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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH A. SHARANOFF,
Petitioner,
v.
WARDEN,
Respondent.

No. 2:13-cv-0794 AC P

ORDER

Petitioner, a state inmate proceeding pro se and in forma pauperis, has filed an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Respondent has filed an answer, ECF No. 11, and the time to file a traverse has expired. Before this court could rule on the pending habeas corpus application, petitioner filed a “Motion to Quit Claim and Re-File in [a] Timely Manner.” ECF No. 13. It is not clear from the motion whether petitioner seeks a voluntary dismissal of his present habeas action or whether he is requesting a stay and abeyance in order to return to state court to exhaust newly discovered claims. See ECF No. 13 at 1. To the extent that petitioner is requesting a voluntary dismissal, respondent does not oppose the motion. ECF No. 14. However, if petitioner is seeking a stay and abeyance respondent does oppose the motion because it is not clear whether any new claims would relate back to the original timely-filed habeas corpus petition. See ECF No. 14 at 2. Because it is not clear what relief petitioner seeks, the undersigned will deny the motion to quit claim without prejudice to re-filing either a motion for voluntary dismissal or a motion for stay and abeyance.

1 In considering which motion to file, petitioner is advised that a court may stay a petition
2 and hold it in abeyance pursuant to either Rhines v. Weber, 544 U.S. 269 (1995), or King v.
3 Ryan, 564 F.3d 1133, 1135 (9th Cir. 2009) (citing three-step procedure of Kelly v. Small, 315
4 F.3d 1063 (9th Cir. 2003)). Kelly and Rhines set out different procedures and impose different
5 requirements for obtaining a stay. Under Rhines, 544 U.S. at 277-78, a federal petition
6 containing both exhausted and unexhausted claims may be stayed only if (1) petitioner
7 demonstrates good cause for the failure to have first exhausted the claims in state court, (2) the
8 claim or claims at issue potentially have merit, and (3) petitioner has not been dilatory in pursuing
9 the litigation. Under Kelly, the court may stay a petition containing only exhausted claims while
10 allowing the petitioner to proceed to state court to exhaust additional claims. King v. Ryan, 564
11 F.3d at 1135 (citing Kelly, 315 F.3d at 1070-71). Once the additional claims have been
12 exhausted, the petitioner may then amend his petition to add them to the original petition *if they*
13 *are not time-barred*. Id. at 1135, 1140-41. The court may deny a request for stay under Kelly if
14 the new claims would clearly be barred by the federal statute of limitations upon exhaustion. See
15 id. at 1141.

16 Petitioner must file a motion for a stay and abeyance setting forth which claims have been
17 exhausted and which he seeks to exhaust. Petitioner must also specify whether he seeks a stay
18 pursuant to Rhines or Kelly. If petitioner elects to pursue a Rhines stay, he must demonstrate
19 how he meets the requirements for such a stay as set forth above.

20 Petitioner is further advised that any request to voluntarily dismiss the present habeas
21 corpus action may preclude the federal court from reviewing any claims in a subsequently filed
22 petition due to the one year statute of limitations of the AEDPA. See 28 U.S.C. § 2244(d)(1).

23 On April 25, 2013, an Order Re Consent or Request for Reassignment was issued in this
24 case, together with the appropriate form. All parties were required to complete and file the form
25 within 30 days. Although the 30-day period has expired, and petitioner filed a completed form on
26 May 1, 2013, respondent has not yet filed the required form.

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