

1 first exhausted all claims in state court; (2) the claims potentially have merit; and (3) petitioner
2 has not been dilatory in pursuing the litigation. *Id.* at 277-78. The Court found that because
3 nothing in the record suggests Petitioner intentionally or maliciously failed to pursue his
4 meritorious claims, good cause existed to grant a stay and abeyance under *Rhines*. (Doc. 3).

5 In granting the stay and abeyance, the Court directed Petitioner to file a status report
6 within thirty days in order to advise the Court of the status of the state court proceedings.
7 Thereafter, Petitioner was required to file a status report every ninety days. *Id.*

8 Petitioner timely filed his first status report on February 27, 2017. (Doc. 5). On June 12,
9 2017, the Court ordered Petitioner to show cause why he should not be sanctioned for failure to
10 file a status report within ninety days after filing the previous report as ordered by the Court.
11 (Doc. 6). On June 29, 2017, the Court received a notice from Pastor Rick Riley of Thief on the
12 Cross Prison Ministry, stating that Petitioner was unable to file a status report because his legal
13 property was sequestered when he was transferred to another prison. (Doc. 7). The Court took
14 notice of documents pertaining to Petitioner's ongoing state proceedings filed with Pastor Riley's
15 notice and discharged the order to show cause on July 21, 2017.¹ (Doc. 8). The Court again
16 ordered Petitioner to file a status report within thirty days and every ninety days thereafter. *Id.*

17 Petitioner timely filed a status report on August 9, 2017, stating that his petition for writ of
18 habeas corpus was denied by the Kern County Superior Court and he was appealing to the
19 California Court of Appeal. (Doc. 9). Although more than ninety days have passed since August
20 9, 2017, Petitioner has not filed a status report. Accordingly, on December 11, 2017, the Court
21 issued a second order to show cause, within 21 days, why the petition should not be dismissed for
22 failure to obey a court order. Petitioner failed to respond to the order.

23 The Court has the discretion to impose any and all sanctions authorized by statute or rule
24 or within the inherent power of the Court, including dismissal of an action based on Petitioner's
25 failure to comply with a court order. F.R.Civ.P. 11; Local R. 110. Because Petitioner has failed
26 to follow the Court's order a second time, the Court recommends dismissing the petition.

27 ¹ The Court cautioned Petitioner that while Pastor Riley may assist him in preparing documents for filing, Pastor
28 Riley is not an attorney, and may not act on behalf of Petitioner, who is proceeding *pro se*. (Doc. 8); *see Simon v. Hartford Life, Inc.*, 546 F.3d 661, 664 (9th Cir. 2008).

1 **Certificate of Appealability**

2 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a
3 district court's denial of his petition, but may only appeal in certain circumstances. *Miller-El v.*
4 *Cockrell*, 537 U.S. 322, 335-36 (2003). The controlling statute in determining whether to issue a
5 certificate of appealability is 28 U.S.C. § 2253, which provides:
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7 (a) In a habeas corpus proceeding or a proceeding under section 2255
8 before a district judge, the final order shall be subject to review, on appeal, by
9 the court of appeals for the circuit in which the proceeding is held.

10 (b) There shall be no right of appeal from a final order in a proceeding
11 to test the validity of a warrant to remove to another district or place for
12 commitment or trial a person charged with a criminal offense against the
13 United States, or to test the validity of such person's detention pending
14 removal proceedings.

15 (c) (1) Unless a circuit justice or judge issues a certificate of
16 appealability, an appeal may not be taken to the court of appeals
17 from—

18 (A) the final order in a habeas corpus proceeding in which the
19 detention complained of arises out of process issued by a State
20 court; or

21 (B) the final order in a proceeding under section 2255.

22 (2) A certificate of appealability may issue under paragraph (1)
23 only if the applicant has made a substantial showing of the denial
24 of a constitutional right.

25 (3) The certificate of appealability under paragraph (1) shall
26 indicate which specific issues or issues satisfy the showing
27 required by paragraph (2).
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29 If a court denies a habeas petition, the court may only issue a certificate of
30 appealability "if jurists of reason could disagree with the district court's resolution of his
31 constitutional claims or that jurists could conclude the issues presented are adequate to deserve
32 encouragement to proceed further." *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*, 529 U.S. 473,
33 484 (2000). Although the petitioner is not required to prove the merits of his case, he must

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