

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ROBERT HENLEY,

Case No. 2:16-cv-01843-MA

Petitioner,

ORDER

v.

MARK NOOTH,

Respondent.

MARSH, Judge.

Petitioner, an inmate at Snake River Correctional Institution, brings this habeas corpus proceeding pursuant to 28 U.S.C. § 2254, challenging his 2009 conviction for Sexual Abuse in the First Degree and Attempted Sodomy in the First Degree. Habeas Pet. (ECF No. 2) at 1. It is undisputed that Petitioner has not exhausted his available state remedies. Respondent moves the Court to dismiss the Petition for failure to exhaust, and Petitioner moves the Court to stay this proceeding pending his exhaustion of state remedies.

Given the fact that this proceeding involves a delayed state appeal caused by ineffective assistance of counsel (*see* Resp't Mot. to Dismiss, Attach. E), this Court concludes that there is a sufficient issue concerning the limitations period to warrant staying, rather than dismissing, this


proceeding. *See Rhines v. Weber*, 544 U.S. 269, 278 (2005) (stay is appropriate if “the petitioner had good cause for his failure to exhaust, his unexhausted claims are potentially meritorious, and there is no indication that the petitioner engaged in intentionally dilatory litigation tactics.”); *Mena v. Long*, 813 F.3d 907, 912 (9th Cir. 2016) (extending holding in *Rhines* to fully unexhausted petition).

CONCLUSION

Based on the foregoing, this Court grants Petitioner’s Motion to Stay (ECF No. 15) and denies Respondent’s Motion to Dismiss (ECF No. 14). It is ordered that Petitioner shall file a status report within sixty days of the date of this Order and every sixty days thereafter. It is further ordered that Petitioner shall file a motion to lift the stay in this proceeding within thirty days of the completion of the state court process.

IT IS SO ORDERED.

DATED this 11 day of April, 2017.


Malcolm F. Marsh
United States District Judge