

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
7

8 DANELL L. PRATT,

No. C 09-4005 MHP (pr)

9 Petitioner,

**ORDER TO STAY PROCEEDINGS
AND ADMINISTRATIVELY CLOSE
CASE**

10 v.

11 SAN QUENTIN STATE PRISON
12 WARDEN,

13 Respondent.
_____/

14
15 Petitioner has moved for a stay and abeyance of this action so that he may exhaust
16 state court remedies for some claims in addition to those already briefed that he wishes to
17 present to this court for federal habeas review. Respondent has not opposed the stay. Upon
18 due consideration, the court GRANTS petitioner's motion to stay and hold these proceedings
19 in abeyance. (Docket # 13.) Liberally construed, the pro se motion satisfies the criteria for
20 permitting a stay identified in Rhines v. Weber, 544 U.S. 269, 277-78 (2005).

21 Petitioner states that he did not intend to start his federal habeas action when he filed
22 his federal habeas petition but instead was attempting to petition for writ of certiorari and
23 inadvertently sent his filing to this court instead of the U.S. Supreme Court. Although it is
24 not clear why he wants to petition the U.S. Supreme Court for writ of certiorari – as filing
25 such a petition is not necessary to exhaust state court remedies – such a course of action is
26 not impermissible. He also may have additional claims that he wants to present to state court
27 before proceeding with this action. With this action stayed, he will be able to attempt to
28 pursue his desired course of action.

1 This action is now STAYED and the clerk shall ADMINISTRATIVELY CLOSE the
2 action. Nothing further will take place in this action until petitioner exhausts any
3 unexhausted claims and, within thirty days of doing so, moves to reopen this action, lift the
4 court's stay and amend his petition to add his new claims. Petitioner must act diligently to
5 get his state court petition filed and promptly return to federal court after his state court
6 proceedings have concluded. See id.; Kelly v. Small, 315 F.3d 1063, 1071 (9th Cir. 2003).

7 IT IS SO ORDERED.

8 DATED: January 7, 2011


Marilyn Hall Patel
United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28