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| 8 | UNITED STATES DISTRICT COURT | |
| 9 | FOR THE EASTERN DISTRICT OF CALIFORNIA | |
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| 11 | JAMES BOOKER, | Case No. 2:20-cv-01894-NONE-JDP |
| 12 | Petitioner, | FINDINGS AND RECOMMENDATIONS TO DENY PETITIONER'S MOTION TO STAY |
| 13 | V. | OBJECTIONS DUE IN THIRTY DAYS |
| 14 | J. LYNCH, | ECF No. 9 |
| 15 16 | Respondent. | |
| 10 | Petitioner James Booker, a state prison | er without counsel, filed a writ of habeas corpus |
| 17 | under 28 U.S.C. § 2254. ECF No. 1. I dismissed that petition with leave to amend on October 6, | |
| 19 | 2020 after finding that the petition appeared to contain only unexhausted claims. ECF No. 8 at 2. | |
| 20 | In a footnote, I also noted that petitioner's claims might be time-barred. <i>Id.</i> at 2 n.1. My order | |
| 21 | gave petitioner thirty days to file an amended petition which addressed both issues. <i>Id.</i> at 2. As | |
| 22 | of this filing, petitioner has not filed an amended petition. He has, however, filed a motion to | |
| 23 | stay, ECF No. 9, which I recommend be denied without prejudice. | |
| 24 | Petitioner's motion fails because there is no longer any petition to stay. As state above, I | |
| 25 | dismissed his initial petition with leave to amend on October 6 and before petitioner motioned for | |
| 26 | a stay under <i>Rhines v. Weber</i> , 544 U.S. 269 (2005). At that point, the initially filed petition was | |
| 27 | no longer operative. I will deny petitioner's motion to stay without prejudice. If he wishes to | |
| 28 | obtain a stay under <i>Rhines</i> , he should file an amended petition and then resubmit a motion to stay. | |
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| 1 | He is advised that a petitioner seeking a <i>Rhines</i> stay must show: (1) good cause for his failure to | |
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| 2 | exhaust before advancing to federal court, (2) that the unexhausted claims are not "plainly | |
| 3 | meritless," and (3) that he has not engaged in "abusive litigation tactics or intentional delay." 544 | |
| 4 | U.S. at 277-78. He should discuss those elements in any future motion to stay he files. | |
| 5 | It is ORDERED that the Clerk of Court shall assign a district judge to rule on these | |
| 6 | findings and recommendations. | |
| 7 | I recommend that petitioner's motion for a stay be denied. ECF No. 9. These findings | |
| 8 | and recommendations are submitted to the U.S. District Court judge presiding over this case | |
| 9 | under 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States | |
| 10 | District Court, Eastern District of California. Within thirty days of the service of the findings and | |
| 11 | recommendations, petitioner may file written objections to the findings and recommendations | |
| 12 | with the court and serve a copy on all parties. That document must be captioned "Objections to | |
| 13 | Magistrate Judge's Findings and Recommendations." The district judge will then review the | |
| 14 | findings and recommendations under 28 U.S.C. § 636(b)(1)(C). | |
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| 16 | IT IS SO ORDERED. | |
| 17 | Dated: November 17, 2020 | |
| 18 | JEREMY D. PETERSON UNITED STATES MAGISTRATE JUDGE | |
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