

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 20-02051-PA (DFM)

Date: September 14, 2020

Title John Christopher Brown v. Josie Gastelo

Present: The Honorable	Douglas F. McCormick, United States Magistrate Judge	
Nancy Boehme		Not Present
Deputy Clerk		Court Reporter
Attorney(s) for Plaintiff(s):		Attorney(s) for Defendant(s):
Not Present		Not Present
<b>Proceedings:</b>	<b>(IN CHAMBERS) ORDER TO SHOW CAUSE</b>	

Petitioner filed his petition for writ of habeas corpus in March 2020. See Dkt. 1 (“Petition”). In June 2020, Respondent filed a motion to dismiss claiming Petitioner’s fourth ground for relief was unexhausted—i.e., he had not presented it to the California Supreme Court. Petitioner acknowledges that he did not raise this claim in his petition for review in the state supreme court (see Petition at 3), and the copy of the petition for review that he attached to his federal habeas petition bears this out (see Dkt. 1-3 at 1-75.).

Accordingly, on July 9, 2020, the Court ordered Petitioner (see Dkt. 16) to choose by July 30, 2020, between two options:

1. Petitioner may request a stay and abeyance of the mixed Petition while he exhausts Ground Four in the California Supreme Court. See Rhines v. Weber, 544 U.S. 269, 277 (2005) (holding that district courts have the discretion to stay and hold in abeyance, rather than dismiss, a mixed habeas petition). Such a stay is not automatic, however. This Court can grant a stay only if Petitioner demonstrates “good cause” for the failure to exhaust in state court, that the claims are not plainly meritless, and that he is not using intentionally dilatory litigation tactics. If Petitioner chooses this option, he must explain why he did not raise Ground Four in the California Supreme Court.

2. Petitioner may voluntarily dismiss Ground Four of his Petition, and the Court will proceed to the merits of his remaining exhausted claims. If he chooses this option, Petitioner is

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warned that this Court will likely be foreclosed from ever considering Ground Four in a successive petition.

The Court warned Petitioner that if Petitioner did nothing, the Court would recommend that the Petitioner be dismissed as mixed. See id. This case was then transferred to the undersigned magistrate judge. See Dkt. 19.

Petitioner’s deadline has passed, but it appears that he may not have received the Court’s order. See Dkt. 17 (notice of change of address filed after Court issued order and asking Court for “next step in [his] proceedings”). The Clerk is directed to attach a copy of the Court’s July 9 order (Dkt. 16) to the copy of this minute orders served on Petitioner.

**Additionally, on or before twenty-one (21) days of the date of this order, Plaintiff is ORDERED to show good cause in writing why the Court should not recommend dismissal of this action without prejudice as mixed and for failure to prosecute. Alternatively, Petitioner may file with this Court a notice of election, stating either that he seeks a stay of his case to exhaust his fourth ground or that he voluntarily dismisses his fourth ground.**

**Petitioner is expressly warned that his failure to timely comply with this Order may result in the Petition being dismissed for the reasons stated above and for failure to prosecute.**