

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:13-cv-02153-MWF-KS

Date: July 13, 2017

Title *DeJames Henderson v. Randy Grounds*

Present: The Honorable: Karen L. Stevenson, United States Magistrate Judge

Roxane Horan-Walker

Deputy Clerk

N/A

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Proceedings: (IN CHAMBERS) ORDER TO SHOW CAUSE RE: DISMISSAL

On March 26, 2013, DeJames Henderson (“Petitioner”) filed a Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254 (“Petition”). (ECF No. 1.) On April 3, 2013, the Court issued an Order Requiring Response to Petition. (ECF No. 5).¹ On May 2, 2013, Respondent filed a Motion to Dismiss the Petition for failure to exhaust state judicial remedies with respect to the following claims: (1) the prosecution violated *Brady v. Maryland*, 373 U.S. 83 (1963) when it suppressed the criminal history records, gang status, or parole or probation status, of a number of prosecution witnesses, as well as the victim’s medical chart (Pet. at 10-12, 13-14, 20-21, 24, 26, 27-29, 32, 35); (2) the medical examiner inflamed the jury by stating that the manner of death was a homicide (*id.* at 37-38); and (3) the trial court violated Petitioner’s due process rights by not issuing sua sponte CALCRIM No. 105, dealing with whether a witness had been convicted of a crime (*id.* at 40-41).²

Stay & Abeyance

On May 17, 2013, Petitioner filed a Motion for Stay and Abeyance (“Motion for Stay”) and renewed his request on December 5, 2013 (“Request”). (ECF Nos. 11, 24.) In a minute order (“Order”) issued on March 7, 2014, Magistrate Judge Oswald Parada denied Respondent’s Motion to Dismiss without prejudice, granted Petitioner’s request to withdraw his three unexhausted claims, and further granted a stay and abeyance pursuant to *Kelly v. Small*, 315 F.3d

¹ For ease of reference, the Petition and its attachments are cited as though they formed a single consecutively paginated document. For other documents that are either unpaginated or non-consecutively paginated, pages are cited using the internal numbering of the electronic docket.

² According to Respondent, the exhausted claims are: (1) evidence of prior acts of domestic violence were improperly admitted at trial (Pet. at 16-18, 36); and (2) CALCRIM No. 362 was a “blatant violation of Petitioner’s due process rights to a fair trial (*id.* at 39).”

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1063, 1069-71 (9th Cir. 2003) to allow Petitioner to exhaust his unexhausted claims before the California Supreme Court. (ECF No. 25.)

Judge Parada’s minute order stated that the matter would be held in abeyance until Petitioner lodges a copy of the decision by the California Supreme Court on his habeas petition, or Respondent advises the Court and Petitioner that the California Supreme Court has denied Petitioner’s habeas petition, whichever occurs first. (*Id.*) The Order further directed that:

Petitioner shall have thirty days thereafter to file a Motion for Leave to Amend the current Petition, along with a proposed First Amended Petition containing all claims Petitioner believes are now exhausted. Respondent shall have thirty days after receipt of the aforementioned documents to file an Opposition to the Motion. Thereafter, the matter will be deemed submitted without oral argument.

(*Id.*) On February 20, 2015, the case was removed from the Court’s active case load pending decision by the California Supreme Court. (ECF No. 27.)

Conclusion of State Court Proceedings

On July 5, 2017, Petitioner filed a “Response” (“Response”) stating, in pertinent part, that he “wants to file a amend [sic] petition,” and asking for a status update as to whether Respondent filed a notice that the California Supreme Court denied his state habeas petition. (ECF No. 35.) Petitioner attaches the March 7, 2014 Order to his Response. (*Id.*) On July 12, 2017, the case was re-assigned to Magistrate Judge Karen L. Stevenson. (ECF No. 36.)

It is unclear from the Response whether and when the California state courts denied relief. The docket for this case does not reflect that Respondent filed a notice that the California Supreme Court denied Petitioner’s state habeas petition. Moreover, Petitioner has neither lodged a copy of the California Supreme Court’s decision nor requested that the stay be lifted.

Order to Show Cause

To the extent Petitioner’s state habeas petition has been denied, Petitioner is directed to show cause why his case must not be dismissed for failure to prosecute and failure to comply

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with the Court’s March 7, 2014 Order. *See Link v. Wabash R. Co.*, 370 U.S. 626, 629-30 (1962); Fed. R. Civ. P. 41(b).

The March 7, 2014 Order clearly states that within 30 days of the state court’s ruling, Petitioner must file a “Motion for Leave to Amend the current Petition, along with a proposed First Amended Petition containing all claims Petitioner believes are now exhausted.” To date, Petitioner has not done so.

To discharge this Order to Show Cause, Petitioner must, do the following **within thirty days of the date of this order**:

- (1) file a Motion for Leave to Amend that also requests that the stay be lifted, and **includes a copy of the California Supreme Court’s decision, clearly states the date of that court’s decision**, and explains any failure to file within 30 days of that date; and
- (2) **lodge with the Motion for Leave to Amend, a First Amended Petition³** containing all claims that Petitioner believes are exhausted, and explaining why would not be untimely.

The Clerk is directed to send Petitioner Form CV-69, the Central District’s standard habeas petition form for a person in state custody. Given the lapse in time since filing, the Clerk is also directed to send Petitioner a copy of his original Petition. However, Petitioner is cautioned that the First Amended Petition must be complete in itself, including any exhibits, and without any reference to any prior pleading including the original Petition. **Petitioner is warned that failure to comply with this Order may result in a recommendation of dismissal.**

IT IS SO ORDERED.

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³ Although Petitioner filed what was fashioned as a “First Amended Petition” previously in this case, (*see* ECF Nos. 18, 21, 22) he did not, as required, attach the proposed amended pleading specifically identifying the exhausted claims on which he seeks relief. Therefore, the original Petition in this case has remained the operative pleading and has never been replaced.