UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JORGE LOPEZ, #242607,

Petitioner,

v.

Case Number 1:16-CV-10606
Honorable Thomas L. Ludington

DUNCAN MACLAREN,

Respondent.
_____/

ORDER DENYING PETITIONER'S MOTION TO HOLD PETITION IN ABEYANCE

Michigan prisoner Jorge Lopez ("Petitioner") has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his state court convictions which is currently pending before this Court. In his habeas petition, he raises claims concerning his sentence, the effectiveness of trial and appellate counsel, and the great weight of the evidence. This matter is before the Court on Petitioner's motion to stay the proceedings so that he may obtain transcripts and potentially pursue additional claims on collateral review in the state courts.

A federal district court has discretion to stay a mixed habeas petition, containing both exhausted and unexhausted claims, to allow a petitioner to present unexhausted claims to the state courts and then return to federal court on a perfected petition. *See Rhines v. Weber*, 544 U.S. 269, 276 (2005). Stay and abeyance is available only in "limited circumstances" such as when the one-year statute of limitations poses a concern, and when the petitioner demonstrates "good cause" for the failure to exhaust state remedies before proceeding in federal court, the petitioner has not engaged in intentionally dilatory litigation tactics, and the unexhausted claims are not "plainly meritless." *Id.* at 277.

Petitioner has not shown the need for a stay. First, his current claims appear to be exhausted. Second, while the one-year statute of limitations applicable to federal habeas actions, *see* 28 U.S.C. § 2244(d), may pose a concern, Petitioner has not established good cause for failing to obtain transcripts and/or exhausting any additional issues in the state courts before seeking federal habeas review. While Petitioner states that he does not personally have a copy of his transcripts, he does not explain why he was unable to obtain transcripts from trial counsel, appellate counsel, and/or the state trial court before proceeding in federal court. Third, Petitioner's desire to obtain transcripts and search for new, unidentified claims is insufficient to justify a stay of the proceedings as the Court cannot determine whether any such potential claims concern matters of federal law which are not plainly meritless. A stay is unwarranted under such circumstances.

Accordingly, it is **ORDERED** that Petitioner's motion to stay the habeas corpus proceedings, ECF No. 7, is **DENIED.** Petitioner may move for a non-prejudicial dismissal of his habeas petition within 30 days of the filing date of this order. If he does not do so, the Court shall proceed on the claims contained in the pending petition.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: June 28, 2016

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on June 28, 2016.

s/Michael A. Sian
MICHAEL A. SIAN, Case Manager