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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KELVIN PETERSON,
Petitioner,
v.
MARTIN BITER,
Respondent.

No. 2:16-cv-00251-TLN-DB

ORDER

Petitioner is a state inmate proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 13, 2020, the magistrate judge assigned to this action issued findings and recommendations recommending that the petition be denied. (ECF No. 20.) The findings and recommendations were served on all parties and contained notice that any objections to the findings and recommendations were to be filed within fourteen days. (Id.)

On March 20, 2020, Petitioner requested additional time to file objections to the findings and recommendations due to the COVID-19 pandemic. (ECF No. 21.) Petitioner was given an additional sixty days to file any objections. (ECF No. 22.) Those sixty days have now expired, and Petitioner has not filed objections or requested additional time to do so.

Petitioner has, however, filed a motion for stay pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005). (ECF No. 23.) Therein, Petitioner argues the Court should impose a stay so that he can

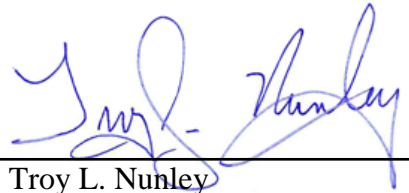
1 pursue a claim that trial counsel was ineffective in failing to investigate a possible insanity
2 defense. This claim was not included in the petition and has only now been alleged after the
3 magistrate judge issued the pending findings and recommendations. Moreover, the Petition
4 presented is wholly exhausted and therefore the Court cannot impose a stay pursuant to Rhines.
5 See Rhines, 544 U.S. at 277-78; Jackson v. Roe, 425 F.3d 654, 661 (9th Cir. 2005) (“Rhines
6 applies to stays of mixed petitions”); Mena v. Long, 813 F.3d 907, 912 (9th Cir. 2016).

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Petitioner’s Motion for Stay (ECF No. 23) is DENIED;
- 9 2. The findings and recommendations filed March 13, 2020 (ECF No. 20), are
10 ADOPTED IN FULL;
- 11 3. The petition for writ of habeas corpus is DENIED; and
- 12 4. The Court declines to issue the certificate of appealability in 28 U.S.C. § 2253.

13 IT IS SO ORDERED.

14 DATED: August 10, 2020

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18 Troy L. Nunley
19 United States District Judge
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