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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PATRICK C. DOUGLAS,
Petitioner,
v.
RICK HILL and ROB BONTA, Attorney
General, State of California,
Respondents.

Case No.: 22-CV-00884 JLS (BGS)

**ORDER GRANTING MOTION FOR
STAY AND ABEYANCE**

(ECF Nos. 1, 3)

Patrick C. Douglas (“Petitioner” or “Douglas”) has filed a Petition for Writ of Habeas Corpus (“Pet.,” ECF No. 1), as well as a Supplement thereto (“Pet. Supp.,” ECF No. 4). Petitioner also filed a Motion for Stay and Abeyance (“Mot.,” ECF No. 3), and Supplement thereto (“Mot. Supp.,” ECF No. 5). Respondents Rick Hill and Rob Bonta (collectively, “Respondents”) filed an Opposition to Petitioner’s Motion (“Opp’n,” ECF No. 9), and Petitioner filed a Reply to the Opposition (“Reply,” ECF No. 11). Having considered the Petitioner’s Petition and Motion, the parties’ arguments and the law, the Court **GRANTS** Douglas’s Motion for Stay.

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1 **BACKGROUND**

2 Following a jury trial, Douglas was convicted in San Diego Superior Court of two
3 counts of attempted murder, two counts of assault with a deadly weapon, one count of
4 assault with a deadly weapon on a peace officer, and one count of evading a peace officer
5 with reckless driving. See Lodgment No. 1 (ECF No. 10-1) at 47–52. His conviction was
6 affirmed by the California Court of Appeal, Fourth Appellate District, Division One on
7 October 30, 2020, *id.* at 62–75, and a Petition for Review he filed in the California Supreme
8 Court was denied on January 13, 2021, *id.* at 77.

9 Douglas constructively filed a Petition for Writ of Habeas Corpus and Motion for
10 Stay and Abeyance in this Court on June 11, 2022.¹ See generally Pet; Mot. The one-year
11 statute of limitations imposed by the Anti-Terrorism and Effective Death Penalty Act
12 (“AEDPA”) expired two days later on June 13, 2022.² The Petition raises two exhausted
13 claims, an insufficiency of the evidence claim, an improper jury instruction claim, and an
14 unexhausted ineffective assistance of trial counsel claim in which Douglas claims trial
15 counsel should have investigated and presented a diminished capacity defense. See Pet.;
16 see also Pet. Supp.; Mot.; Mot. Supp. On June 14, 2022, Douglas constructively filed a
17 habeas corpus petition in the San Diego Superior Court raising the unexhausted ineffective
18 assistance of counsel claim. ECF No. 10-1.

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24 ¹ A document filed by a prisoner is deemed filed at the moment the prisoner delivers it to prison authorities
25 for forwarding to the clerk of court. *Houston v. Lack*, 487 U.S. 266, 276 (1988); *Anthony v. Cambra*, 236
26 F.3d 568, 575 (9th Cir. 2000) (applying *Houston* to a pro se prisoner’s federal habeas petition and state
27 court habeas petition).

28 ² The statute of limitations expired on June 12, 2022, which was a Sunday. See
<https://www.timeanddate.com/date/dateadd.html?d1=12&m1=6&y1=2022&>. Under Fed. R. Civ. Pro.
6(a)(1)(C), if the last day of the period of limitation is a Saturday or Sunday, “the period continues to run
until the end of the next day that is not a Saturday, Sunday or legal holiday.” Fed. R. Civ. Pro. 6(a)(1)(C).

1 In his motion, Douglas seeks a stay pursuant to *Rhines v. Weber*, 544 U.S. 269, 278
2 (2005), in order to exhaust his ineffective assistance of counsel claim in state court. *See*
3 *Mot.*; *Mot. Supp.* In opposition to the Motion, Respondents argue Douglas has not shown
4 good cause for his failure to exhaust. *See Opp'n*; *see also* ECF No. 10-1.

