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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

CHARLES WILLIAMS,  
Petitioner,  
v.  
NEIL McDOWELL, Warden,  
Respondent.

Case No. 2:19-cv-02663-AFM

**MEMORANDUM OPINION AND  
ORDER DISMISSING FIRST  
AMENDED PETITION WITHOUT  
PREJUDICE**

**BACKGROUND**

On April 1, 2019, Petitioner filed this habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging his 2017 conviction of involuntary manslaughter. (ECF No. 1.) On April 10, 2019, the Court issued an order explaining that it appeared that the claims raised in this federal petition had never been presented to the California Supreme Court and, therefore, the petition was subject to dismissal. The Court directed Petitioner to file an amended petition clearly indicating whether he had exhausted his state remedies by presenting his claims to the California Supreme Court. The order informed Petitioner that if he wished to raise unexhausted claims in his first amended petition, he should file a motion to stay the proceedings. Petitioner was further informed of the limited circumstances under which a stay could be warranted under *Rhines v. Weber*, 544 U.S. 269 (2005), including the requirement

1 that he show good cause for his failure to exhaust his state remedies. (ECF No. 7.)

2 Petitioner filed a first amended petition on April 29, 2019. (ECF No. 8.) The  
3 first amended petition makes clear that Petitioner has never filed any petition  
4 challenging his 2017 conviction in the California Supreme Court. (*See* ECF No. 8 at  
5 3, 4-6.) Nonetheless, Petitioner did not file a motion for a stay.

6 On May 7, 2019, the Court issued a report and recommendation (“R&R”),  
7 recommending that the action be dismissed based upon Petitioner’s failure to exhaust  
8 his state remedies with respect to any claim presented in the first amended petition.  
9 (ECF No. 9.) After Petitioner filed objections to the R&R that were difficult to  
10 discern, the Court provided him another opportunity to request a stay. In its June 4,  
11 2019 order, the Court repeated the requirements of a stay pursuant to *Rhines*, notably  
12 the requirement of showing good cause. (ECF No. 14.)

13 In response, Petitioner filed a motion for a stay. (ECF No. 15.) On July 16,  
14 2019, Respondent filed an opposition to Petitioner’s motion. (ECF No. 19.) Petitioner  
15 had until August 15, 2019 to file a reply to the opposition. As of the date of this  
16 memorandum and order, Petitioner has neither filed a reply nor requested an  
17 extension of time within which to do so.<sup>1</sup>

## 18 DISCUSSION

### 19 1. Petitioner is not entitled to a stay.

20 In *Rhines*, the Supreme Court held that a petitioner is entitled to a stay if he  
21 demonstrates that (1) he has “good cause” for his failure to exhaust his claims in state  
22 court; (2) the unexhausted claims are not “plainly meritless”; and (3) there is no  
23 indication that he intentionally engaged in dilatory litigation tactics. *Rhines*, 544 U.S.  
24 at 277-278; *see also Mena v. Long*, 813 F.3d 907, 912 (9th Cir. 2016) (extending  
25 *Rhines* to petitions that contain only unexhausted claims). In order to show good  
26 cause, a petitioner seeking a stay must “set forth a reasonable excuse, supported by

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27 <sup>1</sup> All parties have consented to proceed before the Magistrate Judge pursuant to 28 U.S.C. § 636(c).  
28 *See* ECF No. 23.

1 sufficient evidence” justifying his failure to exhaust claims earlier. *Blake v. Baker*,  
2 745 F.3d 977, 982 (9th Cir. 2014).<sup>2</sup>

3 On two occasions, Petitioner was notified of the showing he is required to  
4 make in order to be entitled to a stay under *Rhines* – first, in the April 10, 2019 order  
5 dismissing his petition and again on June 4, 2019. (ECF Nos. 7 & 14.) Despite having  
6 two opportunities to do so, Petitioner’s motion for a stay does not set forth any reason  
7 justifying his failure to exhaust his claims. (See ECF No. 15.) Indeed, Petitioner has  
8 not offered *any* excuse for his failure to present his unexhausted claims to the  
9 California Supreme Court, let alone provided evidentiary support for a “reasonable  
10 excuse.” See *Blake*, 745 F.3d at 982 (noting “[a]n assertion of good cause without  
11 evidentiary support will not typically amount to a reasonable excuse justifying a  
12 petitioner's failure to exhaust”).

13 Respondent points out that the Ninth Circuit has held that a petitioner’s lack  
14 of counsel in state postconviction proceedings may constitute good cause for failure  
15 to exhaust. *Dixon v. Baker*, 847 F.3d 714, 721-722 (9th Cir. 2017) (finding that lack  
16 of post-conviction counsel could constitute good cause for a *Rhines* stay where the  
17 petitioner had “repeatedly” asserted in his federal proceedings that he was without  
18 counsel in state post-conviction proceedings, and did so again in support of his  
19 motion for a *Rhines* stay). Petitioner, however, has not argued that good cause exists  
20 because he was without counsel in his post-conviction proceedings. Furthermore, it  
21 appears that Petitioner was able to, and actually did, raise his claims in a habeas  
22 corpus petition filed in the California Court of Appeal. That petition was denied on  
23 March 13, 2019. (See ECF No. 8; California Court of Appeal Case No. E072292.)  
24 Petitioner has not explained why he was unable to file an identical petition raising  
25 the same allegations in the California Supreme Court. See *Brown v. Muniz*, 2018 WL

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27 <sup>2</sup> A district court may also hold a fully exhausted petition in abeyance pursuant to *Kelly v. Small*,  
28 315 F.3d 1063 (9th Cir. 2003). *Kelly* does not apply here because the first amended petition includes  
no exhausted claim for relief.

1 7252958, at \*6 (C.D. Cal. Dec. 28, 2018) (no good cause shown under *Rhines* where  
2 the petitioner did not argue his lack of postconviction counsel was the reason he failed  
3 to exhaust and where record showed the petitioner had been “able to pursue post-  
4 conviction relief in the state courts without counsel”), *report and recommendation*  
5 *adopted*, 2019 WL 483320 (C.D. Cal. Feb. 7, 2019).

6 **2. The first amended petition must be dismissed due to Petitioner’s failure**  
7 **to exhaust his state remedies.**

8 A state prisoner is required to exhaust all available state court remedies before  
9 a federal court may grant him habeas relief. 28 U.S.C. § 2254(b); *O’Sullivan v.*  
10 *Boerckel*, 526 U.S. 838, 842 (1999). To satisfy the exhaustion requirement, a  
11 petitioner must fairly present both the factual and the federal legal basis for his claims  
12 to the highest state court. *O’Sullivan*, 526 U.S. at 845.

13 Petitioner concedes that he has not presented any of the claims raised in this  
14 federal petition to the California Supreme Court. (See ECF No. 8 at 4-6.) Because the  
15 first amended petition consists entirely of unexhausted claims, it must be dismissed  
16 without prejudice.<sup>3</sup> See *Rose v. Lundy*, 455 U.S. 509, 522 (1982).

17 **ORDER**

18 IT THEREFORE ORDERED that Petitioner’s motion for a stay is denied and  
19 Judgment be entered dismissing the first amended petition without prejudice for  
20 failure to exhaust.

21  
22 DATED: 10/4/2019



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24  
25 ALEXANDER F. MacKINNON  
UNITED STATES MAGISTRATE JUDGE

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28 <sup>3</sup> Petitioner is notified that any future federal petition is subject to the one-year limitation period set forth in 28 U.S.C. § 2244(d).