UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SAMUEL ISAAC MARQUEZ,

Petitioner,

vs.

E.K. MCDANIELS, *et al.*,

Respondents.

3:08-cv-00647-LRH-VPC

ORDER

This represented habeas action under 28 U.S.C. § 2254 comes before the Court on petitioner's request for a stay in his response (#29) to the Court's show cause order regarding exhaustion. Petitioner requests that the Court stay this action while he seeks to exhaust the unexhausted claims in state court. Respondents have filed a notice (#30) advising that they do not oppose the stay, subject to the reservation of their continuing potential procedural objections to all grounds asserted in the amended petition (#19).

Pursuant to *Rhines v. Weber*, 544 U.S. 269, 125 S.Ct. 1528, 161 L.Ed.2d 440 (2005), and further pursuant to Local Rule LR 7-2(d), the Court finds that petitioner has demonstrated good cause, that the unexhausted claims include at least one claim that is not plainly meritless, and that petitioner has not engaged in intentionally dilatory litigation tactics.

The Court expresses no opinion as to whether the circumstances presented satisfy the cause and prejudice standard with respect to any claim of procedural default. The Court's holding herein should not be read as an express or implied holding on this issue or any other issue. The Court holds only that

the criteria for a stay under *Rhines* have been satisfied, and its findings and holding are expressly limited to that specific context.

IT THEREFORE IS ORDERED that this action is STAYED pending exhaustion of the unexhausted claims. Petitioner may move to reopen the matter following exhaustion of the claims, and any party otherwise may move to reopen the matter at any time and seek any relief appropriate under the circumstances.

IT FURTHER IS ORDERED that the grant of a stay is conditioned upon petitioner filing, if same has not been filed previously, a state post-conviction petition or other appropriate proceeding in state district court within forty-five (45) days of entry of this order and returning to federal court with a motion to reopen within forty-five (45) days of issuance of the remittitur by the Supreme Court of Nevada at the conclusion of all state court proceedings.

IT FURTHER IS ORDERED that, with any motion to reopen filed following completion of all state court proceedings pursued, petitioner: (a) shall attach an indexed set of exhibits (with the corresponding CM/ECF attachments identified by exhibit number(s) on the docketing system) containing the state court record materials relevant to the issues herein that cover the period between the state court exhibits on file in this matter and the motion to reopen; and (b) if petitioner intends to amend the petition, shall file a motion for leave to amend along with the proposed verified amended petition or a motion for extension of time to move for leave.[1] Respondents shall have thirty (30) days to file a response to the motion or motions filed.

IT FURTHER IS ORDERED that the Clerk of Court shall ADMINISTRATIVELY CLOSE this action until such time as the Court grants a motion to reopen the matter.

DATED this 19th day of October, 2010.

LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

[1]No claims are dismissed by this order.