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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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|--------------------------|---|----------------------------|
| PHILLIP FRANCIS GRAZIDE, |) | 1:07-cv-00735 MJS HC |
| Petitioner, |) | ORDER DENYING PETITIONER'S |
| |) | MOTION TO STAY PROCEEDINGS |
| v. |) | [Doc. 34] |
| LELAND MCEWEN, Warden, |) | |
| Respondent. |) | |

Petitioner is a state prisoner proceeding pro se with a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. Respondent, Leland McEwen, is represented by Ivan P. Marrs, Esq. of the office of the Attorney General of California.

I. BACKGROUND

On May 10, 2007, Petitioner filed the instant petition for writ of habeas corpus in this Court raising eleven claims for relief. (Pet. at 6-16, ECF No. 1.) Petitioner stated in his federal petition that claims three through eleven were not presented to the California Supreme Court. (Id. at 17.)

Following a preliminary review of the petition on June 7, 2007, the Court granted Petitioner thirty days to inform the Court whether he would decide to withdraw the unexhausted claims and proceed on the claims that were already exhausted, or withdraw the

1 petition and return to state court to exhaust the previously unexhausted claims. (Order
2 Regarding Exhaustion, ECF No. 7.) In response, on July 6, 2007, Petitioner requested the
3 Court stay his federal petition to allow Petitioner time to exhaust his state claims. (Resp., ECF
4 No. 9.) Over a year later, on July 15, 2008, the Court granted Petitioner's request and stayed
5 the case pending exhaustion. (Order Staying Case, ECF No. 10.)

6 Two years later, on July 1, 2010, Petitioner notified the Court that he had exhausted all
7 of his state remedies. (Notice, ECF No. 23.) Based on Petitioner's assertions that his state
8 claims were exhausted, the Court vacated the stay on July 19, 2010, and directed Respondent
9 to file a response to the Petition on July 20, 2010. (Order Vacating Stay, ECF No. 24, Order
10 to Respond, ECF No. 25.)

11 On September 20, 2010, Respondent filed a motion to dismiss claims three through
12 eleven of the petition for failure to exhaust state remedies. (Mot. To Dismiss, ECF No. 28.) The
13 Court granted Respondent's motion to dismiss claims three through eleven of the petition and
14 requested Respondent provide a response to claims one and two within sixty days of service
15 of the order. (Order, ECF No. 33.) In response, Petitioner filed a second motion to stay the
16 proceedings so that he may return to state court to attempt to exhaust the unexhausted
17 claims. (Mot. To Stay, ECF No. 34.) Respondent filed an opposition to the motion to stay on
18 December 21, 2010. (Opp'n, ECF No. 35.)

19 **II. DISCUSSION**

20 Petitioner's unexhausted claims have been dismissed, and are no longer before the
21 Court. Petitioner's request for a stay does not revive previously dismissed claims. Even if the
22 claims were still before the Court, Petitioner has not shown good cause why the proceedings
23 should be stayed. Petitioner had ample opportunity to exhaust his claims during the three and
24 one half years the petition has been pending before this Court, but did not do so. Petitioner's
25 continued attempts to delay the prosecution of the matter "frustrate AEDPA's¹ goal of finality."
26 Rhines v. Weber, 544 U.S. 269, 277 (2005). Accordingly, Petitioner's motion to stay the

27
28 ¹AEDPA refers to the Antiterrorism and Effective Death Penalty Act of 1996.

1 proceeding is denied, and the unexhausted claims remain dismissed as discussed in the
2 Court's November 17, 2010 order.

3 On January 14, 2010, Respondent filed a request for extension of time. (Request, ECF
4 No. 36.) Respondent requests the Court vacate the briefing schedule while the motion to stay
5 is pending. In denying Petitioner's motion to stay, there is no longer any reason to vacate the
6 briefing schedule. However, the Court shall give Respondent until thirty (30) days after the
7 service of this order to respond to the remaining claims of the petition.

8 **ORDER**

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Petitioner's motion for stay and abeyance is DENIED; and
11 2. Respondent is GRANTED thirty (30) days from the date of service of this order to
12 respond to the remaining claims of the petition.

13
14 IT IS SO ORDERED.

15 Dated: January 14, 2011

1s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE