

United States District Court
For the Northern District of California

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

ALTON A. KING,

No. C 11-2792 SI

Petitioner,

ORDER ON INITIAL REVIEW

v.

DERRAL G. ADAMS, Warden, et al.,

Respondents.

Alton A. King, an inmate at the California State Prison at Corcoran, filed this action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. King’s petition is a “mixed” petition; it contains six claims that King exhausted on direct appeal and three claims that King has yet to exhaust through collateral review. This Court may not adjudicate a mixed petition, and ordinarily would be required to dismiss the petition until all of its claims have been exhausted. See Rose v. Lundy, 455 U.S. 509 (1982). In his petition, however, King requests that the Court allow him to utilize the stay-and-abeyance procedure of Rhines v. Webber, 544 U.S. 269 (2005), to finish exhausting his claims.

A district court may stay a mixed habeas petition to allow the petitioner to exhaust state court remedies as to those claims that have not yet been presented to the state’s highest court. See Rhines, 544 U.S. at 277-78. This stay-and-abeyance procedure “is only appropriate when the district court determines there was good cause for the petitioner’s failure to exhaust his claims first in state court,” the claims are not meritless, and there are no intentionally dilatory litigation tactics by the petitioner. Id.

King filed his federal habeas petition on June 7, 2011, just one day before the one-year AEDPA statute-of limitations on his claims expired. See 28 U.S.C. § 2244(d). His petition indicates that he has

1 yet to begin the state court collateral review process. It only briefly describes the “good cause” for his
2 failure to do so, stating only that “his ability to fully develop the facts on this issue has been severely
3 hampered by apparent prosecutorial overreaching.” Petition at 13.

4 Without more, the Court cannot find good cause for King’s failure to exhaust all of his claims.
5 Accordingly, IT IS HEREBY ORDERED THAT King shall file a formal motion to stay this action **by**
6 **July 29, 2011**. In his motion, King must fully explain the circumstances that constitute “good cause”
7 for his failure to fully exhaust his habeas petition.

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9 **IT IS SO ORDERED.**

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11 Dated: July 5, 2011



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SUSAN ILLSTON
United States District Judge