

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

NATHAN GONZALEZ,
Petitioner,

Case No. 2:16-cv-01983-TC
ORDER

v.

JOHN MYRICK,
Respondent.

COFFIN, Magistrate Judge:

Petitioner, an inmate at Two Rivers Correctional Institution appearing pro se, brings this habeas corpus action pursuant to 28 U.S.C. § 2254. Respondent moves for dismissal on the basis that petitioner currently has a post-conviction petition pending in state court and has not exhausted his available state remedies before bringing the instant federal habeas petition.

A state prisoner must exhaust all available state court remedies either on direct appeal or through post-conviction proceedings before a federal court may consider granting habeas corpus relief. 28 U.S.C. § 2254(b)(1)(A); *see also Baldwin v. Reese*, 541 U.S. 27, 29 (2004). Petitioner has not responded to or otherwise opposed respondent's motion. Based on the attachments to

respondent's motion, it is clear that petitioner has not exhausted his state remedies. *See* Resp.'s Motion, Attachment D. However, instead of dismissing the petition, respondent concedes that the court has discretion to stay the proceedings under the circumstances in this case. Resp.'s Motion at 5 n.2.

Accordingly, respondent's Motion to Dismiss (ECF No. 8) is GRANTED, in part. IT IS ORDERED that this action is STAYED until 30 days after the conclusion of petitioner's post-conviction proceedings in state court. The parties shall notify the court of the status of those proceedings within 90 days from the date of this order.

IT IS SO ORDERED.

DATED this 11 day of April, 2017.



Thomas Coffin
United States Magistrate Judge