5 DISCUSSION

6 In order to have their claims heard, habeas petitioners who wish to challenge their
7 state court conviction in federal court must demonstrate they have exhausted their state
8 court remedies and file their claims within the one-year statute of limitations. 28 U.S.C.
9 §§ 2244(d), 2254(b)(1)(A); *Granberry v. Greer*, 481 U.S. 129, 133-34 (1987). A petitioner
10 satisfies the exhaustion requirement by presenting a claim to a state's highest court, either
11 on direct appeal or through state collateral proceedings. *See Anderson v. Harless*, 459 U.S.
12 4, 6 (1982); *Sandgathe v. Maass*, 314 F.3d 371, 376 (9th Cir. 2002). Once claims are
13 exhausted, a petitioner must bring those claims in a federal habeas corpus petition within a
14 one-year statute of limitation. 28 U.S.C. § 2244(d).

15 When a petitioner files a habeas corpus petition in federal court which contains both
16 exhausted and unexhausted claims, or only unexhausted claims, a district court has the
17 discretion to stay the petition while a petitioner returns to state court to exhaust the
18 unexhausted claims. *Rhines*, 544 U.S. at 275–76. Once a petitioner has exhausted the
19 claims, a district court lifts the stay and a petitioner may then proceed in federal court with
20 all his claims. *Id.* In order for a petitioner to be granted a *Rhines* stay, however, he or she
21 must establish: (1) good cause for the failure to exhaust, (2) the unexhausted claims are
22 potentially meritorious, and (3) he or she has not engaged in intentionally dilatory tactics.
23 *Id.* at 277–78.

24 **I. Whether Douglas Has Established Good Cause**

25 “The good cause element is the equitable component of the *Rhines* test . . . [and] [a]s
26 such, good cause turns on whether the petitioner can set forth a reasonable excuse,
27 supported by sufficient evidence, to justify th[e] failure [to exhaust].” *Blake v. Baker*, 745
28 F.3d 977, 982 (9th Cir. 2014). Since *Blake*, “[t]he caselaw concerning what constitutes

1 ‘good cause’ under *Rhines* has not been developed in great detail.” *Dixon v. Baker*, 847
2 F.3d 714, 720 (9th Cir. 2017) (citing *Blake*, 745 F.3d at 980). In the Ninth Circuit,
3 however, a petitioner’s lack of counsel in state post-conviction proceedings is sufficient to
4 establish good cause under *Rhines*. *Id.* at 721. Some district courts interpreted *Dixon* as
5 requiring, in addition to a lack of counsel, a showing that the petitioner had commenced
6 state court exhaustion proceedings before coming to federal court. *See Torres v.*
7 *McDowell*, 292 F. Supp. 3d 983, 990 (C.D. Cal. Nov. 13, 2017); *Sangurima v.*
8 *Montgomery*, No. 2:17-cv-05022-PSG-KES, 2017 WL 7371168, *7 (C.D. Cal. Dec. 12,
9 2017); *Reeves v. Madden*, No. 3:19-cv-01886-WQH-RBB, 202 WL 65076, at *4 (S.D. Cal.
10 Jan 7, 2020). In *Cage v. Montgomery*, 812 Fed. App’x 679 (9th Cir. 2020),³ however, the
11 Ninth Circuit clarified that the distinction between petitioners who file state post-
12 conviction review petitions prior to filing their motion for stay in federal court and those
13 who do not is “immaterial” for purposes of determining whether a *Rhines* stay is warranted.
14 *Cage*, 812 Fed. App’x at 680.

