

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

OLIVER JOHNSON,)
)
Petitioner,)
)
v.)
)
JAY CASSADY,)
)
Respondent.)

No. 4:16-CV-1129 SPM

MEMORANDUM AND ORDER

This matter is before the Court on Petitioner’s motion for leave to proceed in forma pauperis and motion to stay and abey under Rhines v. Weber, 544 U.S. 269 (2005).

The Court has reviewed Petitioner’s financial affidavit and has determined that Petitioner is unable to pay the filing fee. See 28 U.S.C. § 1915. The motion for leave to proceed in forma pauperis is granted.

Petitioner moves to stay the case because he filed a motion in his direct appeal case to recall the mandate on April 29, 2016. See Johnson v. Missouri, No. ED97856 (Mo. Ct. App.). However, the state court denied his motion before he put his federal petition in the mail. Moreover, state court records show that Petitioner properly exhausted his state remedies by filing a postconviction appeal, which was denied on September 8, 2015. As a result, there is no reason to stay this case.

Accordingly,

IT IS HEREBY ORDERED Petitioner’s motion for leave to proceed in forma pauperis [ECF No. 2] is **GRANTED**.

IT IS FURTHER ORDERED that Petitioner's motion to stay and abey [ECF No. 5] is **DENIED.**



SHIRLEY PADMORE MENSAH
UNITED STATES MAGISTRATE JUDGE

Dated this 20th day of July, 2016.