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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Dell Rainbow Vanderschuit,

10 Petitioner,

11 v.

12 Charles L. Ryan, et al.,

13 Respondents.
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No. CV-15-00915-PHX-JAT (BSB)

ORDER

15 Pending before the Court is Petitioner's Petition for Writ of Habeas Corpus,
16 pursuant to 28 U.S.C. § 2254. (Doc. 1). The Court directed Respondents to answer the
17 petition and subsequently extended the answer deadline to December 7, 2015. (Doc. 8).
18 On December 3, 2015, Respondents filed a motion for clarification and to stay the answer
19 deadline. (Doc. 19). Respondents' asked the Court to order Petitioner to clarify whether
20 (1) he wants to delete his unexhausted claim, Ground Five, from his petition, or (2) to
21 pursue habeas corpus relief on all seven grounds in the petition and ask the Court to stay
22 the § 2254 proceeding and hold the petition in abeyance while he exhausts Ground Five.
23 (*Id.* at 11). Petitioner responded to Respondents' motion and requested the Court stay the
24 proceeding. (Doc. 20).

25 The Magistrate Judge to whom this case is assigned issued a Report and
26 Recommendation (R&R) recommending that Respondents' motion to stay, (Doc. 19),
27 and Petitioner's motion to stay, (Doc. 20), be granted. Subsequently, Petitioner filed a
28 motion to strike his motion requesting the Court to stay the proceeding. (Doc. 23).

1 Petitioner also filed a “motion” to clarify,¹ (Doc. 24), and an objection to the Magistrate
2 Judge’s R&R. (Doc. 25). The Court now rules on the motions.

3 In Petitioner’s motion to strike his prior motion to stay the proceeding, he stated,
4 “he did not know that his request for a stay would result in the dismissal without
5 prejudice of his habeas petition while he continued to exhaust Ground 5 in State court,
6 nor that in doing so he would be forever barred from bringing another habeas petition in
7 Federal Court.” (Doc. 23). Petitioner seemingly misunderstood the Magistrate Judge’s
8 R&R. To stay and hold Petitioner’s habeas proceeding in abeyance does not mean that
9 the habeas petition is dismissed without prejudice. Rather, to stay and hold Petitioner’s
10 habeas proceeding in abeyance means that the Court will suspend any judgment one way
11 or the other (neither granting nor dismissing) the habeas petition until his post-conviction
12 claims in state court are complete.

13 Because Petitioner’s Ground Five claim of his habeas petition has not been
14 exhausted in state court and is still pending before the Arizona Court of Appeals, (Doc.
15 19, Exs. R, U), this Court cannot adjudicate the habeas petition. *See Henderson v.*
16 *Johnson*, 710 F.3d 872, 873 (9th Cir. 2013). The Court’s granting of the stay of the habeas
17 petition will not result in Petitioner being “forever barred from bringing [his] habeas
18 petition in Federal Court.” (Doc. 23 at 1). Instead, the Magistrate Judge remarked that
19 Petitioner would likely be time barred from bringing any new habeas petition in federal
20 court in the future, apart from the current petition, because of the AEDPA statute of
21 limitations. (Doc. 21 at 7–8; 28 U.S.C. § 2244(d)(1)). This is not to say that the Court is
22 dismissing Petitioner’s current habeas petition. Petitioner is not at a disadvantage as a
23 result of the Court ordering the stay and abeyance of his habeas proceeding; it only
24 means that this Court will wait to rule on his petition until his state court remedies are
25 exhausted.

26 Based on the foregoing,
27 _____

28 ¹ Petitioner’s “motion” to clarify entailed notice of forthcoming objection to the
Magistrate Judge’s R&R as well as notice of Petitioner’s physical location and his means
of available communication with the Court.

