

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

SEBASTIAN SHEPHERD,)	
)	
Petitioner,)	
vs.)	NO. CIV-17-0427-HE
)	
HECTOR RIOS, Warden,)	
)	
Defendant.)	

ORDER

Petitioner is a state prisoner seeking habeas relief under 28 U.S.C. § 2254. The matter was referred to Magistrate Judge Gary Purcell for initial proceedings. After Judge Purcell ordered a response from the State, petitioner requested a stay of the case in order to exhaust state remedies on new claims for ineffective assistance of appellate counsel. That request was denied. Petitioner then filed a letter asking the court to hold his habeas action in abeyance pending the resolution of his newly initiated state court post-conviction proceeding. The State has also filed a motion to dismiss petitioner’s habeas action, arguing that petitioner’s state conviction is not final and therefore this court must abstain from addressing petitioner’s claims.

Judge Purcell determined that because petitioner’s claims currently before the court are exhausted, a stay is not appropriate. Judge Purcell also determined that petitioner’s action was not subject to dismissal, as the claims before this court are not the subject of the ongoing state proceedings. He therefore recommends that both requests be denied.

The parties were advised of their right to file an objection to the Report and Recommendation by August 9, 2017. No objections have been filed. The parties have therefore waived any right to appellate review of the factual and legal issues raised in the Report and Recommendation. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059–60 (10th Cir. 1996); *see* 28 U.S.C. § 636(b)(1)(C). The court therefore **ADOPTS** the Report and Recommendation [Doc. #26]. Petitioner’s motion to stay [Doc. #25] and respondent’s motion to dismiss [Doc. #20] are **DENIED**. This action shall proceed before Judge Purcell in accordance with the initial referral.

IT IS SO ORDERED.

Dated this 18th day of August, 2017.



JOE HEATON
CHIEF U.S. DISTRICT JUDGE