15 In support of his Motion for Stay, Douglas states that his former appellate attorney,
16 Mary Wells, told him in March 2022 that she would assist him by preparing a basic state
17 court petition for writ of habeas corpus, “Stay and Abey” request, and federal petition for
18 writ of habeas corpus for him to file. Pet. at 5–6, 17; Pet. Supp. at 10, 12–13. According
19 to Douglas, Wells told him the Covid-19 pandemic had delayed her preparation of the
20 documents and he should “be patient as [she] prepares [his] state habeas petition.” Pet. at
21 9, 12. He alleges that due to his mental illness, his incarceration, and the Covid-19
22 protocols implemented in prison, which restricted his law library access, he relied on
23 Wells’s assurances. *Id.* When he still had not received those documents as of June 10,
24 2022, three days before his statute of limitations was to run out, he filed the Petition and
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27 ³ Pursuant to Ninth Circuit Rule 36-3(c), “[u]npublished decisions and orders of [the Ninth Circuit]
28 issued on or after January 1, 2007 may be cited to the courts of this circuit in accordance with FRAP
32.1.”

1 Motion for Stay in this case. Pet. at 5–6, 17; Pet. Supp. at 10, 12–13. Douglas finally
2 received the documents from Wells several days later. He filed the state petition for writ
3 of habeas corpus in San Diego Superior Court on June 14, 2022, *see* ECF No. 10-1, and
4 sent the federal habeas corpus petition and the Motion for Stay prepared by Wells to the
5 Court; those documents were filed as supplements to his Petition and Motion for Stay on
6 June 21, 2022. *See* Pet. Supp.; Mot. Supp.

7 In his Reply to Respondents’ Opposition, Douglas states he “did not fully understand
8 the legal issues presented nor the procedures for presenting my claims and could not have
9 investigated and pursued the claim on my own.” Reply at 3. In a declaration attached to
10 the petition for writ of habeas corpus Douglas filed in the San Diego Superior Court on
11 June 20, 2022, Wells states she has been assisting Douglas “on a pro bono basis and for
12 the limited purpose of seeing this petition filed but inadvertently let time pass.” ECF No.
13 10-1 at 97.

14 Douglas has “set forth a reasonable excuse, supported by sufficient evidence, to
15 justify [his] failure [to exhaust].” *Blake*, 745 F.3d at 982. First, the failure was a direct
16 result of Douglas’s reliance on Wells’s representations that she would assist him in
17 exhausting his claims in a timely manner. Douglas states he did not exhaust his ineffective
18 assistance of counsel claim earlier because he was following Wells’s admonition to “be
19 patient” while she prepared a state habeas petition and believed he would receive the
20 documents before the statute of limitations expired. *See* Pet. at 9, 12, 17; *see also*
21 *Vanderwood v. Huston*, No. 5:20-cv-02064-FLA-PD, 2021 WL 6103534, at *4–5 (C.D.
22 Cal. Oct. 20, 2021) (finding good cause under *Rhines* where petitioner relied on counsel’s
23 representation that the unexhausted claims would be exhausted before the statute of
24 limitations ran out). Moreover, Douglas’s mental health issues and incarceration
25 substantially interfered with his ability to understand and investigate his ineffective
26 assistance of counsel claim. Douglas’s original counsel, deputy public defender Tatiana
27 Kline, arranged for Douglas to be evaluated by Dr. David DeFrancesco after determining
28 a mental defense should be investigated. ECF No. 10-1 at 79–80. But a report was never

1 generated, and therefore remained inaccessible to Douglas, because Douglas’s retained
2 attorney, Justin Murphy, did not follow up with DeFrancesco despite being told of the
3 evaluation by Kline. *Id.* at 79–80, 89–90. Further, Murphy refused to cooperate by
4 providing a declaration until May 2022 after Wells told him Douglas was filing a federal
5 habeas corpus petition. *Id.* at 108; *see, e.g., Spicer v. Madden*, No. 2:17-cv-07353-PA
6 (AFM), 2022 WL 2229936, at *12 (C.D. Cal. Feb. 2, 2022) (finding good cause under
7 *Rhines* where “pro se, indigent, incarcerated inmate with cognitive deficits . . . could not
8 have known about all of his viable ineffective assistance of counsel claims at the time he
9 filed his state court petitions” and the claims were “based upon evidence outside that record
10 that would be difficult, if not impossible, for Petitioner to obtain without the assistance of
11 counsel”).

