

ROBERTO RODRIGUEZ,

Petitioner,

- versus -

THOMAS LAVALLEY,
Superintendent,

Respondent.

ORDER

13-CV-5811 (JG)

JOHN GLEESON, United States District Judge:

Roberto Rodriguez has petitioned pursuant to 28 U.S.C. § 2254 for a writ of habeas corpus. At the March 31, 2014 argument on the motion, Rodriguez raised an apparently unexhausted claim of ineffective assistance of counsel – he argued that his lawyer failed to investigate a potentially meritorious intoxication defense prior to trial, and as a consequence failed to present any such evidence during trial.

I asked Rodriguez's trial counsel, Kleon Andreadis, to provide a written statement to the court responding to Rodriguez's claim of ineffective assistance. Andreadis has filed that statement, and I am sending Rodriguez a copy. In addition, respondent has filed a letter opposing any stay in this case.

Based in part on Andreadis's statement, I believe it is unlikely that Rodriguez will be able to demonstrate that it is appropriate for me to stay this case and appoint him counsel for the purpose of raising his unexhausted claim in the state courts. A stay would *not* be appropriate if the new claim is meritless, or if Rodriguez cannot demonstrate good cause for his failure to raise it until now. *See Rhines v. Weber*, 544 U.S. 269, 277 (2005).

By Monday, June 30, 2014, Rodriguez shall file any additional papers (if he wishes) arguing why a stay would be appropriate.

So ordered.

John Gleeson, U.S.D.J.

Dated: May 20, 2014
Brooklyn, New York