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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Will H. Harlan,
Petitioner

v.

Brian E. Williams, et al.,
Respondents

Case No.: 2:15-cv-00799-JAD-PAL

Order Dismissing Case

[ECF No. 5]

On September 29, 2016, I found the petition for writ of habeas corpus in this case to be mixed, containing both exhausted and unexhausted claims. I directed petitioner Will H. Harlan to select one of three options: (1) submit a sworn declaration advising the court that he is voluntarily abandoning his unexhausted claims and will proceed on the exhausted claims only; (2) submit a sworn declaration advising the court that he will return to state court to exhaust his unexhausted claims, in which case his federal habeas petition will be denied without prejudice; or (3) file a motion asking the court to hold his exhausted claims in abeyance while he returns to state court to exhaust his unexhausted claims.¹ Harlan responded with a document indicating that he wishes to return to state court and is therefore selecting “option two.”² In light of certain other statements made in the notice, it was unclear whether he actually wanted his petition to be denied without prejudice. I therefore directed petitioner to file a notice clarifying his choice.³

On December 4, 2017, Harlan filed a motion for stay and abeyance, which I denied because he failed to make the requisite showing.⁴ I directed petitioner to select between the remaining two options—abandoning his unexhausted claims or dismissing the entire petition so

¹ ECF No. 15.

² ECF No. 19.

³ ECF No. 21.

⁴ ECF Nos. 22, 23.

1 that he could return to state court—on or before February 12, 2018. Harlan has failed to respond
2 to my order, and the time for doing so has long since expired.

3 In my prior orders, I advised Harlan that his failure to make a selection from the available
4 options would result in dismissal of this petition without further prior notice. Because he has
5 failed to elect to either abandon his unexhausted claims or to dismiss the entire petition without
6 prejudice, the petition in this case remains mixed and must therefore be dismissed under *Rose v.*
7 *Lundy*.⁵

8 Accordingly, IT IS HEREBY ORDERED that Harlan’s petition for a writ of habeas
9 corpus [ECF No. 5] is dismissed without prejudice to his ability to file a new, separate petition.
10 By dismissing this case without prejudice, I do not make any implied findings about the
11 limitations period. Harlan remains responsible for calculating the federal limitations period and
12 timely filing his claims. The **Clerk of Court** is directed to **ENTER JUDGMENT accordingly**
13 and **CLOSE THIS CASE**.

14 Dated: April 9, 2018

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16 U.S. District Judge Jennifer A. Dorsey

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28 ⁵ *Rose v. Lundy*, 455 U.S. 509, 510 (1982).