECF No. 1-1), this Order, and all other items previously filed in this 26 27 2 Although Gardner's second state habeas proceedings are still in progress, his Petition only raises claims from his direct appeal, making exhaustion not an 28 issue.

1 || case by regenerating the Notices of Electronic Filing. 2 It is further ordered that Respondents' counsel enter a notice of appearance 3 || within 14 days of entry of this Order, but no further response will be required 4 || until further order. 5 It is further ordered that Gardner has until January 30, 2026, to file a 6 || motion for the appointment of counsel if he desires that counsel be appointed to 7 || represent him.

8 9 DATED THIS 13th day of January 2026. 10 11 on 13 UNITED STATES DISTRICT JUDGE
14 15 16 17 18 19 20 21 22 23 24 25 26 27 28