12 Respondents argue *Dixon* does not apply to Douglas’s case because he “received
13 help from his state appellate counsel in investigating and preparing the petition he filed in
14 the state superior court” and was therefore not proceeding pro se. Opp’n at 4. It is clear
15 from Douglas’s filings in this case that Wells has assisted Douglas in preparing and filing
16 his state and federal petitions. Receiving help from an attorney on a pro bono basis,
17 however, is not the same as being represented by an attorney. A retained attorney has a
18 professional and legal obligation to adequately represent a petitioner in post-conviction
19 proceedings. *See, e.g., Blake*, 745 F.3d at 983 (finding that “ineffective assistance of
20 postconviction counsel [can] constitute good cause for a *Rhines* stay”). But an attorney
21 who is merely assisting a petitioner out of the goodness of her heart does not. All of the
22 petitions filed in state and federal court identify Douglas as proceeding pro se. *See* Pet. at
23 15; Mot.; Pet. Supp. at 9; Mot. Supp.; ECF No. 10-1 at 1. While Wells told Douglas she
24 would help him draft and obtain declarations and exhibits in support of his state habeas
25 petition, she does not represent him in those proceedings. *See* ECF No. 10-1 at 97.

26 Even if the Court concluded Wells was representing Douglas in his postconviction
27 proceedings, Douglas would still have met the “good cause” standard of *Rhines*. In *Blake*,
28 the Ninth Circuit held that “the ineffectiveness of postconviction counsel could constitute

1 good cause for a *Rhines* stay, provided that the petitioner’s assertion of good cause ‘was
2 not a bare allegation of state postconviction [ineffective assistance of counsel], but a
3 concrete and reasonable excuse, supported by evidence.’” *Dixon*, 847 F.3d at 721 (quoting
4 *Blake*, 745 F.3d at 983). Here, Douglas has presented more than a “bare allegation” of
5 ineffectiveness of postconviction counsel. *Dixon*, 847 F.3d at 721; *Blake*, 745 F.3d at 983.
6 Wells admitted she told Douglas she would prepare his state habeas petition in a timely
7 manner. ECF No. 10-1 at 97. Douglas stated in his Petition he had not exhausted his claim
8 because he was following Wells’s admonition to “be patient” while she prepared a state
9 habeas petition to exhaust his ineffective assistance of trial counsel claim. *See* Pet. at 9,
10 12; *Vanderwood*, 2021 WL 6103534, at *4–5. Wells states in her declaration that Murphy
11 refused to respond to her questions and request for a declaration until May 26, 2022, when
12 he sent her an email saying he believed Douglas was competent and did not think a
13 diminished capacity defense was viable. ECF No 10-1 at 108. At that point, she could
14 have filed a state habeas corpus petition on Douglas’s behalf using the same evidence as
15 was presented in the state habeas petition filed on June 14, 2022: Murphy’s email,
16 DeFrancesco’s psychological evaluation, and the declarations from Douglas, Kline, and
17 DeFrancesco. *See generally* ECF No. 10-1. Instead, she “inadvertently . . . let time pass,”
18 which resulted in Douglas’s ineffective assistance of trial counsel claim being unexhausted
19 when his federal habeas corpus petition was due. ECF No. 10-1 at 97. This is sufficient
20 to show postconviction counsel’s representation fell below an objective standard of
21 reasonableness and that Douglas was prejudiced by counsel’s errors. *See Strickland v.*
22 *Washington*, 466 U.S. 668, 688 (1984). Douglas has presented a “concrete and reasonable
23 excuse, supported by evidence,” that post-conviction counsel was ineffective, and he has
24 therefore shown good cause under *Rhines*. *Dixon*, 847 F.3d at 721.

