

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

MARCO E. TORRES, JR.,

Petitioner,

vs.

SCOTT FRAKES, Director, Nebraska
Department of Correctional Services,

Respondent.

4:17CV3078

ORDER

This matter is before the Court on the Unopposed Motion to Continue Stay ([Filing No. 36](#)) filed by the petitioner, Marco Torres, Jr. (“Torres”). The Court previously granted Torres’ motion to hold the instant proceedings in abeyance and stayed this case pending the resolution of the state court proceedings on Torres’ claims pursuant to *Hurst v. Florida*, 577 U.S. ___, 136 S. Ct. 616 (2016), and *Johnson v. United States*, 576 U.S. ___, 135 S. Ct. 2551 (2015). ([Filing No. 32](#)). On August 3, 2018, the Nebraska Supreme Court affirmed the dismissal of Torres’ *Hurst* claims. See *State v. Torres*, 915 N.W.2d 596 (Neb. 2018). On August 17, 2018, Torres notified this Court that his *Hurst* claims were exhausted. ([Filing No. 33](#)). Thereafter, the Court granted Torres’ request that the Court continue to hold these proceeding in abeyance while he exhausts additional claims based upon the State of Nebraska’s repeal and re-imposition of the death penalty. ([Filing No. 35](#)).

On January 3, 2020, the Nebraska Supreme Court issued its opinion affirming the Hall County district court’s denial of Torres’ motion for post-conviction relief. *State v. Torres*, 936 N.W.2d 730 (Neb. 2020), and issued its mandate on February 11, 2020. Torres intends to file a petition of certiorari to the Supreme Court of the United States and asks the Court to continue the stay until the Supreme Court either denies certiorari or grants certiorari and rules on his claims. After review of the instant motion and Torres’ Petition, the Court finds that this matter should continue to be held in abeyance, pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005). Upon consideration,

IT IS ORDERED:

1. Petitioner's Unopposed Motion to Continue Stay ([Filing No. 36](#)) is granted. This case shall continue to be stayed and held in abeyance until the Supreme Court either denies certiorari in *State v. Torres*, 936 N.W.2d 730 (Neb. 2020), or grants certiorari and rules on his claims.
2. Petitioner shall file a notice advising the Court of the date he files his petition for certiorari.
3. Petitioner shall notify the Court within 14-days regarding whether the Supreme Court grants or denies his petition for certiorari. If the Supreme Court denies certiorari, the Court will enter an order lifting the stay. If the Supreme Court grants certiorari, Petitioner shall file status reports every 90-days after certiorari is granted advising the Court of the status of the appeal.
4. Respondent shall have an extension of time to file a response to the Petition until 30-days after the stay is lifted.
5. The Clerk of Court shall terminate the previous case management deadline and set a new case management deadline of May 25, 2020: check for filing of petition for certiorari.

Dated this 25th day of February, 2020.

BY THE COURT:

s/ Michael D. Nelson
United States Magistrate Judge