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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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DANE FLY,

Petitioner,

Case No. 2:17-cv-01611-MMD-GWF

v.

ORDER

JO GENTRY,

Respondent.

On July 31, 2017, this Court entered an order in this habeas corpus proceeding directing petitioner Dane Fly to either (1) show cause why the Court should not dismiss his petition as unexhausted or (2) file a motion for stay and abeyance. (ECF No. 6.) Fly has filed his response to the order to show cause. (ECF No. 8.) For the reasons that follow, Fly's petition will be dismissed.

Fly's response to the order to show cause consists of two orders entered by Nevada appellate courts. One was issued by the Nevada Court of Appeals and affirmed the lower court's decision to deny Fly's state post-conviction petition on the merits. (ECF No. 8 at 4-7.) According to the order, Fly had raised claim in that proceeding that his counsel was ineffective for failing to investigate and present certain evidence at sentencing. The other order, entered by the Nevada Supreme Court, dismissed for lack of jurisdiction a notice of appeal in relation to Fly's judgment of conviction. (*Id.* at 9.)

The three claims in Fly's petition before this Court all involve the application of Nevada's habitual criminal statute to his sentence. (ECF No. 5.) Fly has made no showing

1 that he has presented any of these claims to the Nevada courts. And, despite being  
2 advised of his opportunity to do so, he has not filed a motion asking this Court to stay  
3 proceedings and hold them in abeyance while he exhausts state court remedies. See  
4 *Mena v. Long*, 813 F.3d 907, 912 (9<sup>th</sup> Cir. 2016) (holding a district court has the discretion  
5 to stay and hold in abeyance fully unexhausted petitions under the circumstances set  
6 forth in *Rhines v. Weber*, 544 U.S. 269 (2005)). Consequently, this Court must dismiss  
7 Fly's petition. See *Rose v. Lundy*, 455 U.S. 509, 510 (1982).

8 For the foregoing reasons, the Court finds that summary dismissal of the petition  
9 is appropriate under Rule 4 of the Rules Governing Section 2254 Cases In United States  
10 District Courts. It is therefore ordered that the petition (ECF No. 5) is hereby dismissed  
11 without prejudice. The Clerk will enter judgment accordingly.

12 It is further ordered that the Court declines to issue certificate of appealability.

13 It is further ordered that Fly's "emergency motion" (ECF No. 10) is denied as moot.<sup>1</sup>

14 DATED this 13<sup>th</sup> day of December 2017.

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17 MIRANDA M. DU  
18 UNITED STATES DISTRICT JUDGE

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26 <sup>1</sup>This motion asks this Court to grant relief based on Fly's claim that the Nevada  
27 Department of Corrections has failed to properly apply statutory good-time credits to his  
28 sentence. Fly did not include this claim in his habeas petition, but instead merely filed an  
"addendum" without asking the Court for leave to supplement or amend his petition. (ECF  
No. 9.) Moreover, it appears as if Fly has also failed to properly exhausted state court  
remedies for this claim, as well. (*Id.* at 26-27.)