

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

THE SCO GROUP, INC., et al., )  
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 )  
 Plaintiff(s), )  
 )  
 vs. )  
 )  
 AUTOZONE, INC., et al., )  
 )  
 )  
 Defendant(s). )

**CALENDAR SETTING**  
 Case # CV-S-04-237 RCJ(CRL)  
**BEFORE THE HONORABLE  
 JUDGE ROBERT C. JONES**

FILED RECEIVED  
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 COUNSEL/PROFESSOR  
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 DISTRICT OF NEVADA

**XX TAKE NOTICE** that a proceeding has been set for the place, date and time set forth below:

<b>Place:</b> U. S. District Court Lloyd D. George, U. S. Courthouse 333 Las Vegas Blvd., South Las Vegas, NV 89101	<b>Before:</b> The Honorable Robert C. Jones Courtroom #7D	<b>Date and Time:</b> <b>Monday, June 21, 2004</b> <b>@ 9:00 a.m.</b>
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**TYPE OF PROCEEDING(S):** ORAL ARGUMENT ON DEFENDANT AUTOZONE, INC.'S MOTION TO STAY OR, IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT (#10)

     **TAKE NOTICE** that the above referenced proceeding has been *rescheduled* as indicated below:

<b>Before:</b> The Honorable Robert C. Jones Courtroom #7D	<b>Previous Date and Time:</b>	<b>Date and Time Rescheduled to:</b>
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**Note:** Please contact Barbara Price at 702-464-5427 for questions regarding scheduling.

LANCE S. WILSON, Clerk  
 United States District Court

DATE: April 28, 2004

By: BPrice  
 Deputy Clerk

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CV-S-04-0274



CV-S-04-0274-0004



04/29/2004



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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

ERIC W. ZESSMAN,

*Petitioner,*

CV-S-04-0274-RCJ (LRL)

vs.

ORDER

JAMES SCHOMIG, *et al.*,

*Respondents.*

This habeas matter comes before the Court for initial review under Rule 4 of the Rules Governing Proceedings under Section 2254. Petitioner has submitted the required filing fee. Following upon said review, service will be ordered.

In this regard, petitioner is informed that the petition should include all exhausted claims and all unexhausted claims which petitioner believes might be a basis for granting relief. An exhausted claim is one that has been fairly presented to the Nevada Supreme Court. An unexhausted claim, on the other hand, is one that has not been presented to the Nevada Supreme Court and, indeed, may not have been presented to any court. Petitioner should consider the matter carefully and determine all possible claims for habeas corpus relief. If petitioner is aware of any claims and fails to inform the Court as provided below, the abuse of the writ rules may bar him from later raising these claims in a federal court. See 28 U.S.C. § 2244(b).

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1           Petitioner also should consider the potential effect of the one-year statute of limitations  
2 applicable to Section 2254 federal habeas corpus petitions. 28 U.S.C. § 2244(d)(1). The  
3 time during which state post-conviction or other collateral review is pending will not count  
4 toward this period. 28 U.S.C. § 2244(d)(2). However, this one-year limitations period will  
5 generally not be tolled during the pendency of a *federal* habeas corpus petition. *Duncan v.*  
6 *Walker*, 533 U.S. 167, 181-82 (2001). If the petition is dismissed to allow petitioner to return  
7 to state court to exhaust any unexhausted claims, then § 2244(d)(1) probably will not be tolled  
8 during the time in which this federal habeas petition was pending. Consequently, it is possible  
9 for the period of limitations to expire during the pendency of an unexhausted federal habeas  
10 corpus petition, unless the matter is stayed; and any subsequent federal habeas petition filed  
11 after exhausting state court remedies may be time-barred. Accordingly,

12           IT IS ORDERED that the Clerk shall serve respondents by sending a copy of the  
13 petition and this order by certified mail to the Office of the Attorney General, Criminal Division,  
14 100 North Carson St., Carson City, NV 89701-4717. In addition, the Clerk shall return to  
15 petitioner a copy of his petition that he sent to the Court.

16           IT FURTHER IS ORDERED that petitioner shall have twenty (20) days from the date  
17 that this Order is entered in which to inform the Court of any and all additional claims for  
18 habeas corpus relief of which petitioner is aware. Petitioner must inform the Court of these  
19 additional claims through a written pleading. The pleading shall be entitled "Statement of  
20 Additional Claims," shall carry the caption and file number of this case, and shall be filed with  
21 the Clerk of the Court. Furthermore, petitioner's Statement of Additional Claims shall be  
22 limited to five (5) pages in length and shall set forth each additional claim in a single,  
23 separately numbered paragraph. Each of these paragraphs must include a brief statement  
24 of the facts supporting that claim and no legal argument or legal citations. Petitioner should  
25 also indicate whether each additional claim has been exhausted by stating the case number  
26 and date of the Nevada Supreme Court decision denying that claim. Finally, if petitioner  
27 thoroughly considers the matter and concludes that no additional claims for habeas corpus  
28 relief exist, he still must file a written statement that no such claims exist.

1 IT FURTHER IS ORDERED that if petitioner does not timely respond to this order, the  
2 Court shall conclude that he has no additional habeas corpus claims. Accordingly, the Court  
3 will process the petition in its current form and petitioner may be barred from later presenting  
4 any exhausted habeas corpus claims not contained in the instant petition.

5 IT FURTHER IS ORDERED that petitioner shall serve a copy of the Statement of  
6 Additional Claims, if any, on the Attorney General of the State of Nevada and shall submit  
7 proof of said service to the Clerk of the Court.

8 IT FURTHER IS ORDERED that if petitioner files a Statement of Additional Claims,  
9 respondents shall have twenty (20) days from the date the statement is served within which  
10 to answer, or otherwise respond to, the petition and statement. If petitioner does not file a  
11 Statement of Additional Claims, respondents shall have twenty (20) days from the date by  
12 which the statement was required to be filed within which to answer, or otherwise respond to,  
13 the petition. In their answer or other responsive pleading, respondents shall address any  
14 claims presented by petitioner in the Statement of Additional Claims. In addition, if an answer  
15 is filed, respondents shall comply with Rule 5 of the Rules Governing Section 2254 Cases.

16 IT FURTHER IS ORDERED that henceforth, petitioner shall serve upon respondents  
17 or, if appearance has been entered by counsel, upon the attorney(s), a copy of every  
18 pleading, motion or other document submitted for consideration by the court. Petitioner shall  
19 include with the original paper submitted for filing a certificate stating the date that a true and  
20 correct copy of the document was mailed to the respondents or counsel for the respondents.  
21 The court may disregard any paper received by a district judge or magistrate judge which has  
22 not been filed with the Clerk, and any paper received by a district judge, magistrate judge or  
23 the Clerk which fails to include a certificate of service.

24 DATED this 28<sup>th</sup> day of April, 2004.

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27 \_\_\_\_\_  
28 LAWRENCE R. LEAVITT  
United States Magistrate Judge

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