

OCT 03 2016

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GERARDO CASTILLO,

Petitioner-Appellant,

v.

LEGRAND and NEVADA ATTORNEY  
GENERAL,

Respondents-Appellees.

No. 14-16341

D.C. No. 3:13-cv-00704-LRH

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Larry R. Hicks, District Judge, Presiding

Submitted September 27, 2016\*\*

Before: TASHIMA, SILVERMAN, and M. SMITH, Circuit Judges.

Nevada state prisoner Gerardo Castillo appeals from the district court's judgment dismissing his 28 U.S.C. § 2254 habeas petition. We have jurisdiction under 28 U.S.C. § 2253. We review de novo a dismissal for failure to exhaust, *see*

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

*Rhoades v. Henry*, 638 F.3d 1027, 1034 (9th Cir. 2010), and we vacate and remand.

Castillo contends that the district court erred in dismissing his habeas petition as unexhausted because it had discretion to stay the proceedings. After the district court dismissed Castillo’s petition, this court held in *Mena v. Long*, 813 F.3d 907, 912 (9th Cir. 2016), that a “district court has the discretion to stay and hold in abeyance fully unexhausted petitions under the circumstances set forth in *Rhines [v. Weber]*, 544 U.S. 269 (2005).” We, therefore, vacate and remand for the district court to determine in the first instance whether Castillo is entitled to a stay and for any further proceedings.

Castillo’s request for judicial notice of state court records is granted.

**VACATED and REMANDED.**