

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL LAWRENCE CHERVENY,  
Petitioner,  
v.  
ERIC ARNOLD, Warden,  
Respondent.

No. 2:17-cv-2528-GGH

ORDER

Petitioner filed his petition for a Writ of Habeas Corpus on December 1, 2017. ECF No. 1. On December 14, 2017 this court directed that petitioner either submit an Application to Proceed Informa Pauperis or pay the filing fee required by the Court. ECF No. 3. On January 2, 2018 petitioner paid the filing fee. On January 5, 2017, petitioner filed a Motion for Stay and Abeyance pursuant to Rhines v. Weber, 544 U.S. 269 (2005) in order to permit him to exhaust his state remedies by petitioning the California Supreme Court for a writ. ECF No. 5. However, petitioner states in the petition at page 5 that he filed a petition for habeas corpus in the California Supreme Court, and that Court’s records reflect that a habeas matter filed under Case Number S215518 was resolved by the Court, and the case was closed on December 23, 2013.

Under Rhines, a district court may stay a mixed petition to allow a petitioner to present an unexhausted claim to the state courts. Rhines at 277. Here, however, it appears that petitioner may have completed his exhaustion through the habeas petition referred to above. Thus stay and

1 abeyance would not be appropriate in this case. If, however, the identified state habeas petition  
2 related to a different conviction than the one at issue in the instant case, or different issues in the  
3 same case as currently at bar, stay and abeyance may be considered by the court.

4 The court will need clarification from petitioner of how the fact that he identifies a prior  
5 habeas in his current petition at ECF No. 1 at page 5, and the state supreme court has a record of  
6 this case as stated above, doesn't result in a conclusion that his state remedies have been fully  
7 exhausted.

8 In light of the foregoing IT IS HEREBY ORDERED that: Petitioner shall, within 30 days  
9 of the date of this Order, explain why the state supreme court habeas petition referred to above  
10 does not constitute exhaustion.

11 **IT IS SO ORDERED.**

12 Dated: January 23, 2018

13 /s/ Gregory G. Hollows  
14 UNITED STATES MAGISTRATE JUDGE  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28