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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Geary Wayne Walton,

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No. CV 11-00578-PHX-FJM

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Plaintiff,

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ORDER

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vs.

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Charles L. Ryan, et al.,

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Defendants.

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We have before us petitioner’s motion to stay habeas corpus proceedings pending outcome of state court proceedings (doc. 58), addenda to the motion (docs. 60, 71), and petitioner’s motion for expedited ruling on the motion to stay proceedings (doc. 59).

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Petitioner filed the instant habeas corpus petition on March 28, 2011 (doc. 2). He filed an amended petition on July 14, 2011 (doc. 11), a second amended petition on January 31, 2012 (doc. 36), and after months of delay and extensions of time, petitioner has now filed a third amended petition on September 14, 2012. This case has been pending for over 18 months. Nevertheless, petitioner now asks us to stay these proceedings pending the resolution of two state court petitions for post-conviction review.

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Habeas corpus relief is unavailable “unless the applicant has exhausted the remedies available in the courts of the State.” 28 U.S.C. § 2254(b)(1)(A). Generally, “a district court must dismiss habeas petitions containing both unexhausted and exhausted claims.” Rose v.

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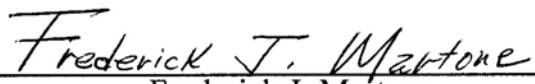
1 Lundy, 455 U.S. 509, 522, 102 S. Ct. 1198 (1982). However, a district court has limited
2 discretion to hold in abeyance a habeas petition containing both exhausted and unexhausted
3 claims in order to allow a petitioner to return to state court to exhaust additional claims while
4 the federal proceedings are stayed. Rhines v. Weber, 544 U.S. 269, 277, 125 S. Ct. 1528,
5 1535 (2005). Stay and abeyance is appropriate only when (1) there is good cause for
6 petitioner's failure to exhaust his claims first in state court; (2) the unexhausted claims are
7 potentially meritorious, and (3) there is no indication that the petitioner has engaged in
8 intentionally dilatory litigation tactics. Id. at 278, 125 S. Ct. at 1535.

9 Petitioner has made no showing to satisfy these criteria and our independent review
10 of the record demonstrates no reason to prolong this case any further.

11 Therefore, **IT IS ORDERED DENYING** petitioner's motion to stay habeas corpus
12 proceedings (doc. 58).

13 **IT IS FURTHER ORDERED DENYING** petitioner's motion for expedited ruling
14 as moot (doc. 59).

15 DATED this 4th day of October, 2012.

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 Frederick J. Martone
19 United States District Judge
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