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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MICHAEL JAY McCOLLUM,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>STATE OF NEVADA,</p> <p>Defendant - Appellee.</p>

No. 11-17281

D.C. No. 3:11-cv-00494-RCJ-VPC

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Robert Clive Jones, Chief Judge, Presiding

Submitted June 26, 2012**

Before: SCHROEDER, HAWKINS, and GOULD, Circuit Judges.

Michael Jay McCollum, a Nevada state prisoner, appeals pro se from the district court’s judgment dismissing, for failure to pay a filing fee or submit an application to proceed in forma pauperis, his petition for writ of habeas corpus

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

under 28 U.S.C. § 2254. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *James v. Madison St. Jail*, 122 F.3d 27, 28 (9th Cir. 1997) (per curiam). We vacate and remand.

A review of the record indicates that the district court incorrectly processed McCollum's habeas petition as a civil rights complaint. We remand for the district court to process his filing in the first instance as a habeas petition, and to notify him that the filing fee in a habeas case is \$5. We express no opinion on the merits or timeliness of the habeas petition.

The district court is instructed on remand to refund the \$455 appellate docketing fee to McCollum.

McCollum's "Motion to Amend," filed on October 6, 2011, "Motion of Discovery," filed on March 19, 2012, and "Motion for Expedition," filed on July 2, 2012, are denied as moot.

VACATED and REMANDED.