
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

DEMONTRELL MILLER,

Petitioner,

versus

DIRECTOR, TDCJ-CID,

Respondent.

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CIVIL ACTION NO. 6:15-CV-535

**MEMORANDUM ORDER OVERRULING RESPONDENT'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Petitioner Demontrell Miller, a death row inmate confined within the Texas Department of Criminal Justice, Correctional Institutions Division, filed this petition for a writ of habeas corpus challenging his conviction pursuant to 28 U.S.C. § 2254.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends that Petitioner's Motion for Stay and Abeyance (#56) be granted and the case be administratively closed until such time as Petitioner notifies the court that he has exhausted his grounds for relief in state court.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings and all available evidence. Respondent filed objections to the magistrate judge's Report and Recommendation.


The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes Respondent's objections are without merit. Petitioner has satisfied the United States Supreme

Court's requirements to stay and abate the case as set forth in *Rhines v. Weber*, 544 U.S. 269 (2005). He has shown good cause for the failure to exhaust, the claim is not plainly meritless, and there is no indication that the failure to exhaust was for purposes of delay. *Id.* at 277-78. It is specifically noted that Petitioner argues that his conviction was the product of false scientific evidence, and the Texas Court of Criminal Appeals has been receptive to successive applications for a writ of habeas corpus raising this type of claim. *Ex parte Robbins*, 478 S.W.3d 678, 690 (Tex. Crim. App. 2014); *Ex parte Roberson*, No. WR-63,081-03, 2016 WL 3543332, at *1 (Tex. Crim. App. June 16, 2016). In her objections, Respondent focuses on the merits of Petitioner's claims, but such arguments are more appropriately considered by the Texas Court of Criminal Appeals in the first instance.

ORDER

Accordingly, Respondent's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. Petitioner's Motion for Stay and Abeyance (#56) is **GRANTED**. The above-styled and numbered petition for a writ of habeas corpus is **STAYED** and the case is **ADMINISTRATIVELY CLOSED** until such time as Petitioner notifies the court that he has exhausted his grounds for relief in state court.

SIGNED at Beaumont, Texas, this 1st day of March, 2018.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE