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United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM J. RAMOS, JR.,

No. C 05-3752 SI

Petitioner,

DEATH PENALTY CASE

v.

KEVIN CHAPPELL, Warden, San Quentin State
Prison,

**ORDER DENYING RESPONDENT'S
MOTION TO DISMISS AND GRANTING
PETITIONER'S MOTION FOR A STAY**

Respondent.

_____ /

Petitioner William J. Ramos, Jr. is a condemned prisoner at San Quentin. He has filed a habeas petition containing forty-seven claims. Respondent contends that the petition must be dismissed because it contains unexhausted claims. Petitioner counters that the petition should instead be stayed and held in abeyance pending his exhaustion of claims in state court. For the reasons stated below, respondent's motion to dismiss is DENIED. Petitioner's motion for stay and abeyance is GRANTED.

BACKGROUND

Petitioner pleaded guilty in Contra Costa County Superior Court to the murders of Tonya Karr,

1 Minnie Mae Coombs, and Janice Butler, and admitted the multiple-murder special circumstance
2 allegation. A jury sentenced petitioner to death in November 1992.

3 The California Supreme Court affirmed petitioner's conviction on November 29, 2004. *People*
4 *v. Ramos*, 34 Cal. 4th 494 (2004). On September 29, 2006, petitioner filed a *pro se* state habeas petition
5 in the California Supreme Court. (ECF Doc. No. 23, at 7.) That petition was dismissed as improperly
6 filed. (ECF Doc. No. 23, at 8.) Petitioner's counsel filed a state habeas petition in the California
7 Supreme Court on August 11, 2009, which was denied on the merits of the claims and, in part, on
8 procedural grounds. (ECF Doc. No. 23, at 8.)

9 Petitioner initiated the present federal capital habeas action on September 16, 2005, when he
10 asked the Court to appoint counsel and stay his execution pending the completion of this action. The
11 Court granted petitioner's requests and referred the matter to the Court's Selection Board for
12 recommendation of counsel to represent him. (ECF Doc. No. 3.)

13 Counsel was appointed on September 28, 2012. (ECF Doc. No. 9.) The Court granted petitioner
14 equitable tolling on July 21, 2013. (ECF Doc. No. 19.) Petitioner filed an amended habeas petition on
15 June 16, 2014. (ECF Doc. No. 23.)

16 On July 15, 2014, the parties conferred telephonically and agreed upon the exhaustion status of
17 the claims contained in the amended petition. (ECF Doc. No. 24.) The parties agree that claims 2.D,
18 24, 25, 30, 31, 33, 37, 39, 48, and 49 are unexhausted, and that claim 41 is both unexhausted and
19 premature. (ECF Doc. No. 24.)

20 Respondent filed a motion to dismiss on August 19, 2014. (ECF Doc. No. 26.) He contends that
21 petitioner's unexhausted and unripe claims must be dismissed and litigation should proceed only on the
22 remaining exhausted claims. Petitioner counters that the petition should instead be stayed and held in
23 abeyance pending his exhaustion of claims in state court. (ECF Doc. No. 29.) He argues that he is
24 entitled to a stay under *Rhines v. Weber*, 544 U.S. 269 (2005). Respondent contends that a stay is not
25 warranted.

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2 **LEGAL STANDARD**

3 The Supreme Court follows a rule of "total exhaustion" requiring that all claims in a habeas
4 petition be exhausted before a federal court may grant the petition. *Rose v. Lundy*, 455 U.S. 509, 522
5 (1982). A district court is permitted, however, to stay a mixed petition to allow a petitioner to exhaust
6 his claims in state court without running afoul of the one-year statute of limitations period to file for
7 federal habeas review imposed by the Antiterrorism and Effective Death Penalty Act of 1996
8 ("AEDPA"). *Rhines v. Weber*, 544 U.S. 269, 273-75 (2005). A district court must stay a mixed petition
9 if: 1) the petitioner has good cause for his failure to exhaust his claims, 2) the unexhausted claims are
10 potentially meritorious, and 3) there is no indication that the petitioner intentionally engaged in dilatory
11 tactics. *Id.* at 278.

