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United States District Court

For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HI QUOC TRUONG,

No. C-06-4235 MMC

Petitioner,

**ORDER GRANTING APPLICATION TO
STAY FEDERAL HABEAS PETITION
PENDING EXHAUSTION OF CLAIMS IN
STATE COURT**

v.

DAVID RUNNELS, Warden, High Desert
State Prison,

(Docket No. 2)

Defendant.

_____ /

Petitioner, a California prisoner, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Before the Court is petitioner's motion, filed July 10, 2006, to stay his federal habeas petition while he exhausts certain of the claims contained therein in state court.

BACKGROUND

In 2002, in the California Superior Court for the City and County of San Francisco, petitioner was convicted of one count of first degree murder and one count of attempted murder, with related sentencing enhancements for use of a firearm. On the first count, first degree murder, petitioner was sentenced to a term of twenty-five years to life in state prison, with a consecutive term of 25 years to life for the firearm use allegation. On the second count, attempted murder, petitioner was sentenced to a concurrent term of life

1 imprisonment with the possibility of parole, with a consecutive term of twenty years for the
2 firearm allegation associated with that count. The California Court of Appeal affirmed
3 petitioner's conviction, and the Supreme Court of California denied review. On July 6,
4 2006, four days before the instant petition was filed in federal court, petitioner filed a
5 petition for a writ of habeas corpus in Superior Court, which petition remains pending.

6 Petitioner states that of the three claims contained in his federal petition, two are
7 unexhausted until the state court rules on his state petition. In his first claim, which
8 petitioner states he exhausted during his direct appeal, petitioner contends the state
9 violated the federal Constitution by suppressing exculpatory evidence it was required to
10 disclose to defense counsel prior to trial. In his second and third claims, which are included
11 in his pending state petition, petitioner contends his trial counsel provided ineffective
12 assistance of counsel by failing to present a manslaughter defense, and that the prosecutor
13 violated his right to due process by making a victim impact argument during closing
14 argument.

15 DISCUSSION

16 Petitioner has filed a motion to stay his federal petition to allow him to exhaust his
17 unexhausted claims. A district may stay a "mixed" petition to allow for exhaustion of
18 unexhausted claims when (1) there is "good cause for the petitioner's failure to exhaust his
19 claims first in state court"; (2) the "unexhausted claims are potentially meritorious"; and (3)
20 "there is no indication that the petitioner engaged in intentionally dilatory litigation tactics."
21 See Rhines v. Webber, 125 S. Ct. 1528, 1535 (2005); see also Pace v. DiGuglielmo, 125
22 S. Ct. 1807, 1813-14 (2005) (noting prisoner may file "protective" petition in federal court
23 and ask federal court to stay federal habeas proceedings until state remedies exhausted).

24 Here, petitioner already has filed a petition in state court, prior to filing his federal
25 petition, but the state court has not yet ruled on that petition. As petitioner's unexhausted
26 claims are potentially meritorious, and there is no evidence that he has engaged in
27 intentionally dilatory litigation tactics, the request for a stay will be granted.

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CONCLUSION

In light of the foregoing, petitioner's motion for a stay of the instant petition is GRANTED, and the above-titled action is hereby STAYED until petitioner has exhausted all of the claims in his federal petition.

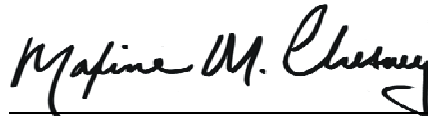
Petitioner is cautioned that if he wishes to have this Court consider his claims, he must notify this Court, within thirty days of the state Supreme Court's ruling on his state court petition, that he wishes to reopen this action.

The Clerk shall ADMINISTRATIVELY CLOSE the file pending the stay of this action.

This order terminates Docket No. 2.

IT IS SO ORDERED.

Dated: July 31, 2006



MAXINE M. CHESNEY
United States District Judge