

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Patrick Edward Wilcock,

Case No.: 2:17-cv-02101-JAD-CWH

Petitioner

V.

Jo Gentry, et al.,

Respondents

Order Granting Motion to Stay and Abey Proceedings

[ECF No. 30]

Patrick Edward Wilcock petitions under 28 U.S.C. § 2254 for habeas corpus relief from state-court conviction for first-degree murder, burglary with a deadly weapon, robbery, possession of stolen property, and two deadly weapon enhancements. Wilcock moves for a stay of *Rhines v. Weber* to allow him to return to state court to exhaust various grounds for relief.

14 |¹ Respondents do not oppose the request. ² I grant the motion and stay this case pending
15 | Wilcock's exhaustion of state-court proceedings.

Discussion

17 In *Rhines v. Weber*,³ the United States Supreme Court limited the district courts' 18 discretion to allow habeas petitioners to return to state court to exhaust claims. When a 19 petitioner pleads both exhausted and unexhausted claims—known as a mixed petition—the 20 district court may stay the petition to allow the petitioner to return to state court to exhaust the

¹ ECF No. 30.

23 | ² ECF No. 31.

³ *Rhines v. Weber*, 544 U.S. 269 (2005).

1 unexhausted ones only if: (1) the habeas petitioner has good cause; (2) the unexhausted claims
2 are potentially meritorious; and (3) petitioner has not engaged in dilatory litigation tactics.⁴
3 “[G]ood cause turns on whether the petitioner can set forth a reasonable excuse, supported by
4 sufficient evidence, to justify [the failure to exhaust a claim in state court].”⁵ “While a bald
5 assertion cannot amount to a showing of good cause, a reasonable excuse, supported by evidence
6 to justify a petitioner’s failure to exhaust, will.”⁶ The Supreme Court’s opinion in *Pace v.*
7 *DiGuglielmo*,⁷ suggests that this standard is not particularly stringent, as the High Court held that
8 “[a] petitioner’s reasonable confusion about whether a state filing would be timely will ordinarily
9 constitute ‘good cause’ to excuse his failure to exhaust.”⁸

10 Wilcock meets the standard for a *Rhines* stay. He explains that he is currently pursuing
11 *Brady* claims in state court related to the state’s alleged suppression of favorable and material
12 evidence regarding the state’s key witness against him.⁹ While respondents do not waive any
13 defenses to Wilcock’s second-amended petition, they indicate that they do not oppose the motion
14 for stay.¹⁰ Especially in light of respondents’ non-opposition, I find that a *Rhines* stay is
15 warranted, and I grant it.

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19 ⁴ *Id.* at 277; *Gonzalez v. Wong*, 667 F.3d 965, 977–80 (9th Cir. 2011).

20 ⁵ *Blake v. Baker*, 745 F.3d 977, 982 (9th Cir. 2014).

21 ⁶ *Id.*

22 ⁷ *Pace v. DiGuglielmo*, 544 U.S. 408 (2005).

23 ⁸ *Pace*, 544 U.S. at 416 (citing *Rhines*, 544 U.S. at 278). *See also Jackson v. Roe*, 425 F.3d 654, 661–62 (9th Cir. 2005) (the application of an “extraordinary circumstances” standard does not comport with the “good cause” standard prescribed by *Rhines*).

⁹ ECF No. 30.

¹⁰ ECF No. 31.

1 IT IS THEREFORE ORDERED that petitioner's motion for issuance of stay and
2 abeyance¹¹ of this federal habeas corpus proceeding [ECF No. 30] is GRANTED.

3 IT IS FURTHER ORDERED that **this action is STAYED** pending final resolution of
4 petitioner's postconviction habeas petition. Petitioner must return to federal court with a motion
5 to reopen this case within 45 days of the issuance of the remittitur by the Supreme Court of
6 Nevada at the conclusion of the state-court proceedings on his postconviction habeas petition.

7 IT IS FURTHER ORDERED that the Clerk is directed to **ADMINISTRATIVELY**
8 **CLOSE** this action.

9 Dated: June 4, 2019

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U.S. District Judge Jennifer A. Dorsey

¹¹ ECF No. 30