

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PATRICK CHARLES McKENNA,)
)
 Petitioner,)
)
 vs.)
)
 RENEE BAKER, *et al.*,)
)
 Respondents.)
)
 _____)

2:11-cv-0191-JCM-PAL

ORDER

This capital habeas corpus action was stayed on May 9, 2012, pending completion of certain state-court litigation. *See* Order entered May 9, 2012 (ECF No. 37). The state-court litigation has not yet been completed. *See* Status Report filed December 11, 2013 (ECF No. 48).

On March 5, 2014, however, the petitioner, Patrick Charles McKenna, filed a “Motion to Temporarily Lift Stay to Amend” (ECF No. 51) (hereafter “Motion to Temporarily Lift Stay”). McKenna explains in that motion that he recently discovered several new claims. *See* Motion to Temporarily Lift Stay, p. 2. McKenna states that he included those claims in his state-court petition. *Id.* McKenna requests that the stay of this action be lifted, temporarily, to allow consideration of the Motion to Temporarily Lift Stay itself, and to allow amendment of his habeas petition to add his new claims. The new claims are set out, and exhibits in support of the new claims are provided, in an exhibit to the Motion to Temporarily Lift Stay. *See* Exhibit A to Motion to Temporarily Lift Stay.

1 McKenna further requests in his motion "... that he be temporarily relieved of the obligation of filing
2 an amended habeas petition until after completing exhaustion in state court, when [he] can then
3 incorporate his new claims by amending his pending Amended Habeas Petition." Motion to
4 Temporarily Lift Stay, p. 2.

5 On March 6, 2014, respondents filed a response to McKenna's motion, stating that they
6 generally do not oppose McKenna's motion, but that they do oppose the court relieving McKenna of
7 the requirement that he file a complete second amended petition at this time. *See* Opposition to
8 Motion to Temporarily Lift Stay to Amend (ECF No. 52). On March 12, 2014, McKenna filed a
9 reply (ECF No. 53).

10 A petition for a writ of habeas corpus "may be amended or supplemented as provided in the
11 rules of procedure applicable to civil actions." 28 U.S.C. § 2242; *see also* Rule 12, Rules Governing
12 § 2254 Cases (Federal Rules of Civil Procedure apply to federal habeas proceedings "to the extent
13 that they are not inconsistent."). Federal Rule of Civil Procedure 15(a) permits a party to amend a
14 pleading with the opposing party's written consent or leave of court. *See* Fed. R. Civ. P. 15(a)(2).
15 "The court should freely give leave when justice so requires." *Id.* The court will grant McKenna's
16 motion, will temporarily lift the stay of this action, and will grant leave of court for the requested
17 amendment.

18 The court finds reasonable McKenna's request that he be temporarily relieved of the
19 obligation of filing a complete second amended petition until after completing exhaustion in state
20 court, and until the stay of this action is lifted. The court finds that proceeding in the manner
21 suggested by McKenna is in the interest of judicial economy and in the interest of conserving the
22 parties' resources. The court will, in this instance, therefore, waive the requirements of Local Rule
23 15-1. The court will grant leave of court for the amendment requested by McKenna, and the claims
24 set forth in Exhibit A to the Motion to Temporarily Lift Stay shall be considered added to
25 McKenna's habeas corpus petition; after the completion of his pending state-court proceedings, and
26

1 if and when the stay of this action is permanently lifted, the court will require McKenna to file a
2 second amended habeas petition, including those new claims.

3 **IT IS THEREFORE HEREBY ORDERED** that petitioner's Motion to Temporarily Lift
4 Stay to Amend (ECF No. 51) is **GRANTED**.

5 **IT IS FURTHER ORDERED** that petitioner is granted leave of court to amend his habeas
6 corpus petition in this action to add the claims set forth in Exhibit A to the Motion to Temporarily
7 Lift Stay (ECF No. 51). Those claims shall be considered added to the habeas corpus petition in this
8 action. However, the court will not require McKenna to file a second amended habeas petition,
9 including those new claims, at this time. After completion of his pending state-court proceedings,
10 and if and when the stay of this action is permanently lifted, the court will require McKenna to file a
11 second amended habeas petition, including the new claims.

12 **IT IS FURTHER ORDERED** that, in all other respects, the stay of this action imposed on
13 May 9, 2012, is reinstated and shall remain in effect as described in the Order entered May 9, 2012
14 (ECF No. 37).

15
16 Dated March 17, 2014.

17
18 
19 _____
20 UNITED STATES DISTRICT JUDGE
21
22
23
24
25
26