

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

3 LARRY DARNELL THOMAS,

No. C 11-04709 CW (PR)

4 Petitioner,

ORDER GRANTING MOTION TO STAY
HABEAS PROCEEDINGS; GRANTING
LEAVE TO PROCEED IN FORMA
PAUPERIS; DIRECTING CLERK OF
THE COURT TO ADMINISTRATIVELY
CLOSE CASE UNTIL STAY IS LIFTED

5 v.

6 MATTHEW CATE,

7 Respondent.

(Docket nos. 2, 3)

8 _____/

9 Petitioner, a state prisoner, has filed this petition for a
10 writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner
11 also has filed a motion to stay the petition while he exhausts his
12 ineffective assistance of counsel claims in state court.

13 A district court may stay a mixed habeas petition, i.e., a
14 petition containing both exhausted and unexhausted claims, to allow
15 the petitioner to exhaust state court remedies as to those claims
16 that have not yet been presented to the state's highest court. See
17 Rhines v. Webber, 544 U.S. 269, 277-78 (2005). In Rhines, the
18 Supreme Court discussed the stay-and-abeyance procedure, explaining
19 that a stay and abeyance "is only appropriate when the district
20 court determines there was good cause for the petitioner's failure
21 to exhaust his claims first in state court," the claims are not
22 meritless, and there are no intentionally dilatory litigation
23 tactics by the petitioner. Id. If the stay is granted, the
24 petitioner does not have to worry that his newly-exhausted claims
25 will be barred by the statute of limitations because those claims
26 remain pending in federal court. King v. Ryan, 564 F.3d 1133,
27 1139, 1140 (9th Cir. 2009).

1 Here, it appears that good cause exists for Petitioner's
2 failure to exhaust his claims of ineffective assistance of trial
3 and appellate counsel on direct appeal because such claims must be
4 raised by way of state habeas corpus. Moreover, the claims state
5 cognizable bases for federal habeas relief. Further, this is
6 Petitioner's first habeas petition, and there is no evidence that
7 he seeks the stay for improper purposes. Accordingly, the Court
8 GRANTS Petitioner's request for a stay.

9 These proceedings are hereby STAYED pending Petitioner's
10 exhaustion of his state judicial remedies. Nothing further will
11 take place in this action until the Court decides further action is
12 appropriate or until Petitioner exhausts the unexhausted claims
13 and, within **thirty days** of doing so, moves to reopen this action
14 and lift the stay.

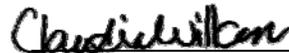
15 Petitioner's motion for leave to proceed in forma pauperis is
16 GRANTED.

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

19 This Order terminates Docket nos. 2 and 3.

20 IT IS SO ORDERED.

21 Dated: 10/26/2011



22 CLAUDIA WILKEN
23 UNITED STATES DISTRICT JUDGE
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 LARRY D THOMAS,

5 Plaintiff,

6 v.

7 MATTHEW CATE et al,

8 Defendant.

Case Number: CV11-04709 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 October 26, 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 Larry Darnell Thomas V91749
16 3C05 104Low
17 CSP - Corcoran
18 P.O. Box 3471
19 Corcoran, CA 93212-3471

20 Dated: October 26, 2011

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