12 The Supreme Court has not articulated with precision what constitutes "good cause" for purposes
13 of granting a stay under *Rhines*. In *Pace v. DiGuglielmo*, 544 U.S. 408, 416 (2005), the Supreme Court
14 stated in *dicta* that a "petitioner's reasonable confusion about whether a state filing would be timely will
15 ordinarily constitute 'good cause' for him to file in federal court" without exhausting state remedies first.
16 More recently, in *Martinez v. Ryan*, 132 S. Ct. 1309, 1315 (2012), the Supreme Court held that
17 ineffective assistance of post-conviction counsel may constitute cause for overcoming the procedural
18 default.

19 The Ninth Circuit has clarified that "good cause" for failure to exhaust does not require
20 "extraordinary circumstances." *Jackson v. Roe*, 425 F.3d 654, 661-62 (9th Cir. 2005). Nonetheless, the
21 good cause requirement should be interpreted in light of the Supreme Court's admonition that stays be
22 granted only in "limited circumstances" so as not to undermine AEDPA's twin goals of reducing delays
23 in the execution of criminal sentences and streamlining federal habeas proceedings by increasing a
24 petitioner's incentive to exhaust all claims in state court. *Wooten v. Kirkland*, 540 F.3d 1019, 1024 (9th
25 Cir. 2008). A petitioner's mistaken impression that his counsel included a claim in an appellate brief
26 does not qualify as "good cause" for failure to exhaust as such an allegation could be raised by any
27 petitioner, rendering stay-and-abeyance orders routine. *Id.*

1 Most recently, in *Blake v. Baker*, 745 F.3d 977, 983 (9th Cir. 2014), the Ninth Circuit held that
2 "[ineffective assistance] by post-conviction counsel can be good cause for a *Rhines* stay," finding that
3 such a conclusion was consistent with and supported by *Martinez*. The court found that the "good cause
4 element is the equitable component of the *Rhines* test," and that "good cause turns on whether the
5 petitioner can set forth a reasonable excuse, supported by sufficient evidence, to justify [the failure to
6 exhaust.]" *Id* at 982. The petitioner in *Blake* argued that he failed to exhaust his ineffective assistance
7 of trial counsel claim because state post-conviction counsel failed to discover evidence that he suffered
8 extreme abuse as a child, as well as organic brain damage and psychological disorders. *Id.* He
9 supported his argument with evidence of his abusive upbringing and history of mental illness. In light
10 of this showing, the Ninth Circuit found that the district court abused its discretion in denying a stay and
11 remanded the case. *Id.* at 983-84.

12 13 DISCUSSION

14 Respondent's request to dismiss the petition because it contains unexhausted claims is
15 unwarranted because a mixed petition may be stayed provided that petitioner meets the *Rhines*
16 requirements. 544 U.S. 278. As discussed below, petitioner meets the requirements for a stay.

17 18 1. Good Cause

19 Petitioner alleges that the ineffective assistance of his post-conviction counsel constitutes good
20 cause for the failure to exhaust. Petitioner argues that due to post-conviction counsel's ineffective
21 assistance, many of his claims were never raised in state court, even though they were apparent from
22 the record. Claims 2.D, 24, 25, 48, and 49 are examples of such claims.

23 In claim 2.D, petitioner alleges that trial counsel was ineffective in conceding petitioner's
24 competency to plead guilty and to stand trial. Petitioner asserts that trial counsel "had consulted with
25 mental health experts who diagnosed [petitioner] with paranoid personality disorder, posttraumatic
26 stress disorder, and other disorders." (ECF Doc. No. 29, at 11.) Prior to entering a guilty plea,
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1 petitioner's counsel advised the court that petitioner would be doing so with the conscious intent to
2 receive the death penalty. (ECF Doc. No. 29, at 11.) Defense counsel informed the court at that time
3 that petitioner had advised him that should counsel not cooperate with petitioner's plan to plead guilty,
4 petitioner would seek counsel's removal. (ECF Doc. No. 29, at 12.) Moreover, petitioner asserts that
5 during his pre-trial detention, he misused medication twice in a manner that was consistent with a
6 suicide attempt. (ECF Doc. No. 29, at 11.) Petitioner contends that both counsel and the court should
7 have had a reasonable doubt as to his competency. *Moran v. Godinez*, 57 F.3d 690, 695 (9th Cir. 1994),
8 superseded on other grounds by AEDPA.

