

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3
4 Mariano Madrid,
5 Petitioner

6 v.

7 Dwight Neven, et al.,
8 Respondents

2:15-cv-00118-JAD-PAL

Order

[ECF Nos. 27, 28]

9
10 Pro se petitioner Mariano Madrid is serving two consecutive 20-years-to-life
11 sentences after he was convicted of murder with deadly-weapon and gang-
12 promotion enhancements.¹ Madrid filed this mixed petition for a writ of habeas
13 corpus under 28 U.S.C. § 2254, but because he cannot proceed on a mixed
14 petition—a petition that has exhausted and unexhausted claims—I gave him three
15 options.² He could (1) voluntarily abandon his unexhausted claims and proceed on
16 his exhausted claims only, (2) return to state court to exhaust his unexhausted
17 claims, which would result in a denial of his habeas corpus petition without
18 prejudice, or (3) file a motion to stay and abey his exhausted claims while he
19 returned to state court to exhaust his unexhausted claims.³

20 Madrid chose the third option, but he was unable to satisfy the applicable
21 legal standard, so his stay-and-abey motion was denied.⁴ I then gave him until
22
23

24 ¹ ECF No. 1 at 2.

25 ² ECF No. 20.

26 ³ *Id.* at 5–6.

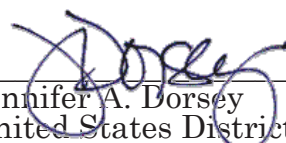
27 ⁴ ECF No. 24.
28

1 April 20, 2017, to choose again between options 1 and 2.⁵ Madrid now asks for an
2 extension of time and renews his motion to stay and abey his exhausted claims.⁶
3 Madrid argues that he never received my order denying his first stay-and-abey
4 motion. That does not justify a renewed filing, but his renewed motion still fails to
5 satisfy the *Rhines v. Weber*⁷ standard. I made him aware of the *Rhines* standard
6 when I gave him the three options to choose from, but he still fails to show—or even
7 address—that he has good cause for failing to exhaust his unexhausted claims.

8 Accordingly, IT IS HEREBY ORDERED that Madrid’s renewed motion to
9 stay and abey [ECF No. 28] is DENIED. The Clerk of Court is directed to SEND to
10 Madrid a copy of my March 20, 2017, (ECF No. 24) order.

11 Good cause appearing, IT IS FURTHER ORDERED that Madrid’s motion for
12 an extension of time [ECF No. 27] is GRANTED *nunc pro tunc* to April 20, 2017.
13 Madrid has until **December 8, 2017**, to advise the court in a sworn declaration
14 whether he wants to (1) voluntarily abandon his unexhausted claims and proceed
15 on the exhausted claims or (2) return to state court to exhaust his unexhausted
16 claims. Choosing option 2 **will result in a denial of his petition without prejudice** to
17 his ability to file a new petition in a separate case. If Madrid does not comply or
18 otherwise respond to this order, **this action will be dismissed without prejudice and**
19 **without further prior notice.**

20 DATED: November 8, 2017.

21 
22 Jennifer A. Dorsey
23 United States District Judge
24

25 _____
26 ⁵ *Id.*

27 ⁶ ECF Nos. 27, 28.

28 ⁷ *Rhines v. Weber*, 544 U.S. 269 (2005).