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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARLON F. BEASON,

Petitioner,

v.

DANNY SAMUEL, Warden,

Respondent.

Case No.: 21cv2052-GPC(RBB)

**ORDER DENYING REQUEST FOR
STAY AND ABEYANCE ORDER AS
MOOT [ECF NO. 2];**

**ORDER REQUIRING RESPONSE
TO FIRST AMENDED PETITION
(28 U.S.C. § 2254)**

On December 8, 2021, Marlon F. Beason, a state prisoner proceeding through counsel, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 against Respondent Danny Samuel, Warden [ECF No. 1]. Petitioner simultaneously filed a Request for Stay and Abeyance Order [ECF No. 2]. For the reasons set forth herein, the Court **DENIES** the Request for Stay and Abeyance Order as **MOOT** and issues an Order Requiring Response to Petition.

I. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner was convicted of robbery (count one). (Pet. 6, ECF No. 1.) The trial court found allegations regarding priors to be true. (Id.) Beason pleaded guilty to possession of two different firearms by a person previously convicted of a felony (counts two and three) and possession of ammunition by a person prohibited from possessing a

1 firearm (count four). (Id.) The court imposed a three strikes sentence of twenty-five
2 years to life on the robbery count; two years, doubled to four, because of the strike prior
3 on count two; concurrent terms of two years for counts three and four; two years for two
4 prison priors; and ten years for two serious felony priors. (Id.) The total term imposed
5 was twenty-five years to life plus sixteen years, which was later amended to twenty-five
6 years to life. (Id. at 6-7.)

7 Petitioner appealed. The California Court of Appeal affirmed in part and
8 remanded in part for sentencing on July 1, 2020. (Id. at 40-58.) Petitioner filed a petition
9 for review with the California Supreme Court; the petition was summarily denied on
10 September 9, 2020. (Id. at 39.) Petitioner then filed a state habeas corpus petition in San
11 Diego Superior Court on August 20, 2021, with new evidence allegedly proving his
12 innocence. (Id. at 6, 60.) The petition was summarily denied. (Id.) Petitioner then filed
13 a habeas corpus petition in the California Court of Appeal; the petition was denied on
14 November 2, 2021. (Id. at 59-65.) He next filed a Petition for Review in the California
15 Supreme Court on November 9, 2021. (Id. at 7.)

16 Petitioner filed his federal petition on December 8, 2021. (Id. at 1.) At the time he
17 filed the federal petition, his Petition for Review remained pending before the California
18 Supreme Court. (Id. at 7.) On the same date that he filed his federal petition, Petitioner
19 filed a separate Request for Stay and Abeyance Order, asking the Court to stay his federal
20 petition and hold the proceedings in abeyance to permit him to exhaust a claim of
21 ineffective assistance of trial counsel under the "stay and abey" procedure set forth in
22 Rhines v. Weber, 544 U.S. 269 (2005). (Req. Stay 1-2, ECF No. 2.) The Court issued an
23 Order Setting Briefing Schedule on Motion for Stay and Abeyance on December 9, 2021,
24 requiring Respondent to file a response by January 31, 2022, and Petitioner to file a reply
25 by February 14, 2022 [ECF No. 3].

26 On January 14, 2022, Beason filed a first amended federal habeas corpus petition,
27 in which he indicated that his Petition for Review had been denied by the California
28 Supreme Court on December 15, 2021. (First Am. Pet. 7, 66, ECF No. 5.) On January

1 28, 2022, Respondent filed a Response to Motion for Stay and Abeyance, in which he
2 argued that in light of the California Supreme Court's denial of Petitioner's Petition for
3 Review on December 15, 2021, the motion to stay and abey should be denied as moot.
4 (Resp. 1-2, ECF No. 6.) Petitioner did not file a reply.

