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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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BRET HENRY KELLER,

Petitioner,

v.

ISIDRO BACA, *et al.*,

Respondents.

Case No. 3:15-cv-00563-MMD-VPC

ORDER

This is a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 initiated by a Nevada state prisoner.


On February 13, 2018, the Court entered an order finding that Ground 1 and part of Ground 2 of the Petition are unexhausted. (ECF No. 41.) The Court directed Petitioner to either (1) move to dismiss the unexhausted claims; (2) dismiss the entire petition without prejudice; or (3) move for other relief, including a stay and abeyance. (*Id.*) On May 16, 2018, Petitioner filed a motion to stay and abey. On June 12, 2018, the Court denied Petitioner's motion to stay and abey and directed Petitioner to elect either (1) to dismiss his unexhausted claims or (2) dismiss the entire petition without prejudice so he could return to state court to exhaust his unexhausted claims. The Court directed Petitioner to make his election within thirty days of the date of its order. To date, Petitioner has failed to respond to the Court's order. He did, however, attempt to appeal, but the appeal was dismissed for lack of jurisdiction.

The Petition in this action remains mixed and is therefore subject to dismissal. *Rose v. Lundy*, 455 U.S. 509, 510 (1982). Petitioner is accordingly directed, once again,

1 to elect either (1) to dismiss his unexhausted claims or (2) dismiss the entire petition
2 without prejudice so he can return to state court to exhaust his unexhausted claims. If
3 Petitioner fails to timely comply with this order, his Petition will be dismissed without
4 prejudice.

5 In accordance with the foregoing, it is therefore ordered that Petitioner will, within
6 twenty (20) days of the date of entry of this order, file a notice with the Court electing to
7 either dismiss his unexhausted claims or to dismiss the entire petition without prejudice
8 so that he may return to state court to exhaust his unexhausted claims. Failure to do so
9 will result in the dismissal of this action without prejudice.

10 DATED THIS 23rd day of August 2018.

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13 MIRANDA M. DU
14 UNITED STATES DISTRICT JUDGE
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