25 **II. Whether the Claims are Potentially Meritorious**

26 “A federal habeas petitioner must establish that at least one of his unexhausted
27 claims is not ‘plainly meritless’ in order to obtain a stay under *Rhines*.” *Dixon*, 847 F.3d
28 at 722 (citation omitted). “In determining whether a claim is ‘plainly meritless,’ principles

1 of comity and federalism demand that the federal court refrain from ruling on the merits of
2 the claim unless ‘it is perfectly clear that the petitioner has no hope of prevailing.’” *Id.*
3 (quoting *Cassett v. Stewart*, 406 F.3d 614, 624 (9th Cir. 2005)).

4 Although one of the victims and a witness did not identify Douglas as the perpetrator,
5 evidence that Douglas was the attacker was strong. The first victim identified her attacker
6 as “Patrick” who was driving a four-door Mercedes. ECF No. 10-1 at 65. “Patrick” told
7 her it was his birthday and showed her his driver’s license which showed a birthdate of
8 November 7, the date of the attack. *Id.* at 63–64. Shortly after the first stabbing, a second
9 stabbing was reported at a nearby 7-Eleven. *Id.* An officer responding to that incident saw
10 a light-colored Mercedes driving away from where the second victim was stabbed. *Id.* at
11 66. Douglas was eventually apprehended, and his blood was found on the trunk and the
12 steering wheel of the car. *Id.* at 67. Blood from the first victim was found on the passenger
13 side of the car, as well as Douglas’s phone and driver’s license. *Id.* Douglas had also
14 recorded a video of himself on his phone dated shortly after the first attack showing him
15 inside the car with a knife threatening to kill people. *Id.* The second stabbing victim
16 identified Douglas as the perpetrator. *Id.* at 20. Nevertheless, Murphy presented a
17 mistaken identity defense at trial. *Id.* at 20–21.

18 When Douglas’s first attorney Tatiana Kline interviewed him, Douglas told her
19 about his mental health issues. *Id.* at 79. This was later corroborated by Marsha Jackson,
20 an individual who had a power of attorney for Douglas, who told Kline that Douglas had
21 been “diagnosed [with] bipolar [disorder], was manic, experienced irresistible impulses,
22 and was not taking a prescribed mood stabilizer.” *Id.* Kline had Douglas evaluated by a
23 psychologist, DeFrancesco. *Id.* When Murphy, took over the case, Kline told Murphy
24 about the mental issues she saw with the case and about DeFrancesco’s evaluation; Murphy
25 never followed up.⁴ In addition Douglas claims Murphy told him “[his] history of mental
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28 ⁴ Kline states in her declaration that Murphy took over the case “before Dr. DeFrancesco had the
opportunity to meet with Mr. Douglas, conduct testing, and review the medical records and reports

1 disorders was not relevant to the case and that he couldn't use [his] mental health history
2 at all." *Id.* at 92. He also told Douglas he had merely "skimmed" his mental health records.
3 *Id.* at 93. Further, Murphy told Wells in an email that he found Douglas to be "mentally
4 competent," and that "[i]n good faith, I did not believe that a diminished capacity defense
5 was appropriate." *Id.* at 108. DeFrancesco ultimately diagnosed Douglas with Bipolar II
6 Disorder, Post Traumatic Stress Disorder ("PTSD"), and Intermittent Explosive Disorder.
7 Douglas told DeFrancesco he did not remember committing the acts that led to his arrest
8 and prosecution. *See* ECF No. 10-1 at 83, 85–86.

