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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Robert Raymond Navarro,
Petitioner,
v.
Charles L. Ryan, et. al.,
Respondents.

No. CV-12-1899-PHX-GMS (LOA)
ORDER

Pending before the Court are Petitioner's Petition for Writ of Habeas Corpus, Respondent's Motion to Stay, and United States Magistrate Judge Lawrence O Anderson's Report and Recommendation ("R&R"). (Docs. 1, 9, 17.) The R&R recommends that the Petition be stayed and held in abeyance. (Doc. 17 at 7.)

Petitioner made three minor objections to statements contained in the R&R, but did not object to Judge Anderson's recommendation to grant Respondents' Motion to Stay. Respondents did not file a response to those objections. The first objection is that the R&R inaccurately described Petitioner's sentence as "life imprisonment without the possibility of parole for 25 years." (Doc. 17 at 2.) The sentence is actually "life imprisonment without the possibility of release for 25 years." (Doc. 18, Ex. 1.) The Court hereby so revises that statement in the R&R.

The second objection relates to Judge Anderson's handling of Petitioner's amended petition. Petitioner claims Judge Anderson improperly found his amended petition improper under Rule 15 of the Federal Rules of Civil Procedure. Nevertheless, leave was granted to Petitioner to file his amended petition. Any error was harmless.

1 The third objection is a “request for clarification.” The R&R states “Because the
2 parties agree the action should not be dismissed it is not necessary to provide Petitioner
3 with leave to amend” to add his unexhausted actual innocence claim. Petitioner requests
4 clarification that this remark means that amendment is unnecessary at this time. The
5 Court so construes that remark.

6 As Judge Anderson noted, this Order expresses no opinion on whether Petitioner’s
7 unexhausted actual innocence claim is timely, procedurally defaulted, or subject to any
8 exceptions. The record lacks sufficient clarity to make that determination. Later
9 developments may change this decision. *See King v. Ryan*, 564 F.3d 1133, 1140-41 (9th
10 Cir. 2009) (noting that a district court may decline to stay and hold in abeyance where it
11 is clear the unexhausted claim would be untimely). Nor does this Order express any
12 opinion on the issues surrounding Petitioner’s exhausted ineffective assistance of counsel
13 claim.

14 **IT IS THEREFORE ORDERED:**

- 15 1. Magistrate Judge Anderson’s R&R (Doc. 17) is **accepted** with the minor
16 modifications described above.
- 17 2. Respondent’s Motion to Stay (Doc. 9) is **GRANTED** and Petitioner’s
18 Petition for Writ of Habeas Corpus (Doc. 1) is hereby **stayed and held in**
19 **abeyance**.
- 20 3. Petitioner shall file a detailed status report on his post-conviction
21 proceeding currently pending in state court no later than thirty (30) days
22 after the date of this Order.
- 23 4. Petitioner shall thereafter file an updated status report every ninety (90)
24 days. Failure to comply with these instructions may result in the Court
25 vacating the stay and dismissing this habeas action for failure to comply
26 with Court orders. Fed. R. Civ. P. 41(b).

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