

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LARRY A. CHATMAN,

Petitioner,

No. CIV S-10-0264 KJM KJN (TEMP) P

vs.

M.S. EVANS, et al.,

Respondents.

ORDER

_____ /

On December 10, 2010, petitioner filed a motion for leave to file an amended petition for writ of habeas corpus, a proposed amended petition, and a request that this action be stayed so petitioner can exhaust state court remedies with respect to the new claim presented in the amended petition. On January 12, 2011, the court recommended that petitioner's original habeas petition be dismissed as time-barred. If the original petition is dismissed as time-barred, the only claim that would remain in the amended petition is the new, unexhausted claim, and this court cannot stay a habeas petition which contains no exhausted claims. Raspberry v. Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006). Accordingly, IT IS HEREBY ORDERED that petitioner's motion to amend and motion for a stay (#21) are denied. Petitioner may renew his motions if the

////

////

1 district court judge assigned to this case rejects this court's recommendation that petitioner's
2 original habeas petition be dismissed as time-barred.

3 DATED: February 8, 2011

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

chat0264.mta