5 **II. LEGAL STANDARDS**

6 A federal court may not address a petition for writ of habeas corpus unless the
7 petitioner has exhausted state remedies with respect to each claim raised. See 28
8 U.S.C.A. § 2254(b)(1)(A) (West 2006); Picard v. Connor, 404 U.S. 270, 275 (1982).
9 Generally, to satisfy the exhaustion requirement, a petitioner must "'fairly present[]" his
10 federal claim to the highest state court with jurisdiction to consider it," or "demonstrate[]"
11 that no state remedy remains available." Johnson v. Zemon, 88 F.3d 828, 829 (9th Cir.
12 1996) (citations omitted). Pursuant to the Anti-Terrorism and Effective Death Penalty
13 Act ("AEDPA"), all federal habeas petitions are subject to a one-year statute of
14 limitations and claims not exhausted and presented to the federal court within the one-
15 year period are forfeited. 28 U.S.C.A. § 2244(d)(1) (West 2006); Dixon v. Baker, 847
16 F.3d 714, 719 (9th Cir. 2017). A district court may not consider a "mixed" federal habeas
17 petition containing both exhausted and unexhausted claims. Rose v. Lundy, 455 U.S.
18 509, 522 (1982).

19 Under Rhines, a district court has discretion to stay a mixed federal habeas petition
20 while the petitioner returns to state court to exhaust any unexhausted claims without
21 losing his right to federal habeas review due to the one-year statute of limitations.
22 Rhines, 544 U.S. at 275-76. Once the petitioner exhausts the state court remedies for all
23 of his claims, the district court lifts the stay and allows the petitioner to proceed in federal
24 court on all claims. See id. The "stay and abey" procedure is available only in "limited
25 circumstances" when the following three conditions are met: (1) the petitioner
26 demonstrates "good cause" for failing to exhaust his claims in state court; (2) the
27 unexhausted claims are potentially meritorious; and (3) there is no indication that the
28 petitioner engaged in dilatory litigation tactics. Id. at 277-78; see also Wooten v.

1 Kirkland, 540 F.3d 1019, 1023 (9th Cir. 2008). "When implemented, the Rhines
2 exception eliminates entirely any limitations issue with regard to the originally
3 unexhausted claims, as the claims remain pending in federal court throughout." King,
4 564 F.3d at 1140.

5 III. DISCUSSION

6 A. Magistrate Judge Authority

7 In habeas cases, magistrate judges may hear and determine nondispositive matters,
8 but not dispositive matters. Hunt v. Plier, 384 F.3d 1118, 1123 (9th Cir. 2004).
9 "[W]here the denial of a motion to stay is effectively a denial of the ultimate relief
10 sought, such a motion is considered dispositive, and a magistrate judge lacks the
11 authority to 'determine' the matter." Mitchell v. Valenzuela, 791 F.3d 1166, 1170 (9th
12 Cir. 2015) (citing S.E.C. v. CMKM Diamonds, Inc., 729 F.3d 1248, 1260 (9th Cir.
13 2013)). "By contrast, a motion to stay is nondispositive where it '[does] not dispose of
14 any claims or defenses and [does] not effectively deny . . . any ultimate relief sought.'" Id.
15 (citing CMKM Diamonds, 729 F.3d at 1260). Here, the denial of Petitioner's motion
16 to stay as moot would not dispose of any claims or defenses or deny the ultimate relief
17 sought by Petitioner. Accordingly, the motion to stay is nondispositive and this Court has
18 the authority to decide it without the need for a report and recommendation to the district
19 judge.

20 B. Request to Stay and Abey is Moot

21 Based on Petitioner's First Amended Petition, he has now exhausted his ineffective
22 assistance of counsel claim in state court. (First Am. Pet. 7, 59-66, ECF No. 5.)
23 Respondent argues that Petitioner's request for a stay is therefore moot. (Resp. 1-2, ECF
24 No. 6.) Petitioner had the opportunity to file a reply but did not do so. The Court agrees
25 with Respondent that there is no longer a need for a stay under Rhines. Accordingly,
26 Petitioner's Request for Stay and Abeyance Order is **DENIED AS MOOT**.

