

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02659-BNB

JAMES M. ROBINSON,

Applicant,

v.

VALERIE ESTRADA

Respondent.

ORDER DENYING OBJECTION AND
ADMINISTRATIVELY CLOSING THE CASE

At issue is Applicant's Reply, ECF No. 22, filed on September 11, 2013.

Magistrate Judge Craig B. Shaffer entered an order on August 9, 2013, directing Applicant to respond and state whether he intends to proceed with the one exhausted claim, as identified by the Court, or in the alternative to stay the action until he has fully exhausted state court remedies. Although Applicant has indicated his desire to stay this 28 U.S.C. § 2254 action until he has exhausted state court remedies, he also objects to the August 9, 2013 Order. The Court, therefore, will construe the Reply in part as an Objection filed pursuant to § 636(b)(1)(A) and overrule the Objection for the following reasons.

Under § 636(b)(1)(A) a judge may reconsider any pretrial matter designated to a magistrate judge to hear and determine whether it has been shown that the magistrate judge's order is clearly erroneous or contrary to law. The Court has reviewed the August 9 Order and finds nothing that demonstrates the Order is erroneous or contrary

to law. In the Reply, Applicant does not disagree that Claim One is exhausted. Furthermore, based on a review of all filings in this case, and for the same reasons stated in the August 9 Order, Claims Two through Ten are not exhausted. The Application is a mixed petition, which is subject to dismissal. See *Rose v. Lundy*, 455 U.S. 509, 522 (1982); *Harris v. Champion*, 48 F.3d 1127, 1133 (10th Cir. 1995). Applicant may proceed with only the exhausted claim or seek to dismiss the action so that he may proceed with the exhaustion of the unexhausted claims in state court. Due to the exceptional circumstances, holding the action in abeyance until the completion of the state court proceedings is proper. The Court having considered Applicant's issues and finding nothing in the August 9, 2013 Order that is erroneous or contrary to the law, will stay the action pursuant to Applicant's request.

As for Applicant's objection to Magistrate Judge Shaffer entering the August 9, 2013 Order, Local Rule 8.1C. of the Civil Local Rules for the United States District Court for the District of Colorado provides that "[a] judicial officer designated by the Chief Judge shall review the pleadings of a pro se party . . . to determine whether the pleadings should be dismissed summarily." Magistrate Judge Boyd N. Boland, as indicated by the caption, is the assigned judge who conducted the initial review. Magistrate Judge Shaffer signed the August 9 Order on Magistrate Judge Boland's behalf. Accordingly, it is

ORDERED that Plaintiff's construed 28 U.S.C. § 636 Objection, ECF No. 22, filed on September 11, 2013, is overruled. It is

FURTHER ORDERED that, in accordance with Applicant's request, the action is stayed pending completion of the state court appellate process. It is

FURTHER ORDERED that the Clerk of the Court is instructed to close the case administratively. It is

FURTHER ORDERED that, if he desires to continue with this case after completion of the appellate process, Applicant must request that the stay be lifted within thirty days of the completion of the appeal process.

DATED at Denver, Colorado, this 16th day of September, 2013.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court