

1
2
3
4
5
6
7
8
9

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JAHUART SAHAGUN,
Petitioner,

vs.

BRIAN E. WILLIAMS, et al.,
Respondents.

Case No. 2:14-cv-00539-JAD-GWF

**Order Granting in Part Motion to Dismiss and
Directing Further Action from Petitioner by
October 28, 2015**

[ECF 14]

10
11
12
13
14
15
16
17

Petitioner Jahuart Sahagun brings this federal habeas petition to challenge his 2011 state court conviction for drug trafficking.¹ The respondents move to dismiss this petition, arguing that all of petitioner's claims are unexhausted or conclusory.² The court finds that petitioner has not exhausted his available state-court remedies on ground 2 and part of ground 1. Petitioner will have until October 28, 2015, to make a choice between three options: (1) dismiss these unexhausted claims and proceed on the remaining grounds, (2) dismiss this entire action and return to state court to complete the exhaustion process, or (3) seek to stay this case while he completes the exhaustion process in state court.

18
19

Background

20
21
22
23

After a plea agreement, petitioner was convicted in Nevada's Eighth Judicial District Court of four counts of trafficking in a controlled substance.³ Petitioner appealed, and the Nevada Supreme Court affirmed.⁴

24
25

¹ ECF 6.

26
27

² ECF 14. *See also* petitioner's opposition at ECF 22 and respondents' reply at ECF 31.

³ ECF 17-14 (Resp. Ex. 64).

28
29

⁴ ECF 18-9 (Resp. Ex. 84).

1 claim that petitioner presented to the state courts in his state habeas corpus petition because
2 petitioner alleged no facts in support of his state petition.¹² These parts of ground 1 are
3 unexhausted.

4 Regarding Green, petitioner claims in ground 1 that Green did not file a motion to dismiss
5 based upon lack of evidence and a motion to suppress. Respondents argue correctly that petitioner
6 claimed in his state habeas corpus petition that Green did not file a motion to dismiss certain counts
7 for lack of evidence, but petitioner did not claim in his state habeas corpus petition that Green failed
8 to file a motion to suppress.¹³ This part of ground 1 also is unexhausted.

9 To the extent that ground 1 contains claims of petitioner being coerced into pleading guilty,
10 it repeats claims in ground 2, and the court will address these allegations in its analysis of ground 2.

11 **B. Ground 2**

12 In ground 2, petitioner claims that Green coerced him into pleading guilty. Petitioner
13 presented a similar claim in his state habeas corpus petition.¹⁴ However, petitioner did not present
14 to the state courts the claim that counsel told him that he would receive a sentence of 8 to 20 years
15 imprisonment. That allegation fundamentally alters the claim that petitioner presented to the state
16 courts, and it makes ground 2 unexhausted.

17 **C. Petitioner now must make a choice of how to proceed with this mixed petition.**

18 The court declines to dismiss the unexhausted claims on their merits.¹⁵ Respondents argue
19 that the claims are conclusory and belied by the record. If petitioner desires to return to state court,
20 nothing would stop him from alleging the specific facts to support his claims. If he is able to avoid
21 application of the state-law procedural bars against untimeliness and successive petitions, the he
22 might receive a ruling on the merits of those claims.

24 ¹² See ECF 18-25 (Resp. Ex. 100 at 2).

25 ¹³ See ECF 18-13 (Resp. Ex. 88 at 3–5).

26 ¹⁴ See *id.*

27 ¹⁵ See 28 U.S.C. § 2254(b)(2).

1 Respondents' argument that ground 3 is conclusory is better raised in an answer. Because
2 the Nevada Supreme Court resolved this claim on its merits,¹⁶ this court would then analyze the
3 Nevada Supreme Court's decision under the deferential standard of review of 28 U.S.C. § 2254(d).

4 We describe this petition as "mixed" because it contains both claims exhausted in state court
5 and claims not exhausted in state court. Because this petition is mixed, the entire petition is subject
6 to dismissal.¹⁷ **Petitioner now must choose one of three options:**

- 7 1. Dismiss only the unexhausted claims: He may voluntarily dismiss the unexhausted
8 ground 2 and parts of ground 1 and proceed with the remaining grounds;
- 9 2. Dismiss this whole petition: He may voluntarily dismiss this action without prejudice
10 while he returns to state court to exhaust ground 2 and parts of ground 1; **or**
- 11 3. Move to stay this whole case: He may move to stay this whole action while he
12 returns to state court to exhaust ground 2 and parts of ground 1.

13 If petitioner chooses option 2, the court makes no assurances about any possible state-law
14 procedural bars or the timeliness of a subsequently filed federal habeas corpus petition. If petitioner
15 chooses option 3, he must show that he has "good cause for his failure to exhaust, his unexhausted
16 claims are potentially meritorious, and there is no indication that the petitioner engaged in
17 intentionally dilatory litigation tactics" as required by the United States Supreme Court in *Rhines v.*
18 *Weber*, 544 U.S. 269, 278 (2005). If petitioner chooses option 3, he also will need to designate an
19 alternative choice (1 or 2) in case the court denies his request to stay the action. Otherwise, the
20 court will dismiss this action.

21 **Conclusion**

22 IT IS THEREFORE ORDERED that respondents' motion to dismiss [ECF 14] is
23 **GRANTED in part** with respect to ground 2 and parts of ground 1.

24
25
26 _____
26 ¹⁶ ECF 18-25 (Resp. Ex. 100 at 3–4).

27 ¹⁷ See *Rose v. Lundy*, 455 U.S. 509, 521-22 (1982); *Szeto v. Rushen*, 709 F.2d 1340, 1341
28 (9th Cir. 1983).

1 IT IS FURTHER ORDERED that **petitioner has until October 28, 2015, to do one of the**
2 **following:**


- 3 1. Inform this court in a sworn declaration that he wishes to dismiss ground 2 and parts
4 of ground 1 of his petition and proceed only on the remaining grounds for relief;
- 5 2. Inform this court in a sworn declaration that he wishes to dismiss his entire petition
6 (and this case) to return to state court to exhaust his state remedies with respect to the
7 claims set out in ground 2 and parts of ground 1 of his petition; **or**
- 8 3. File a motion to stay this case while he returns to state court to exhaust his state
9 remedies with respect to the claims set out in ground 2 and parts of ground 1 of his
10 petition. With that motion, petitioner must provide a declaration of an alternative
11 choice (1 or 2) in the event the court denies his motion to stay.

12 If petitioner does not complete one of these options by October 28, 2015, this case will be
13 dismissed.

14 IT IS FURTHER ORDERED that if petitioner chooses option 1, respondents will have 45
15 days after petitioner serves his declaration dismissing those grounds to file and serve an answer or
16 other response to the remaining grounds. Any answer must comply with Rule 5 of the Rules
17 Governing Section 2254 Cases in the United States District Courts.

18 IT IS FURTHER ORDERED that, if respondents file and serve an answer, petitioner will
19 have 45 days from the date on which the answer is served to file and serve his reply.

20 DATED September 28, 2015

21
22
23 
24 _____
25 JENNIFER A. DORSEY
26 United States District Judge
27
28