

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 16-09551-JFW (AS)	Date	March 2, 2017
Title	Dennis Petillo Jr. V. Patrice Silverman		

Present: The Honorable	Alka Sagar, United States Magistrate Judge
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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), asserting that he 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, consistent with Petitioner’s concession, finding the Petition totally unexhausted and ordered Petitioner to select, within 20 days, one of two options: (1) request a voluntary dismissal of the action without prejudice; or (2) file a motion for a stay, pursuant to Rhines v. Webber, 544 U.S. 269, 277-78 (2005), seeking a stay of the Petition while he returns to the state courts to exhaust his unexhausted claim. (Docket Entry No. 5).

On February 7, 2017, after Petitioner had failed to timely select one of the two options identified in the Court’s January 4, 2017 Order, the Court issued an Order to Show Cause why the action should not be dismissed as a fully unexhausted petition. (Docket Entry No. 6).

On February 24, 2017, Petitioner filed a Motion seeking a stay of the Petition, pursuant to Rhines, in order to exhaust his unexhausted claim in the state courts. (Docket

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Entry No. 7 at 1-2, Exhibits 1 and 2).¹

On March 1, 2017, the district court issued an Order Denying Stay Under Rhines, based on the findings that Petitioner had failed to exhaust his unexhausted claim and that Petitioner had failed to show “good cause” for failing to exhaust his unexhausted claim. (Docket Entry No. 8).

Accordingly, Petitioner is **HEREBY ORDERED TO SHOW CAUSE why this action should not be dismissed as a fully unexhausted petition.**

Petitioner may file a response to this Order by requesting a voluntary dismissal of the entire action without prejudice, pursuant to Federal Rule of Civil Procedure 41(a). **A Notice of Dismissal form is attached for Petitioner’s convenience.**

Information regarding the requirements for, and potential consequences of, filing a Notice of Dismissal 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 **March 22, 2017**).

Petitioner is warned that failure to comply with this Order will result in a recommendation that this action be dismissed without prejudice as a fully unexhausted petition.

¹ Petitioner’s filing of the Motion for a Stay discharged the Court’s February 7, 2017 Order to Show Cause. (See Docket Entry No. 8 at n. 1).