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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL NAGY,
Petitioner,
v.
D. DAVEY, et al.,
Respondents.

No. 2:11-cv-2948 WBS DAD P

FINDINGS AND RECOMMENDATIONS

Petitioner is a state prisoner proceeding pro se with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is petitioner’s motion to re-instate the stay of this action, which this court has construed as a renewed motion for a stay and abeyance.

BACKGROUND

By way of background, on November 7, 2011, petitioner commenced this action by filing a petition for writ of habeas corpus challenging his 2009 judgment of conviction on multiple state criminal charges. (Doc. No. 1) On February 22, 2012, respondent filed an answer to the petition. (Doc. No. 15) On April 6, 2012, upon review of the petition, then-assigned Magistrate Judge Moulds determined that the petition was a “mixed” petition containing both exhausted and unexhausted claims and granted petitioner time to file a motion for a stay and abeyance. (Doc. No. 19)

1 to stay the federal proceeding is particularly appropriate when an outright dismissal will render it
2 unlikely or impossible for the petitioner to return to federal court within the one-year limitation
3 period imposed” on federal habeas petitioners.). However, district courts may not abuse their
4 discretion by staying habeas proceedings indefinitely. See Calderon v. United States District
5 Court (“Taylor”), 134 F.3d 981, 988 n.11 (9th Cir. 1998). See also Kelly, 315 F.3d at 1071 (“If
6 petitioner fails to act within the allotted time, the stay may be vacated nunc pro tunc as of the date
7 the district court enters the stay. . . .”).

8 Here, the court finds that petitioner has unreasonably delayed in his pursuit of his federal
9 habeas corpus claims. See Kelly, 315 F.3d at 1071 (indicating reasonable time limits would
10 allow petitioner 30 days to file a petition in state court and 30 days to return to federal court after
11 final rejection of claims by state court). In his renewed motion for a stay and abeyance, petitioner
12 notes that he filed a petition for writ of habeas corpus with the San Joaquin County Superior
13 Court on June 22, 2012, prior to this court entering a stay of this federal habeas action. (Pet’r’s
14 Mot. for Stay & Abeyance 1-2.) According to petitioner, the San Joaquin County Superior Court
15 denied his petition back on July 24, 2012, and told him that he needed to present documentary
16 evidence to support his ineffective assistance of counsel claim. More than two years after the
17 superior court’s denial of his June 2012 petition, petitioner claims that he is still working on
18 obtaining copies of his trial transcript to file another petition seeking habeas relief from the San
19 Joaquin County Superior Court. (Id. at 1.) Petitioner contends that he has twice been transferred
20 to different prisons and, as a result, twice lost his paper work related to this case since this court
21 stayed this action back in 2012. (Id.)

22 These prison transfers – commonplace circumstances of many pro se petitioners – simply
23 do not justify petitioner’s substantial delay in exhausting his unexhausted claims in this case.
24 Moreover, according to the California Supreme Court’s website, to date, petitioner has still not
25 filed any petition for writ of habeas corpus with that court in an attempt to exhaust his
26 unexhausted claims. Based on the record in this case, the court concludes that it would be an
27 abuse of discretion to further stay these proceedings. See Taylor, 134 F.3d at 988 n.11 (it is an
28 abuse of discretion to stay habeas proceedings indefinitely or for a petitioner merely seeking to

1 stall the habeas corpus process); see also Ryan v. Gonzalez, ___ U.S. ___, ___, 133 S. Ct. 696, 709
2 (2013) (“But even if [the petitioner] could show that the claim was both unexhausted and not
3 procedurally defaulted, an indefinite stay would be inappropriate.”); Yong v. I.N.S., 208 F.3d
4 1116, 1120 (9th Cir. 2000) (“[W]e have never authorized . . . an indefinite, potentially lengthy
5 stay in a habeas case”).

6 Accordingly, the court will recommend that petitioner’s renewed motion for a stay and
7 abeyance be denied and that this action proceed only on petitioner’s already exhausted claims.

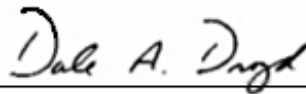
8 **CONCLUSION**

9 Accordingly, IT IS HEREBY RECOMMENDED that:

- 10 1. Petitioner’s motion to re-instate the stay of this action construed as a renewed motion
11 for a stay and abeyance (Doc. No. 31) be denied; and
12 2. Petitioner be directed to file a traverse, if any, in support of his exhausted claims within
13 thirty days of any order adopting these findings and recommendations.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
16 after being served with these findings and recommendations, any party may file written
17 objections with the court and serve a copy on all parties. Such a document should be captioned
18 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
19 objections shall be filed and served within fourteen days after service of the objections. The
20 parties are advised that failure to file objections within the specified time may waive the right to
21 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

22 Dated: July 28, 2015

23 

24 _____
25 DALE A. DROZD
26 UNITED STATES MAGISTRATE JUDGE

26 DAD:9
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