UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JONATHAN CASTILLO,

Petitioner, Case No. 1:13-cv-59

v. Honorable Paul L. Maloney

WILLIE O. SMITH,

Respondent.
_____/

ORDER TO STAY

Pursuant to this Court's opinion and order of January 29, 2013, Petitioner has filed a motion for stay and abeyance, in which he avers cause for his failure to exhaust and requests a stay of this action to exhaust his unexhausted claims in state proceedings. Under *Rhines v. Weber*, 544 U.S. 269 (2005), such a stay should only be granted if (1) there is good cause for Petitioner's failure to exhaust the unexhausted claims, (2) the unexhausted claims are not plainly meritless, and (3) there is no indication that Petitioner has engaged in abusive or dilatory litigation tactics. *Id.* at 277-78. Upon review, the Court finds that a stay is warranted. Therefore, pursuant to the Sixth Circuit's direction in *Palmer v. Carlton*, 276 F.3d 777, 781 (6th Cir. 2002), and the Court's analysis in its January 29, 2013 opinion,

IT IS ORDERED that Petitioner shall have thirty (30) days from the date of this order in which to file a motion for relief from judgment in the Berrien County Circuit Court setting forth any unexhausted claims that he intends to pursue in his habeas petition.

IT IS FURTHER ORDERED that Petitioner's action is hereby stayed until Petitioner files a motion to amend his petition to include any subsequently exhausted claims. Such motion must be filed not later than 30 days after a final decision by the Michigan Supreme Court on Petitioner's unexhausted claims and shall include a description of the newly exhausted claims and the dates and substance of decision at each step of state-court review.

IT IS FURTHER ORDERED that if Petitioner fails to comply with the deadlines imposed in this order, the Court may dismiss the petition.

IT IS FURTHER ORDERED that Petitioner shall advise the Court of any change of address occurring during the pendency of the stay.

IT IS FURTHER ORDERED that this case shall be administratively closed until such time as Petitioner files a motion to amend his petition in accordance with the procedures set forth in this order.

Dated: April 24, 2013

/s/ Paul L. Maloney
Chief United States District Judge