

1 there is no indication that the petitioner engaged in intentionally dilatory litigation tactics.” *Id.* at
2 278. The Ninth Circuit has held that the application of an “extraordinary circumstances”
3 standard does not comport with the “good cause” standard prescribed by *Rhines*. *Jackson v. Roe*,
4 425 F.3d 654, 661-62 (9th Cir. 2005). The court may stay a petition containing both exhausted
5 and unexhausted claims if: (1) the habeas petitioner has good cause; (2) the unexhausted claims
6 are potentially meritorious; and (3) the petitioner has not engaged in dilatory litigation tactics.
7 *Rhines*, 544 U.S. at 277; *see also Wooten v. Kirkland*, 540 F.3d 1019, 1023-24 (9th Cir. 2008).

8 The Federal Public Defender represents Adkisson in this action. Counsel bases this
9 motion to a large degree on *Rhines*. However, the respondents have already answered the
10 petition (ECF No. 49), and Adkisson asks that I defer an adjudication of the merits of the petition
11 pending recent proceedings in state court. ECF No. 77. Adkisson does not elaborate on the issue
12 that he is pursuing in state court, but states that it is a hybrid claim involving both the Nevada
13 Department of Corrections’ implementation of his sentence and the underlying statutory
14 legality. He asks that I briefly defer a merits decision because as the state-court proceedings
15 unfold he will have a better idea whether he has a basis to request a stay and abeyance under
16 *Rhines*.

17 I will grant the motion and briefly defer a decision on the merits of the federal habeas
18 petition. Adkisson shall file a status report within 60 days that explains the status of the state-
19 court proceedings and whether he intends to file a motion for stay and abeyance of this action.

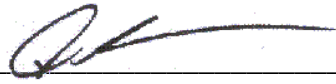
20 IT IS THEREFORE ORDERED that Adkisson’s motion to defer a merits decision on this
21 federal habeas petition (**ECF No. 77**) is **GRANTED**.

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1 IT IS FURTHER ORDERED that within 60 days of the date of this order Adkisson shall
2 file a status report regarding his state-court proceedings and whether he will seek a stay in this
3 case.

4 IT IS FURTHER ORDERED that Adkisson's third motion for extension of time to file
5 supplemental authorities (**ECF No. 73**) is **GRANTED** *nunc pro tunc*.

6 Dated: February 8, 2019



8 Andrew P. Gordon
9 U.S. District Judge

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