9 Petitioner also has provided a declaration from Mark Vermeulen, one of his post-conviction
10 attorneys, who admits that it was not a strategic choice to fail to attempt contact with trial counsel.
11 Counsel also notes that he failed to obtain an independent psychological evaluator despite his intent to
12 do so and that he failed to inquire about sensitive elements of petitioner's past or ask much of petitioner
13 for fear of damaging the relationship. (ECF Doc. No. 23-1, Exhibit 8.) Post-conviction counsel admits
14 he was overwhelmed and under-supported in his attempts to investigate and prepare petitioner's state
15 habeas petition. (ECF Doc. No. 23-1, Exhibit 8.) As such, petitioner asserts that post-conviction
16 counsel were ineffective for failing to raise these, as well as other, unexhausted claims.

17 Based on its review of the record, the Court finds that petitioner has advanced a reasonable
18 excuse, supported by evidence, to justify his failure to exhaust his claims. *See Blake*, 745 F.3d 982.
19 Accordingly, the Court concludes that petitioner's showing of post-conviction ineffective assistance
20 satisfies the *Rhines* good-cause requirement.

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22 **2. Merit of Claims**

23 Petitioner argues that each of his unexhausted claims is potentially meritorious and that each
24 meets the requirements for a stay under *Rhines*. (ECF Doc. No. 29, at 3.) In his Reply, respondent
25 argues that petitioner has failed to show that any of his claims are potentially meritorious because he
26 has not demonstrated prior counsel's ineffectiveness. Respondent focuses his argument on claims 33,
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1 37, 48, and 49. (ECF Doc. No. 30, at 7.)

2 Under the second prong of the *Rhines* test, a district court would abuse its discretion if it were
3 to grant a petitioner a stay when his claims are plainly "meritless." *Rhines*, 544 U.S. at 277. Here,
4 petitioner has articulated cognizable constitutional claims supported by relevant legal authority, and has
5 presented such evidence and offers of proof as are presently available to him. Based on its review of
6 the record, the Court cannot conclude that petitioner's unexhausted claims are plainly meritless.

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8 **3. Absence of Dilatory Tactics**

9 Under the third prong of the *Rhines* test, "it likely would be an abuse of discretion for a district
10 court to deny a stay and to dismiss a mixed petition if . . . there is no indication that the petitioner
11 engaged in intentionally dilatory litigation tactics." *Id.* at 278. The Court already found that the
12 petitioner has been pursuing his rights diligently when it granted equitable tolling. (ECF Doc. No. 19)
13 Since then, petitioner has been following this Court's Habeas Local Rules in litigating his petition.
14 There is no further evidence that petitioner has engaged in dilatory litigation tactics to date. Petitioner
15 satisfies the third prong of *Rhines*.

16
17 **CONCLUSION**

18 For the above-mentioned reasons, the Court finds as follows:


- 19 1) Respondent's motion to dismiss is DENIED;
- 20 2) Petitioner's motion for a stay is GRANTED;
- 21 3) Counsel for petitioner shall file an exhaustion petition raising claims 2D, 24, 25, 30, 31,
22 33, 37, 39, 41, 48, and 49 in state court within 90 days of the date of this Order;
- 23 4) To the extent that any claim contains allegations or supporting documentation that were
24 not part of the state court record, pursuant to *Pinholster*, such materials must be presented to
25 the California Supreme Court before they may be reviewed by this Court under 28 U.S.C. §
26 2254(d)(1). Accordingly, they should be included in the exhaustion petition;

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5) One hundred and twenty days after the entry of this Order, and every 90 days thereafter until proceedings in his state exhaustion case are completed, petitioner shall serve and file in this Court a brief report updating the Court and the parties on the status of his pending state habeas action. No later than 30 days after proceedings in his state case are completed, petitioner shall serve and file notice that proceedings are completed.

IT IS SO ORDERED.

DATED: November 12, 2014



SUSAN ILLSTON
United States District Judge