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1 **IV. ORDER REQUIRING RESPONSE TO PETITION**

2 In accordance with Rule 4 of the rules governing petitions for a writ of habeas
3 corpus pursuant to 28 U.S.C. § 2254, and upon a preliminary review of the Petition, **IT**
4 **IS ORDERED** that:

5 1. If Respondent contends the First Amended Petition can be decided without
6 the Court’s reaching the merits of Petitioner’s claims (e.g., because Respondent contends
7 Petitioner has failed to exhaust any state remedies as to any ground for relief alleged in
8 the First Amended Petition, or that the First Amended Petition is barred by the statute of
9 limitations, or that the First Amended Petition is subject to dismissal under Rule 9 of the
10 Rules Governing § 2254 Cases, or that all of the claims are procedurally defaulted, or that
11 Petitioner is not in custody), Respondent must file a motion to dismiss pursuant to Rule 4
12 of the Rules Governing § 2254 Cases no later than **May 9, 2022**. The motion to dismiss
13 must not address the merits of Petitioner’s claims, but rather must address all grounds
14 upon which Respondent contends dismissal without reaching the merits of Petitioner’s
15 claims is warranted.¹ At the time the motion to dismiss is filed, Respondent must lodge
16 with the Court all records bearing on Respondent’s contention. A hearing date is not
17 required for the motion to dismiss.

18 2. If Respondent files a motion to dismiss, Petitioner must file his opposition, if
19 any, to the motion no later than **June 8, 2022**. At the time the opposition is filed,
20 Petitioner must lodge with the Court any records not lodged by Respondent which
21 Petitioner believes may be relevant to the Court’s determination of the motion.

22 3. Unless the Court orders otherwise, Respondent is not to file a reply to
23 Petitioner’s opposition to a motion to dismiss. If the motion is denied, the Court will
24 afford Respondent adequate time to respond to Petitioner’s claims on the merits.

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¹ If Respondent contends Petitioner has failed to exhaust any state remedies as to any ground for relief
28 alleged in the First Amended Petition, the motion to dismiss must also specify the state remedies still
available to Petitioner.

1 4. If Respondent does not contend that the First Amended Petition can be
2 decided without the Court reaching the merits of Petitioner’s claims, Respondent must
3 file and serve an answer to the First Amended Petition, and a memorandum of points and
4 authorities in support of such answer, pursuant to Rule 5 of the Rules Governing § 2254
5 Cases no later than **May 9, 2022**. At the time the answer is filed, Respondent must lodge
6 with the Court all records bearing on the merits of Petitioner’s claims. The lodgments
7 must be accompanied by a notice of lodgment which must be captioned “**Notice of**
8 **Lodgment in 28 U.S.C. § 2254 Habeas Corpus Case — To Be Sent to Clerk’s**
9 **Office**.” Respondent must not combine separate pleadings, orders, or other items into a
10 combined lodgment entry. Each item must be numbered separately and sequentially.

11 5. Petitioner may file a traverse to matters raised in the answer no later than
12 **June 8, 2022**. Any traverse by Petitioner (a) must state whether Petitioner admits or
13 denies each allegation of fact contained in the answer; (b) must be limited to facts or
14 arguments responsive to matters raised in the answer; and (c) must not raise new grounds
15 for relief that were not asserted in the First Amended Petition. Grounds for relief
16 withheld until the traverse will not be considered. No traverse can exceed ten (10) pages
17 in length absent advance leave of Court for good cause shown.

18 6. A request by a party for an extension of time within which to file any of the
19 pleadings required by this Order must be made at least seven (7) days in advance of the
20 due date of the pleading, and the Court will grant a request only upon a showing of good
21 cause. Any request must be accompanied by a declaration under penalty of perjury
22 explaining why an extension of time is necessary.


23 7. Unless otherwise ordered by the Court, this case will be deemed submitted
24 on the day following the date Petitioner’s opposition to a motion to dismiss and/or his
25 traverse is due.

26 8. Every document delivered to the Court must include a certificate of service
27 attesting that a copy of such document was served on opposing counsel (or on the
28 opposing party, if such party is not represented by counsel). Any document delivered to

1 the Court without a certificate of service will be returned to the submitting party and will
2 be disregarded by the Court.

3 **IT IS SO ORDERED.**

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5 Dated: March 7, 2022

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7 Hon. Ruben B. Brooks
8 United States Magistrate Judge
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