

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

BEVERLY MICHELLE MOORE,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. CIV-09-985-C
	)	
WAREN MILLICENT NEWTON-EMBRY,	)	
INC.,	)	
	)	
Respondent.	)	

MEMORANDUM OPINION AND ORDER

Before the Court is Petitioner’s Second Post-Remand Motion to Lift Stay and Excuse Exhaustion (Dkt. No. 213). Respondent filed a Response in Opposition to Petitioner’s motion (Dkt. No. 214). Petitioner has filed a reply (Dkt. No. 215). The motion is now at issue.

I. Discussion

Section 2254 (a)-(b) codifies a judicial policy that requires a federal habeas petitioner to exhaust state remedies before petitioning the federal court for relief. “A state prisoner is entitled to relief under 28 U.S.C. § 2254 only if he is held ‘in custody in violation of the Constitution or laws or treaties of the United States.’” Engle v. Isaac, 456 U.S. 107, 119 (1982). This Court discussed principles of comity, federalism, and the exhaustion requirement in a prior order and will not repeat that analysis in this order. (Order, Dkt. No. 208.)

Petitioner cites a “continued lack of resources in state court, the futility of future state court proceedings, and the subjugation of interests of comity and federalism” as the

basis for this Court to excuse exhaustion. (Pet'r's Reply, Dkt. No. 215, p. 2.) Respondent argues that there has not been an inordinate delay and the Court's analysis should focus on "whether there has been any activity or progress in the state court action and whether the delay is attributable to the state or petitioner." (Def.'s Resp., Dkt. No. 214, p. 4.) On March 27, 2018, shortly after the filing of this Motion, the state district court issued an Order Denying Application for Post Conviction Relief After Evidentiary Hearing. (Def.'s Resp., Dkt. No. 214-1, Ex. 1.) A Notice of Appeal has been filed. This Court has previously noted the unusual circumstances of this case and that there were persuasive reasons to grant federal relief and excuse exhaustion. (Order, Dkt. No. 208.) However, for reasons of principles of comity and federalism, the state court must be given an opportunity to address the instant case. Petitioner may renew her motion should further delay of the state proceedings occur.

## II. Conclusion

Accordingly, Petitioner's Second Post-Remand Motion to Lift Stay and Excuse Exhaustion (Dkt. No. 213) is DENIED.

IT IS SO ORDERED this 30th day of May, 2018.

  
ROBIN J. CAUTHRON  
United States District Judge