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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Timothy Wayne Connors,
Petitioner
v.
Warden Brian E. Williams, Sr., et al.,
Respondents

Case No.: 2:15-cv-01351-JAD-CWH

**Order Denying Motions to Stay and
Withdraw and Granting Motion for
Extension of Time**

[ECF Nos. 18, 19, 21]

10 Timothy Wayne Connors filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 on
11 July 16, 2015.¹ Connors's counsel filed a second unopposed motion for extension of time to file a
12 first-amended petition,² a motion to stay the proceedings,³ and a motion to withdraw as counsel of
13 record.⁴

14 I first address the motion to stay proceedings.⁵ A jury convicted Connors of first-degree
15 murder and robbery.⁶ His brother Christopher was his co-defendant at trial. Christopher filed a
16 federal habeas petition, which was denied on the merits. But Christopher was granted a certificate of
17 appealability for all three grounds in his petition,⁷ which all involve a so-called *Kazalyn* first-degree
18 murder jury instruction given at the Connors brothers' trial.⁸ Christopher's appeal—petitioner

19 _____
20 ¹ ECF No. 1.

21 ² ECF No. 18.

22 ³ ECF No. 19.

23 ⁴ ECF No. 21.

24 ⁵ ECF No. 19.

25 ⁶ *Id.* at 2.

26 ⁷ *See* Case No. 3:07-cv-00268-JCM-VPC, ECF No. 68.

27 ⁸ ECF No. 19 at 7–9.

1 represents—is pending before the Ninth Circuit Court of Appeals.⁹ Petitioner now explains that he
2 seeks a stay under *Rhines v. Weber*¹⁰ or a stay in light of “what may or could be binding precedent
3 upon his case as he was tried together with his brother/co-defendant . . . and was subject to the same
4 *Kazalyn* instruction.”¹¹

5 *Rhines v. Weber* addresses the failure to exhaust state remedies before bringing a federal
6 petition for habeas relief. In *Rhines*, the Supreme Court placed limitations on the discretion of the
7 court to facilitate habeas petitioners’ return to state court to exhaust claims:

8 [S]tay and abeyance should be available only in limited circumstances. Because
9 granting a stay effectively excuses a petitioner’s failure to present his claims first to
10 the state courts, stay and abeyance is only appropriate when the district court
11 determines there was good cause for the petitioner’s failure to exhaust his claims first
12 in state court. Moreover, even if a petitioner had good cause for that failure, the
13 district court would abuse its discretion if it were to grant him a stay when his
14 unexhausted claims are plainly meritless.¹²

15 Respondents oppose Connors’s motion for stay: because Connors asserts that all seven
16 grounds in his current petition are exhausted,¹³ a *Rhines* stay is unavailable. I agree. The appropriate
17 action at this time is for Connors, through counsel, to file his amended petition, setting forth all
18 known grounds, regardless of exhaustion. Once a first-amended petition has been submitted, the
19 parties may then litigate timeliness, exhaustion, and any other procedural issues. Accordingly,
20 because Connors has not demonstrated that a stay is appropriate at this time, his motion to stay is
21 denied.

22 Next, I consider Connors’s counsel’s motion to withdraw.¹⁴ Counsel asserts that she has

23 ⁹ ECF No. 19-4.

24 ¹⁰ See *Rhines v. Weber*, 544 U.S. 269 (2005).

25 ¹¹ ECF No. 19-4.

26 ¹² *Rhines*, 544 U.S. at 277 (citing by analogy 28 U.S.C. § 2254(b)(2) (“An application for a writ of
27 habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the
28 remedies available in the courts of the State”)).

¹³ ECF No. 20.

¹⁴ ECF No. 21.

