

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

TOBIAS L. ROLLE,

Petitioner,

v.

CASE NO. 4:10cv152-MP-CAS

EDWIN G. BUSS, et al.,

Respondents.

ORDER

This matter is before the court on the Report and Recommendation of the magistrate judge (doc. 19), to which petitioner objected (doc. 20). Additionally, the petitioner has moved to expand the record to include consideration of documents attached to his objections. (See doc. 21). Finally, he has also moved to stay the instant petition so that he can return to state court to pursue a 3.850 motion based on newly discovered evidence. (See doc. 23). The Supreme Court in *Rhines v. Weber*, 544 U.S. 269, 125 S.Ct. 1528, 161 L.Ed.2d 440 (2005), held that a district court has discretion to grant a stay and abeyance if (1) the petitioner had “good cause” for failing to exhaust the claims in state court; (2) the unexhausted claims are “potentially meritorious;” and (3) “there is no indication that the petitioner engaged in intentionally dilatory litigation tactics.”

Accordingly, it is now **ORDERED** as follows:

The Report and Recommendation of the magistrate judge is rejected, and this matter remanded to the magistrate judge to consider the following: (1) whether the arguments raised in the objections and the documents attached thereto justify equitable tolling in this case; and (2) whether a stay and abeyance is appropriate under the factors set out in *Rhines*.

DONE and ORDERED this 9th day of August, 2012.

s/ M. Casey Rodgers

M. CASEY RODGERS
CHIEF UNITED STATES DISTRICT JUDGE