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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CONROY J. HAYES,)	1:09-CV-01749 OWW GSA HC
)	
Petitioner,)	ORDER DENYING PETITIONER'S
)	MOTION FOR STAY OF PROCEEDINGS
v.)	
)	[Doc. #24]
DERREL G. ADAMS,)	
)	
Respondent.)	

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On October 5, 2009, Petitioner filed a petition for writ of habeas corpus. After conducting a preliminary review of the petition, on October 19, 2009, the Court issued an order directing Respondent to file a response to the petition. Respondent filed an answer to the petition on January 19, 2010. On March 1, 2010, Petitioner filed a traverse. The case has been pending decision on the merits since then.

On September 7, 2010, Petitioner filed the instant motion to stay proceedings pending exhaustion of a newly discovered claim. Respondent did not file an opposition.

DISCUSSION

A district court has discretion to stay a petition which it may validly consider on the merits. Rhines v. Weber, 544 U.S. 269, 276 (2005); Calderon v. United States Dist. Court (Taylor), 134 F.3d

1 981, 987-88 (9th Cir. 1998); Greenawalt v. Stewart, 105 F.3d 1268, 1274 (9th Cir.), *cert. denied*, 519
2 U.S. 1102 (1997). However, the Supreme Court held that this discretion is circumscribed by the
3 Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Rhines, 544 U.S. at 277. In light
4 of AEDPA’s objectives, “stay and abeyance [is] available only in limited circumstances” and “is
5 only appropriate when the district court determines there was good cause for the petitioner’s failure
6 to exhaust his claims first in state court.” Id. Even if Petitioner were to demonstrate good cause for
7 that failure, “the district court would abuse its discretion if it were to grant him a stay when his
8 unexhausted claims are plainly meritless.” Id.

9 In this case, the Court does not find good cause to excuse Petitioner’s failure. This case is
10 fully briefed and has been pending a decision on the merits since March 1, 2010. The new claim is
11 clearly untimely under AEDPA and Petitioner has not demonstrated diligence. Petitioner states he
12 only became aware of the claim’s existence upon review of voir dire transcripts which he did not
13 obtain until August 17, 2010. However, Petitioner had ample time to seek these transcripts
14 following judgment in his case on May 17, 2006. He claims he was unable to secure the transcripts
15 until August 17, 2010, because his attempts in the superior court and with his appellate counsel did
16 not prove fruitful until he filed a formal motion in the appellate court. Nevertheless, Petitioner
17 concedes he contacted his appellate counsel for a copy of the transcripts on August 6, 2008. He also
18 concedes he received a response from appellate counsel on August 8, 2008, wherein counsel
19 specifically informed Petitioner that he must apply directly to the appellate court by formal motion
20 for a copy of the transcripts. (See Pet’r’s Mot. for Stay, Ex. F.) Moreover, as the letter indicates,
21 appellate counsel reminded Petitioner that he had already informed Petitioner of this procedure in his
22 letter of June 10, 2007. (See Pet’r’s Mot. for Stay, Ex. F.) Petitioner should have attempted to
23 secure these transcripts soon after June 10, 2007, and not when he actually did so three years later on
24 July 20, 2010. His three-year delay clearly shows a lack of diligence.

25 Petitioner’s various excuses for his untimeliness are without merit. He claims he could not
26 seek his transcripts sooner because he was placed in administrative segregation. According to his
27 exhibits, he was placed in administrative segregation on May 10, 2010, and returned to regular
28 programming on July 14, 2010. (See Pet’r’s Mot. for Stay, Ex. H.) This two-month impediment does

1 not excuse a three-year delay. Petitioner also claims he acted diligently by continuing to seek his
2 transcripts in the superior court and with counsel. As noted above, however, Petitioner was informed
3 on June 10, 2007, and again on August 8, 2008, that in order to obtain the transcripts he had to file a
4 formal motion with the appellate court. His failure to do so until July 20, 2010, does not show
5 diligence.

6 Staying the case at this juncture in order to allow Petitioner to pursue another round of review
7 in the state courts frustrates AEDPA's objective of encouraging finality and undermines AEDPA's
8 objective of streamlining federal habeas proceedings. Rhines, 544 U.S. at 277. The Court does not
9 find good cause to grant a stay.

10 Accordingly, Petitioner's motion for stay of the proceedings is hereby DENIED.

11
12 IT IS SO ORDERED.

13 **Dated: October 19, 2010**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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