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

MANUEL VILLA,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondent.

) Nos. C 13-2228 JSW (PR)  
) C 13-2297 JSW (PR)

) **ORDER CONSOLIDATING CASES;**  
) **DISMISSING CASE NO. C. 13-2297**  
) **JSW (PR); STAYING AND**  
) **ADMINISTRATIVELY CLOSING**  
) **CASE NO. C. 13-2228 JSW (PR);**  
) **GRANTING LEAVE TO PROCEED IN**  
) **FORMA PAUPERIS; INSTRUCTIONS**  
) **TO CLERK**

) **(Docket No. 2)**

**INTRODUCTION**

Petitioner, a prisoner of the State of California proceeding pro se, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the constitutionality of his state court conviction.

**BACKGROUND**

In 2009, Petitioner was convicted in Monterey County Superior Court of possession of a deadly weapon by a prisoner. The California Court of Appeal affirmed the judgment on appeal, and the California Supreme Court denied a petition for review. Petitioner then filed the instant federal petition.

1 **DISCUSSION**

2 I. Standard of Review

3 This court may entertain a petition for a writ of habeas corpus “in behalf of a  
4 person in custody pursuant to the judgment of a State court only on the ground that he is  
5 in custody in violation of the Constitution or laws or treaties of the United States.” 28  
6 U.S.C. § 2254(a). It shall “award the writ or issue an order directing the respondent to  
7 show cause why the writ should not be granted, unless it appears from the application that  
8 the applicant or person detained is not entitled thereto.” *Id.* § 2243.

9 II. Consolidation and Dismissal

10 Petitioner currently has two open cases in which he seeks federal habeas relief,  
11 Case No. C 13-2228 JSW (PR) and Case No. C 13-2297 JSW (PR). His habeas petition  
12 was filed in Case No. C 13-2228 JSW (PR). Petitioner then filed a motion to stay his  
13 petition, and because the motion did not include a case number, the Clerk filed it in a new  
14 case, Case No. C 13-2297 JSW (PR). Because the motion and petition both seek federal  
15 habeas relief from the same state court judgment, there is no need to have two cases.  
16 Accordingly, the two cases will be consolidated, and the later case, Case No. C 13-2297  
17 JSW (PR), will be dismissed. Below, the Court address the motion for a stay as it pertains  
18 to the petition filed in Case No. C 13-2228 JSW (PR).

19 III. Legal Claims and Stay

20 The petition sets forth the following claims: (1) that he received ineffective  
21 assistance of counsel on appeal; (2) that he received ineffective assistance of counsel at  
22 trial; (3) that the trial court abused its discretion in a variety of ways; (4) that the trial  
23 court did not issue certain instructions to the jury regarding eyewitness testimony; (5) that  
24 there was insufficient evidence to support the conviction; and (6) that the trial court failed  
25 to admit evidence pertaining to Sergeant Sullivan, a prosecutorial witness, after reviewing  
26 the material *in camera*.

27 When liberally construed, the foregoing claims are cognizable. The Court notes  
28

1 that while the second claim cites no federal constitutional right, he does claim that the trial  
2 court's decisions denied him a "fair and impartial trial." This can be liberally construed  
3 as a claim for the violation of the federal constitutional right to due process which  
4 guarantees a defendant a fair and impartial trial. Similarly, the sixth claim can be liberally  
5 construed as a claim for the violation of due process because due process is violated when  
6 the exclusion of evidence causes the trial to be fundamentally unfair.

7 Petitioner moves for a stay of proceedings to allow him to exhaust his unexhausted  
8 claims, namely all but the sixth claim in his petition. The United States Supreme Court  
9 has held that district courts have authority to stay mixed petitions to allow exhaustion.  
10 *Rhines v. Webber*, 125 S.Ct. 1528, 1535 (2005). Such stays can, however, only be  
11 granted upon a showing of good cause for petitioner's failure to exhaust the issues before  
12 filing the federal petition, and a showing that the issues which the petitioner proposes to  
13 exhaust are "potentially meritorious." *Id.* The unexhausted claims have been found,  
14 when liberally construed, to be cognizable, and thus they are potentially meritorious. The  
15 failures by appellate counsel to pursue his claims on appeal described in the Petitioner's  
16 motion sufficiently show good cause for his failure to exhaust his claims sooner.  
17 Therefore, the motion for a stay will is granted, below.

### 18 CONCLUSION

19 For the foregoing reasons and for good cause shown,

20 Case No. C 13-2297 JSW (PR) is DISMISSED and all pending motions in that  
21 case are terminated. The Clerk shall enter judgment and close the file in Case No. C 13-  
22 2297 JSW (PR).

23 Case No. C 13-2228 JSW (PR) is STAYED to allow Petitioner to present his  
24 unexhausted issues in state court. If Petitioner is not granted relief in state court, he may  
25 return to this Court and ask that the stay be lifted. To do so, Petitioner **must** notify this  
26 Court within thirty days after the state courts have completed their review of his claims.  
27 The notice **must** clearly identify in the caption that it is to be filed in Case No. C 13-2228  
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1 JSW (PR). If he fails to do so, this Court may vacate the stay and act on this petition  
2 based solely on the one unexhausted claim. *See Rhines*, 544 U.S. at 278 (district court  
3 must effectuate timeliness concerns of AEDPA by placing “reasonable limits on a  
4 petitioner’s trip to state court and back”). Upon Petitioner’s filing of the notification that  
5 all of his claims have been exhausted, the stay of this case will be lifted, the case will be  
6 reopened, and the Court will schedule further proceedings. The Clerk shall  
7 administratively close Case No. C 13-2228 JSW (PR); this closure has no legal effect.

8 Petitioner is GRANTED leave to proceed in forma pauperis in both cases.

9 The Clerk shall file a copy of this order in both Case No. C 13-2228 JSW (PR)  
10 and Case No. C 13-2297 JSW (PR).

11 IT IS SO ORDERED.

12 DATED: July 1, 2013

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15 JEFFREY S. WHITE  
16 United States District Judge  
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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA  
4

5 MANUEL VILLA,  
6 Plaintiff,  
7

Case Number: CV13-02228 JSW  
CV13-02297 JSW

8 v.

**CERTIFICATE OF SERVICE**


9 STATE OF CALIFORNIA et al,  
10 Defendant.  
\_\_\_\_\_ /

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
12 Court, Northern District of California.

13 That on July 1, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said  
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing  
15 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
16 receptacle located in the Clerk's office.

17 Manuel Villa K90355  
18 Corcoran State Prison  
19 P.O. Box 3481  
20 Corcoran, CA 93212

Dated: July 1, 2013

  
Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk