

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 16-09551-JFW (AS) Date February 7, 2017

Title Dennis Petillo Jr. V. Patrice Silverman

Present: The Honorable Alka Sagar, United States Magistrate Judge

Alma Felix

N/A

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Petitioner:

Attorneys Present for Respondent:

N/A

N/A

Proceedings: (IN CHAMBERS) ORDER TO SHOW CAUSE

On December 27, 2016, Dennis Petillo, Jr. (“Petitioner”) filed a Petition for Writ of Habeas Corpus (“Petition”). (Docket Entry No. 1). The Petition, in at least two separate claims, appears to assert the following ground for federal habeas relief: Petitioner has been harassed and tortured, in violation of the cruel and unusual punishment clause of the Eighth Amendment. (See Petition at 3-4, Attachment at 1-2).

On January 4, 2017, the Court issued an Order requiring Petitioner to select, by January 24, 2017, one of two options, because (as Petitioner had conceded) the sole ground alleged in the Petition was unexhausted. (Docket Entry No. 5). Specifically, the Court ordered Petitioner to either: (1) voluntarily dismiss the entire action without prejudice; or (2) request a stay of the Petition, pursuant to Rhines v. Weber, 544 U.S. 269, 277-78 (2005), while he returns to state court to exhaust his unexhausted claim. Id. at 3-4. Petitioner was expressly advised that his failure to file a timely response to the Court’s January 4, 2017 Order might result in a recommendation that this action be dismissed with prejudice for his failure to prosecute and/or obey Court orders pursuant to Fed.R.Civ.P. 41(b). Id. at 4. Petitioner further was expressly advised that his failure to select one of the two options identified in the Court’s January 4, 2017 Order might result in the dismissal of the Petition as a fully unexhausted petition. Id.

As of today’s date, Petitioner has failed to file a Response to the Court’s January 4, 2017 Order.

Accordingly, Petitioner is **HEREBY ORDERED TO SHOW CAUSE why this**

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action should not be dismissed as a fully unexhausted petition.

Petitioner may file a response to this Order by availing himself of one of the two options set forth in the Court's January 4, 2017 Order: (1) voluntary dismissal of the entire action without prejudice; or (2) moving for a stay of this action pursuant to Rhines v. Weber, supra, while he returns to the state courts to exhaust the unexhausted claim, as identified above.

Information regarding the requirements for, and potential consequences of, each of these options are explained in the Court's January 4, 2017 Order, a copy of which is attached.

Petitioner must file a response to this Order withing twenty (20) days of the date of this Order (by no later than **February 27, 2017**).

Petitioner is warned that failure to comply with this Order will result in a recommendation that this action be dismissed with prejudice for his failure to prosecute and/or comply with Court orders pursuant to Fed.R.Civ.P. 41(b) and/or dismissal without prejudice as a fully unexhausted petition.

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