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

PHARAOH E. BROOKS,

Petitioner,

No. CIV S-11-1637 MCE DAD P

vs.

M. MCDONALD, Warden,

Respondent.

ORDER

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Petitioner is a state prisoner proceeding pro se with an amended petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is petitioner’s renewed motion for a stay and abeyance. In his motion, petitioner asks the court to stay this habeas action so that he can return to state court to exhaust an ineffective assistance of counsel claim.

Respondent has filed a statement of non-opposition to petitioner’s renewed motion.

**DISCUSSION**

Petitioner cannot present his ineffective assistance of counsel claim to this court until the claim has been fairly presented to the California Supreme Court. It does not appear that the pro se petitioner seeks to stay these proceedings for an improper purpose. Nor does it appear that petitioner has engaged in abusive litigation tactics or intentional delay. Moreover, respondent does not oppose petitioner’s motion, and if petitioner obtains relief in state court, his

1 federal petition may be rendered moot, thereby serving the interests of judicial economy as well  
2 as the interests of justice. Accordingly, good cause appearing, the court will grant petitioner's  
3 renewed motion for a stay and abeyance pursuant to the procedure set forth in Rhines v. Weber,  
4 544 U.S. 269 (2005).

5 **CONCLUSION**

6 In accordance with the above, IT IS HEREBY ORDERED that:

- 7 1. Petitioner's renewed motion for a stay and abeyance (Doc. No. 11) is granted;
- 8 2. Petitioner shall present any unexhausted claims to the California Supreme  
9 Court in a further state habeas corpus petition to be filed within thirty days if he has not done so  
10 already;
- 11 3. This action is stayed and the Clerk of the Court is directed to administratively  
12 close the case;
- 13 4. Petitioner shall file and serve a status report in this case on the first court day  
14 of each month; and
- 15 5. Petitioner shall file and serve a motion to lift the stay of this action, along with  
16 a proposed second amended petition containing only exhausted claims, within thirty days after  
17 petitioner is served with the California Supreme Court's order disposing of the state exhaustion  
18 petition.

19 DATED: May 3, 2012.

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DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE