

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DOMINIC DECARLO,

Petitioner,

v.

Case No. 3:21-cv-11370

STATE OF MICHIGAN,

Respondent.

/

**ORDER DENYING PETITIONER'S MOTION TO STAY PROCEEDINGS AND HOLD
PETITION IN ABEYANCE (ECF No. 3)**

Petitioner Dominic DeCarlo filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his state court convictions on the same grounds he presented to the Michigan courts on direct review. Presently before the court is Petitioner's motion to stay proceedings and hold the petition in abeyance. The motion restates the claims presented on direct review, but it fails to identify any unexhausted claims Petitioner wishes to raise on state collateral review. The petition likewise suggests that Petitioner completed direct review when the Michigan Supreme Court denied leave to appeal on April 27, 2021. (ECF No. 1, PageID.3.)

A federal district court has discretion to stay a petition 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, however, only when the one-year statute of limitations poses a concern, 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.

Here, Petitioner completed direct review on April 27, 2021. The statute of limitations therefore starts running around July 27, 2021. See 28 U.S.C. § 2244(d)(1)(A). As the limitations period has not even begun, it does not pose a concern. Additionally, Petitioner fails to identify the existence of any unexhausted claims, let alone claims that are not plainly meritless. Accordingly,

IT IS ORDERED that Petitioner’s motion to stay (Dkt. # 3) is DENIED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: July 15, 2021

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, July 15, 2021, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(810) 292-6522

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