

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

HUGO QUENTAL BARROS,

Petitioner,

v.

CASE NO. 6:07-cv-484-Orl-35DAB

SECRETARY, DEPARTMENT OF
CORRECTIONS, et al.,

Respondents.

ORDER

Petitioner filed a Motion to Stay Habeas Corpus Proceedings (Doc. No. 21, filed December 18, 2008). Petitioner seeks a stay in order to exhaust in the state courts a claim challenging the subject matter jurisdiction of the trial court.

The United States Supreme Court set forth the law explaining when a district court should grant a motion to stay a mixed petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254:

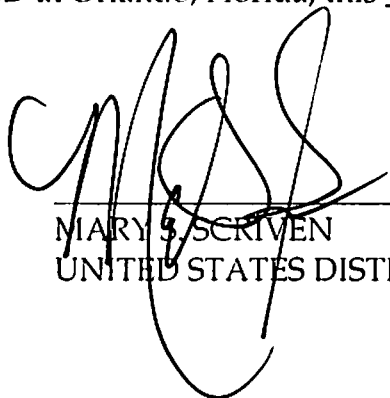
[I]t likely would be an abuse of discretion for a district court to deny a stay and to dismiss a mixed petition if the petitioner had good cause for his failure to exhaust, his unexhausted claims are potentially meritorious, and there is no indication that the petitioner engaged in intentionally dilatory litigation tactics. In such circumstances, the district court should stay, rather than dismiss, the mixed petition.

Rhines v. Weber, 544 U.S. 269, 277-78 (2005).

In response to Petitioner's motion to stay, Respondents assert that Petitioner has not

demonstrated either good cause for failing to raise this claim earlier in the state courts or that the claim is potentially meritorious. Upon review of the motion, the Court agrees that Petitioner has not demonstrated either good cause for not raising this claim earlier or that this claim is potentially meritorious. Thus, the Court concludes that staying the instant action is not appropriate pursuant to *Rhines*. Accordingly, Petitioner's Motion to Stay Habeas Corpus Proceedings (Doc. No. 21) is DENIED.

DONE AND ORDERED at Orlando, Florida, this 13th day of January, 2009.



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

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