

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

SHAHPOR GHOBADI,

No. C 09-02459 CW (PR)

Petitioner,

ORDER STAYING HABEAS
PROCEEDINGS; DIRECTING
PETITIONER TO FILE QUARTERLY
STATUS REPORTS; AND DIRECTING
CLERK TO ADMINISTRATIVELY CLOSE
THIS CASE UNTIL THE COURT
ISSUES ORDER LIFTING STAY

v.

STATE OF CALIFORNIA, Warden,

Respondent.

Petitioner, a state prisoner, has filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 raising four claims. In an Order dated February 23, 2010, the Court ordered Respondent to show cause why the petition should not be granted. Thereafter, Respondent filed a motion to dismiss the petition for failure to exhaust state court remedies.

In an Order dated December 9, 2010, the Court granted Respondent's motion to dismiss the petition and directed Petitioner to make an election regarding how he wanted to cure the problem of the unexhausted claims. Petitioner was instructed to submit (1) a request to dismiss his unexhausted claims and proceed with his exhausted claim (claim three) or (2) a request to stay the petition while he returns to state court to exhaust his unexhausted claims.

On December 23, 2010, Petitioner submitted a request "for a stay until the unexhausted claims (1, 2, 4) are exhausted in state court." (Pet'r Letter dated Dec. 20, 2010 at 1.)

Prisoners in state custody who wish to challenge in federal habeas proceedings either the fact or length of their confinement are first required to exhaust state judicial remedies by presenting the highest state court available with a fair opportunity to rule

1 on the merits of each and every claim they seek to raise in federal
2 court. See 28 U.S.C. § 2254(b),(c); Rose v. Lundy, 455 U.S. 509,
3 515-16 (1982). If available state remedies have not been exhausted
4 as to all claims, the district court must dismiss the petition.
5 Id. at 510; Guizar v. Estelle, 843 F.2d 371, 372 (9th Cir. 1988).
6 A dismissal solely for failure to exhaust is not a bar to returning
7 to federal court after exhausting available state remedies. See
8 Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995).

9 Petitioners may seek a stay of the petition pursuant to Pace
10 v. DiGuiglielmo, 544 U.S. 408, 416 (2005), under which a prisoner
11 may file a protective petition in federal court and ask the court
12 to stay federal habeas proceedings until all state remedies are
13 exhausted. District courts have the authority to issue stays, and
14 the habeas statute does not deprive them of that authority. Rhines
15 v. Webber, 544 U.S. 269, 277-278 (2005). A stay is appropriate
16 where the district court determines that good cause existed for the
17 petitioner's failure to exhaust his claims in state court, and that
18 such claims are potentially meritorious. Id.; see also Pace, 544
19 U.S. at 416.

20 Here, it appears that good cause exists for Petitioner's
21 failure to exhaust his claims on direct appeal because his claims
22 could be raised by way of state habeas corpus. Moreover, the
23 claims state cognizable bases for federal habeas relief. This is
24 Petitioner's first habeas petition, and there is no evidence that
25 he seeks the stay for improper purposes. See Fetterly v. Paskett,
26 997 F.2d 1295, 1301-02 (9th Cir. 1993) (holding that a stay for the
27 purpose of permitting exhaustion of unexhausted claims should be
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1 granted only if the claims petitioner seeks to pursue are
2 cognizable under § 2254; there is a likelihood of prejudice to
3 petitioner if the stay is not granted; and there is no evidence
4 that the motion for a stay is brought to delay, vex, or harass, or
5 that the request is an abuse of the writ). Accordingly, the Court
6 GRANTS Petitioner's request for a stay.

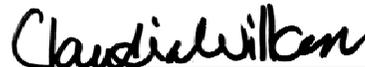
7 These proceedings are hereby STAYED pending Petitioner's
8 exhaustion of his state judicial remedies. Petitioner must act
9 diligently in exhausting his state judicial remedies, or the stay
10 may be lifted. He must file quarterly reports describing the
11 progress of his state court proceedings, commencing thirty (30)
12 days from the date of this Order and continuing every ninety (90)
13 days thereafter until his state court proceedings are terminated.
14 He must also attach to his status reports copies of the cover page
15 of any document that he files with or receives from the state
16 courts relating to the claims.

17 The Clerk of the Court shall ADMINISTRATIVELY CLOSE the file
18 pending the stay of this action. Nothing further will take place
19 in this action until Petitioner receives a final decision from the
20 highest state court and, within thirty (30) days of doing so, moves
21 to reopen the action, lift the Court's stay and amend the stayed
22 petition to add the newly-exhausted claims.

23 This Order terminates Docket no. 16.

24 IT IS SO ORDERED.

25 Dated: 1/6/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 SHAHPOR GHOBADI,

5 Plaintiff,

6 v.

7 STATE OF CALIFORNIA et al,

8 Defendant.

Case Number: CV09-02459 CW

CERTIFICATE OF SERVICE

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

11 That on January 7, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
14 in the Clerk's office.

15 Shahpor Ghobadi F-18677
16 CALIFORNIA SUBSTANCE ABUSE TREATMENT FACILITY (5242)
17 P.O. BOX 5242
18 CORCORAN, CA 93212-5242

19 Dated: January 7, 2011

20 Richard W. Wieking, Clerk
21 By: Nikki Riley, Deputy Clerk
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