

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL SERVICE,

Petitioner,

17-CV-04941 (LJL)(SN)

-against-

ORDER

JOSEPH NOETH,

Respondent.

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SARAH NETBURN, United States Magistrate Judge:

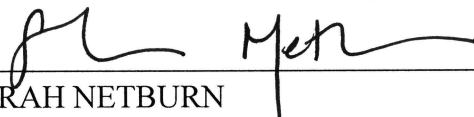
On December 3, 2020, Petitioner filed a motion to stay his petition for writ of habeas corpus so that he could exhaust certain claims in state court by way of a writ of error *coram nobis*. ECF No. 44. Petitioner's motion to stay this matter is GRANTED. This matter is stayed and Petitioner's habeas petition shall be held in abeyance so that Petitioner can exhaust additional claims in state court. Rhines v. Weber, 544 U.S. 269, 277 (2005) (finding the stay and abeyance of a habeas petition is appropriate when there is "good cause for the petitioner's failure to exhaust his claims first in state court" and where the claims are not plainly meritless).

Petitioner is further granted leave pursuant to Federal Rule of Civil Procedure 15(a) to amend the petition to include those additional claims if they are rejected by the state court. Respondent will be granted an opportunity to argue that the amended claims do not relate back and are therefore untimely as part of its response on the merits to the amended petition.

Finally, Petitioner is ordered to file a status letter with the Court within 30 days of a final decision on Petitioner's writ of error *coram nobis*.

The Clerk of Court is respectfully directed to terminate the motion at ECF No. 44.

SO ORDERED.



SARAH NETBURN
United States Magistrate Judge

DATED: February 8, 2021
New York, New York