1 good cause to withdraw under Local Rule IA 11-6 because she is currently serving as court-
2 appointed counsel in too many cases.¹⁵ Connors dispatched the instant habeas petition for mailing on
3 July 13, 2015.¹⁶ His motion for appointment of counsel was granted on October 1, 2015, and the
4 Federal Public Defender was appointed.¹⁷ The Federal Public Defender filed a notice of conflict of
5 interest, and on April 25, 2016, Julian Gregory was appointed as CJA counsel.¹⁸ On July 5, 2016,
6 Julian Gregory filed a motion to withdraw as counsel, explaining that he had learned of a potential
7 conflict because when he worked with the Federal Public Defender, he may have represented
8 co-defendant Christopher Connors.¹⁹ Gregory's motion to withdraw was granted and on July 28,
9 2016, and current counsel Angela Dows was appointed.²⁰ Since being appointed as Connors's
10 counsel, Dows has filed two unopposed motions for extension of time to file an amended petition,²¹ a
11 motion for stay,²² and a motion to withdraw as counsel due to her caseload.²³

12 Dows has not provided a compelling basis to withdraw at this point, especially in light of the
13 time that has already passed since this habeas matter was initiated. Thus, the motion to withdraw is
14 denied at this time, and Dows is directed to file an amended petition within 45 days containing all
15 known grounds for relief. Once an amended petition is filed, if Dows continues to believe that she
16 should withdraw, she may renew her motion, providing compelling reasons.

17 . . .

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19 ¹⁵ *Id.* at 3–4.

20 ¹⁶ ECF No. 8.

21 ¹⁷ ECF No. 7.

22 ¹⁸ ECF No. 11.

23 ¹⁹ ECF No. 13.

24 ²⁰ ECF No. 14.

25 ²¹ ECF Nos. 16, 18.

26 ²² ECF No. 19.

27 ²³ ECF No. 21.

1 Accordingly, IT IS HEREBY ORDERED that:

- 2 • Petitioner’s motion to stay the proceedings [ECF No. 19] is DENIED;
- 3 • Counsel’s motion to withdraw [ECF No. 21] is DENIED; and

4 The second motion for extension of time to file an amended petition [ECF No. 18] is
5 **GRANTED**. Dows has 45 days to file an amended petition that includes all known grounds for
6 relief (both exhausted and unexhausted). Respondents have 30 days after the filing of the amended
7 petition to answer or otherwise respond to the amended petition. The response must comply with
8 Habeas Rule 5. Any procedural defenses must be raised together in a single, consolidated motion to
9 dismiss. Procedural defenses omitted from a motion to dismiss may be deemed waived.
10 Respondents may not file a response in this case that consolidates their procedural defenses, if any,
11 with their response on the merits, except under 28 U.S.C. § 2254(b)(2) as to any unexhausted claims
12 clearly lacking merit. If respondents do seek dismissal of unexhausted claims under § 2254(b)(2),
13 they must: (a) do so within the single motion to dismiss and not in the answer; and (b) specifically
14 direct their argument to the standard for dismissal under § 2254(b)(2) as set forth in *Cassett v.*
15 *Stewart*.²⁴ In any answer filed on the merits, respondents must specifically cite to and address the
16 applicable state court written decision and state court record materials, if any, regarding each claim
17 within the response as to that claim.

18 Connors will have 30 days from service of the answer, motion to dismiss, or other response,
19 to file a reply or opposition; all other requests for relief by respondents by motion will be subject to
20 the normal briefing schedule under the local rules.

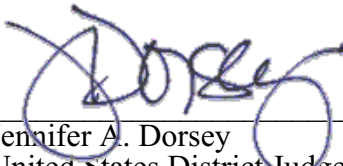
21 Any additional state court record exhibits filed by either party must be filed with a separate
22 index of exhibits identifying the exhibits by number. The CM/ECF attachments that are filed must
23 be identified by the number or numbers of the exhibits in the attachment.

24 The parties must send courtesy copies of all exhibits to the Clerk of Court at the Reno
25 Division at 400 S. Virginia St., Reno, NV, 89501, and directed to the attention of “Staff Attorney”

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27 ²⁴ See *Cassett v. Stewart*, 406 F.3d 614, 623–24 (9th Cir. 2005).

1 on the outside of the mailing address label.

2 DATED May 9, 2017.

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5 Jennifer A. Dorsey
6 United States District Judge
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