9 Douglas's ineffective assistance of trial counsel claim is not "plainly meritless."
10 *Dixon*, 847 F.3d at 722. Murphy did not investigate a mental health defense despite the
11 fact that both Douglas's prior attorney and Douglas himself alerted him to it. Further,
12 Murphy does not appear to understand the difference between the defenses of diminished
13 *capacity* and diminished *actuality*. The defense of diminished capacity has been abolished
14 in California. *See People v. Steele*, 27 Cal.4th 1230, 1254 (2002). On the other hand, a
15 "[t]o support a defense of 'diminished actuality,' a defendant [must] present[] evidence of
16 voluntary intoxication or mental condition to show he 'actually' lacked the mental states
17 required for the crime." *People v. Clark*, 52 Cal. 4th 856, 880, n.3 (2011) (citing *People*
18 *v. Steele*, 27 Cal. 4th 1230, 1253 (2002)). Given that the victims were random and not
19 known to Douglas, and that Douglas had an extensive and well-documented history of
20 mental health issues, Murphy should have investigated and presented a diminished capacity
21 defense, which could have persuaded the jury that he did not have the requisite intent for
22 the attempted murder convictions.

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25 necessary to generate a formal report." ECF No. 10-1 at 80, 89. DeFrancesco states in his declaration
26 and report, however, that he conducted a psychological interview with Douglas on November 13, 2017,
27 and that Kline had provided him with Douglas's medical and psychiatric records. *Id.* He also states in
28 his declaration that he prepared a report, at Wells's request, "based on [his] examination from November
13, 2017, and the records I reviewed" *Id.* at 89. It seems clear that DeFrancesco's and not Kline's
recollection is correct.

1 **III. Whether Douglas Has Engaged in Intentionally Dilatory Tactics**

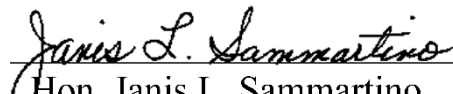
2 Wells mailed the state habeas petition raising his ineffective assistance of counsel
3 claim to Douglas on June 8, 2022. Pet. Supp. at 13. Douglas constructively filed the
4 petition in the San Diego Superior Court five days later on June 14, 2022. See ECF No.
5 10-1. The California Court of Appeal website indicates Douglas filed a petition for writ of
6 habeas corpus in the California Court of Appeal for the Fourth Appellate District, Division
7 One, on September 22, 2022. See
8 https://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=41&doc_id=240368
9 [2&doc_no=D080954&request_token=NiIwLSEmPkg%2FWzBRSCMtWE1IMEQ6Ukxb](https://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=41&doc_id=240368&doc_no=D080954&request_token=NiIwLSEmPkg%2FWzBRSCMtWE1IMEQ6Ukxb)
10 [KyJeIz9SMCAgCg%3D%3D](https://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=41&doc_id=240368&doc_no=D080954&request_token=NiIwLSEmPkg%2FWzBRSCMtWE1IMEQ6Ukxb) (last visited 10/7/22). Respondents do not argue that
11 Douglas has engaged in intentionally dilatory tactics, and the Court finds no basis in the
12 record upon which to conclude otherwise. Accordingly, the third requirement for granting
13 a *Rhines* stay has been met. *Rhines*, 544 U.S. at 277–78.

14 **CONCLUSION**

15 Based on the foregoing, the Court concludes that Douglas has met the criteria for a
16 stay pursuant to *Rhines*. Accordingly, his Motion for Stay is **GRANTED** and the action is
17 stayed. Douglas is **DIRECTED** to file a status report every ninety (90) days, beginning
18 with the date of this Order, that details his progress toward exhaustion. He is also
19 **DIRECTED** to file, within thirty (30) days of the California Supreme Court’s resolution
20 of his ineffective assistance of counsel claim, a motion requesting that the stay be lifted
21 and that leave to file a First Amended Petition pursuant to 28 U.S.C. § 2254 containing all
22 his exhausted claims be granted. The Clerk of Court will administratively close this case
23 until further Order of this Court.

24 **IT IS SO ORDERED.**

25 Dated: October 13, 2022

26 
27 Hon. Janis L. Sammartino
28 United States District Judge