

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

CALVIN EUGENE JACKSON,
ADC #134338

PETITIONER

v.

No. 5:14-cv-388-DPM-JJV

WENDY KELLEY, Director,
Arkansas Department of Correction

RESPONDENT

ORDER

On *de novo* review, the Court declines the recommendation, *No. 16*, without prejudice. FED. R. CIV. P. 72(b)(3). The Court appreciates Magistrate Judge Volpe's good work thus far. But three points give the Court pause.

First, the current record is equivocal on prejudice—that is, whether Jackson would have proceeded to trial but for the alleged errors. *Compare No. 1 at 5 with No. 1 at 8 and No. 24 at 4*. Second, Jackson has fleshed out his ineffectiveness claims significantly after the recommendation. *No. 19–24*. For example, at his change-of-plea hearing, he said several times that he didn't intend to kill the victim—an element of first-degree murder. *E.g., No. 20 at 14, 21–22; ARK. CODE ANN. § 5-10-102(a)(2)*. Nonetheless, his lawyer told the trial court there was a sufficient factual basis for the plea; and the trial court accepted the plea. *No. 20 at 19*. And third, review of the trial court docket

shows Jackson is working to perfect an appeal of the Rule 37 proceedings in his case.

In these circumstances, the Court concludes a stay is appropriate. Jackson's *pro se* status likely provides good cause for his failure to exhaust state post-conviction remedies. *Cf. Martinez v. Ryan*, 132 S. Ct. 1309, 1320 (2012). There's no evidence he's purposefully delayed his case. And his claims aren't all plainly meritless. *Rhines v. Weber*, 544 U.S. 269, 277-78 (2005). Waiting for the state proceedings to end will promote comity and may smooth some wrinkles in this case. The Court therefore grants Jackson's motions for a stay. *No 12 & 15*. The Court will hold Jackson's habeas petition in abeyance pending exhaustion of state remedies. After the state proceedings conclude, Jackson will have ninety days to file an amended petition with this Court. If he fails to do so, then Kelley may move to lift the stay.

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Recommendation, *No 16*, declined without prejudice. Motions, *No 12 & 15*, granted. Case stayed. Amended habeas petition due ninety days after state proceedings conclude. Status report due by 1 June 2016.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

18 November 2015