

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 WARREN GERRUE,

12 Petitioner,

13 v.

14 KIM HOLLAND,

15 Respondent.
16

No. 2: 15-cv-0045 WBS KJN P

ORDER

17 Petitioner is a state prisoner, proceeding without counsel, with a petition for writ of habeas
18 corpus pursuant to 28 U.S.C. § 2254. For the reasons stated herein, petitioner is directed to file
19 further briefing in support of his motion to stay.

20 In the petition, petitioner requested that this action be stayed while his “state appeals are
21 still going.” (ECF No. 1 at 3.)

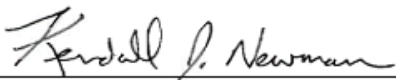
22 On January 22, 2015, the undersigned issued an order directing petitioner to file a motion
23 to stay within thirty days indicating whether he was seeking to stay this action pursuant to the
24 procedures outlined in Kelly v. Small, 315 F.3d 1063 (9th Cir. 2002), or Rhines v. Weber, 544
25 U.S. 269 (2005). (ECF No. 12.) This order described the procedures for a stay pursuant to
26 Rhines. (Id. at 2.) A stay pursuant to Rhines requires a petitioner to show good cause for failure
27 to exhaust the claims in state court prior to filing a petition. (Id.) In addition, a stay pursuant to
28 Rhines is inappropriate where the claims are “plainly meritless” or where the petitioner engaged

1 in “abusive litigation tactics or intentional delay.” (Id.)

2 On February 6, 2015, petitioner filed a motion to stay pursuant to Rhines. (ECF No. 13.)
3 However, in this motion petitioner does not address the Rhines factors discussed in the January
4 22, 2015 order. In particular, petitioner does not address the issue of whether there is good cause
5 for his failure to exhaust his claims prior to the filing of this action. Accordingly, petitioner is
6 granted thirty days to file further briefing in support of his motion to stay addressing why he did
7 not exhaust his claims before filing the instant action.

8 Accordingly, IT IS HEREBY ORDERED that within thirty days of the date of this order,
9 petitioner shall file further briefing in support of his motion to stay.

10 Dated: March 25, 2015

11 
12 _____
13 KENDALL J. NEWMAN
14 UNITED STATES MAGISTRATE JUDGE

15 Ger45.fb
16
17
18
19
20
21
22
23
24
25
26
27
28