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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ROBERT LEE SMITH,
Petitioner,

v.

RONALD DAVIS,
Respondent.

Case No. 11-cv-03062-EJD

**ORDER DENYING WITHOUT
PREJUDICE MOTION TO FILE
AMENDED PETITION AND FOR
CONTINUED STAY**

Re: Dkt. Nos. 67, 69

Petitioner has filed a Motion To File Amended Petition And For Continued Stay. ECF Dkt. No. 67. Petitioner, who is currently exhausting claims in state court, requests this Court to temporarily lift the stay imposed on his federal petition, amend his federal petition to include additional “materials and facts discovered in the exhaustion process”, and re-impose a stay pending the conclusion of exhaustion proceedings. ECF Dkt. No. 71 at 2. Respondent opposes petitioner’s request on the grounds that petitioner’s requested amendment is untimely. For the reasons discussed below, petitioner’s Motion is DENIED.

Background

In 1993, a jury convicted petitioner of the first degree murders of Michelle Dorsey and James Martin, among other offenses, and found true the special circumstances that petitioner committed multiple murders and that each murder was committed in the course of a robbery.

1 Petitioner was sentenced to death. The Supreme Court of California affirmed his conviction and
2 sentence. *People v. Smith*, 40 Cal. 4th 483 (2007).

3 On June 6, 2006, petitioner filed his state petition for a writ of habeas corpus. The Supreme
4 Court of California denied this petition on June 15, 2011. Following the grant of equitable tolling,
5 petitioner filed a federal habeas petition on November 28, 2012. On September 11, 2013, this
6 Court granted petitioner’s motion for a stay pending exhaustion of claims in state court. ECF Dkt.
7 No. 52. Petitioner filed an exhaustion petition on May 19, 2014. That petition remains pending
8 before the California Supreme Court.

9 **LEGAL STANDARD**

10 Federal Rule of Civil Procedure 15(a) allows pleading amendments “with leave of court”
11 any time during a proceeding. A pleading may be amended once as a “matter of course” before a
12 responsive pleading is served. Fed. Rule Civ. Proc. 15(a). When proposed claims in an
13 amendment are barred by the statute of limitations, Fed. Rule Civ. Proc. 15(c)(2) provides for the
14 relation back of claims to the original pleading if the claims asserted in the amended pleading arise
15 out of the conduct, transaction or occurrence set forth in the original pleading. In *Mayle v. Felix*,
16 545 U.S. 644, 654 (2005), the United States Supreme Court held that “so long as the original and
17 amended petitions state claims that are tied to a common core of operative facts, relation back will
18 be in order.”

19 Petitioner concedes that the one-year statute of limitations imposed on his petition by the
20 Anti-Terrorism and Effective Death Penalty Act has run. *See* 28 U.S.C. § 2244(d)(1), ECF Dkt.
21 No. 67 at 5, ECF Dkt. No. 71 at 2. Petitioner’s requested amendment may be warranted if he
22 demonstrates that his new claims relate back to claims contained in his petition. *Mayle*, 545 U.S.
23 at 654; *King v. Ryan*, 564 F.3d 1133, 1142-43 (9th Cir. 2009).

24 Petitioner fails to make this showing. In fact, petitioner declines to identify the changes
25 incorporated into his amended petition beyond stating that it contains previously pled claims, as
26 well as “additional facts and circumstances relating to those claims”. ECF Dkt. No. 71 at 1.

1 Petitioner contends that respondent “is not entitled to a track-changes document as to an amended
2 petition” and “can do his own document comparison”. *Id.* at 5.

3 Having failed to even identify his proposed amendments, petitioner clearly has not
4 demonstrated that any proposed amendments relate back to claims in his original petition. Absent
5 such a showing, petitioner’s proposed amendments are time-barred. *See, e.g., Chavarria v.*
6 *Hamlet*, 2010 WL 1461040 at * 3 (“[w]here an amendment is sought to reopen a habeas action
7 that has been stayed to allow the petitioner to exhaust claims not in the original petition, the
8 newly-exhausted claims must “relate-back” to the timely, exhausted claims in the original
9 petition”).

10 Petitioner argues that his request for amendment is supported by *Pace v. DiGuglielmo*, 544
11 U.S. 408 (2005). In *Pace*, the United States Supreme Court stated, in dicta, that a “petitioner’s
12 reasonable confusion about whether a state filing would be timely will ordinarily constitute ‘good
13 faith’ for him to file in federal court.” *Id.* at 416. *Pace* in no way compels the amendment of
14 petitioner’s petition.

15 Respondent further contends that although he will “someday” explain how his amendments
16 relate back to claims in his original petition, it is not necessary to do so at this juncture. ECF Dkt.
17 No. 71 at 6. The grant or denial of an amendment however, is not warranted if amendment is
18 futile. *Foman v. Davis*, 371 U.S. 178, 182 (1962) (leave to amend should be freely given unless
19 amendment is futile, untimely, prejudicial or sought in bad faith or with a dilatory motive); *Wyatt*
20 *v. McDonald*, 2011 WL 6100611 at *7 (petitioner’s motion to amend his petition would be futile
21 because new claims are time-barred by statute of limitations). Petitioner has failed to demonstrate
22 that amendment of his petition is warranted.

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CONCLUSION

For the above-mentioned reason, petitioner’s motion is DENIED. Additionally, petitioner’s Administrative Motion To File Exhibits To Amended Petition Under Seal, filed concurrently with his Motion To File Amended Petition, is DENIED as moot.

IT IS SO ORDERED.

Dated: December 18, 2018



EDWARD J. DAVILA
United States District Judge