

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 11-cv-02963-RPM

CHARLES M. KRUTSINGER,

Petitioner,

v.

TOM CLEMENTS, Executive Director, Colorado Department of Corrections, and
JOHN W. SUTHERS, Attorney General, State of Colorado,

Respondents.

ORDER FOR STAY AND FOR STATUS REPORT

The Petitioner's Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 presents four claims of constitutional error in the trial proceedings leading to his conviction and sentence. Two of those claims have been exhausted in post-conviction proceedings in the Colorado courts. A claim for ineffective assistance of counsel has not been exhausted and there is some question with respect to procedural default as to cumulative prosecutorial misconduct during closing arguments. Charles M. Krutsinger was released from state custody upon completion of his sentence shortly after the filing of his petition in this court. Because of the mixture of exhausted and unexhausted claims, the petitioner filed a motion to stay and abate this proceeding, recognizing that if this Court proceeds on the exhausted claims and dismisses the claims that have not been exhausted, the petitioner may lose an opportunity for federal review by another petition filed when he is no longer in custody.

The respondents object to the motion to stay and abate. The petitioner has filed a Colo.Crim.P. 35(c) motion with a state trial court and has been granted an evidentiary hearing. The respondents have noted that the motion was filed on May 23, 2011, suggesting that the timing was purposeful to avoid any jurisdictional issue for his petition in this court.

The respondents are concerned about an indefinite stay to permit full exhaustion of the claims that are now before the state court. In considering whether to exercise the discretion in this situation, it will be of assistance to learn the result of the motion pending before the state trial court. Accordingly, it is now

ORDERED that further proceedings in this civil action are stayed until further order of court and the petitioner is directed to file a status report, advising of the trial court's ruling on the Rule 35(c) motion when that occurs.

DATED: May 7th, 2012

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior Judge