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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 ROBERT LEE YATES, JR.,

9 Petitioner,

10 v.

11 STEPHEN D. SINCLAIR,

12 Respondent.
13

NO. C13-0842 RSM

ORDER GRANTING PETITIONER'S
MOTION FOR STAY AND ABEYANCE

THIS IS A CAPITAL CASE

14
15 **I. INTRODUCTION**

16 This matter comes before the Court on Petitioner Robert Lee Yates, Jr.'s Motion for
17 Stay and Abeyance pursuant to *Rhines v. Weber*, 544 U.S. 269, 276 (2005). Dkt. # 18. In this
18 capital habeas corpus action, Mr. Yates seeks to stay the Court's consideration of his First
19 Amended Petition so that he may exhaust two claims that have yet to be considered by a
20 Washington state court. Respondent opposes a full stay and asks the Court consider the claims
21 that have been exhausted while staying consideration of the two unexhausted claims. For the
22 reasons set forth below, the Motion for Stay and Abeyance shall be granted in its entirety and
23 this matter shall be stayed pending resolution of Mr. Yates' state court proceedings.
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1 **II. BACKGROUND**

2 Petitioner Yates is a prisoner held in the Intensive Management Unit of the
3 Washington State Penitentiary at Walla Walla, Washington. Yates’ incarceration derives from
4 two cases: *State v. Yates*, Spokane County Cause No. 00-1-01153-0 (“Spokane County case”)
5 and *State v. Yates*, Pierce County Cause No. 00-1-03253-8 (“Pierce County case”).
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7 In the Spokane County case, Yates pleaded guilty to thirteen counts of First Degree
8 Murder and one count of Attempted First Degree Murder on October 13, 2000. *See* Dkt. # 11
9 (First Amended Petition for Writ of Habeas Corpus, hereafter referred to as Dkt. # 11), ¶
10 II.A.4. The court sentenced Yates to a 408 year prison term for those crimes. *See id.* at ¶
11 II.A.5. In July of 2012, Yates filed a personal restraint petition (“PRP”) challenging his
12 convictions in the Spokane County case. *See id.* at ¶ II.A.6; *In re Personal Restraint of Yates*,
13 Washington Supreme Court No. 875189. Petitioner states that the Washington Supreme
14 Court has yet to issue a ruling although the PRP has been fully briefed. *See* Dkt. # 11, ¶
15 II.A.6.
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17 In the Pierce County case, Yates was convicted of two counts of aggravated murder in
18 October 2002. *See id.* at ¶ II.B.4. After a sentencing hearing, the jury returned a sentence of
19 death. On October 9, 2002, Yates was formally sentenced to death in Pierce County Superior
20 Court. *See id.* Yates then filed a direct appeal and a PRP in the Washington Supreme Court.
21 *See id.* at ¶¶ II.B.5 – II.B.6; *see also State v. Yates*, 161 Wash. 2d 714 (2007) and *In re Yates*,
22 177 Wash. 2d 1 (2013). All of Yates’ claims for relief were rejected by the Washington
23 Supreme Court, and on April 3, 2013, Yates filed a Notice of Intent to file a Habeas Corpus
24 Petition under 28 U.S.C. § 2254 in this Court.
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1 Yates filed a preliminary pleading entitled Application for Writ of Habeas Corpus;
2 Motion to Appoint Counsel; Unopposed Request for Stay of Execution on May 10, 2013. *See*
3 Dkt. # 1. Then, on January 21, 2014, Yates filed the First Amended Petition for Writ of
4 Habeas Corpus wherein he raised two claims that have yet to be resolved in the Washington
5 state courts.
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7 As to these unexhausted claims, Claim One alleges that Yates' Pierce County case
8 trial counsel were ineffective for failing to file a motion for improper venue pursuant to CrR
9 5.1, CrR 5.2(a), or Washington Constitution Article I, § 22. It also alleges that post-conviction
10 counsel were ineffective by failing to raise the ineffective assistance of trial counsel claim.
11 Yates filed additional evidence in the form of declarations to support this new claim. In
12 addition, he recently filed a PRP in the Washington Supreme Court. *See* Dkt. # 11, ¶ II.C.3.
13 The Washington Supreme Court has assigned cause number 89792-1 to the new PRP. Dkt. #
14 18, p. 3 n.2.
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16 Claim Three raises a legal claim challenging the guilty pleas in the Spokane County
17 case. *See* Dkt. # 11, ¶¶ IV.C.1 – IV.C.8. Claim Three alleges that the guilty pleas and
18 judgment in the Spokane County case were unconstitutional and therefore the jury in the
19 Pierce County case should not have considered them during the penalty phase. As noted
20 above, Yates raised the constitutional challenge to the Spokane guilty pleas and judgment in a
21 June 2012 PRP that the Washington Supreme Court has yet to rule upon.
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1 **III. DISCUSSION**

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3 **A. Legal Standard**

4 A federal court may not grant habeas corpus relief on a claim that has not been
5 exhausted in state court. 28 U.S.C. § 2254(b). The federal habeas statutes codify the long-
6 standing common law rule that a state prisoner must “fairly present” to the state courts the
7 substance of the federal claim. *Picard v. Connor*, 404 U.S. 270, 275 (1971). The doctrine of
8 exhaustion derives from the policy of federal-state comity and gives state courts the first
9 occasion to correct any constitutional violations. *See id.* at 275-76.

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11 A mixed petition is one that contains both exhausted and unexhausted claims. “When
12 faced with a petition that contains unexhausted claims, a district court has four options: (1)
13 stay the petition pending the outcome of state proceedings; (2) allow the petitioner to delete
14 the unexhausted claims and proceed on the exhausted claims; (3) dismiss the petition without
15 prejudice as unexhausted; or (4) deny the unexhausted claims on the merits under 28 U.S.C.
16 2254(b)(2).”¹ *Baker v. Ricci*, CIV. 09-3654 KM, 2013 WL 4833415, at * 11 (D.N.J. Sept. 9,
17 2013) (citing *Rhines*, 544 U.S. at 277-78).

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19 If a federal habeas petitioner requests a stay and abeyance to bring the unexhausted
20 claims in state court, the district court may stay the mixed petition if three conditions have
21 been met. Stay and abeyance is appropriate where (1) the petitioner has shown “good cause”
22 for his failure to exhaust; (2) the unexhausted claims are not “plainly meritless”; and (3) the
23 petitioner has not engaged in dilatory or abusive litigation practices. *See Rhines*, 544 U.S. at
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26 ¹ Although Respondent contends that the Court should hold in abeyance the two unexhausted
claims and proceed to consider the remaining claims on the merits, it has failed to cite any authority
that permits a district court to adjudicate only a portion of a petition for habeas corpus.

1 277-78. “In such circumstances, the district court should stay, rather than dismiss the mixed
2 petition.” *Id.* at 278. This is because “the petitioner’s interest in obtaining federal review of
3 his claims outweighs the competing interests in finality and speedy resolution of federal
4 petitions.” *Id.*

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6 **B. Analysis**

7 Claim One

8 Yates’ contends that his newly raised ineffective assistance of trial and post-conviction
9 counsel claim satisfies *Rhines*’ “good cause” for failure to exhaust standard pursuant to two
10 recent Supreme Court cases—*Martinez v. Ryan*, 132 S. Ct. 1309 (2012) and *Trevino v.*
11 *Thaler*, 133 S. Ct. 1911 (2013).

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13 In *Rhines*, the Supreme Court did not offer detailed explanation of what constitutes
14 good cause to warrant a stay of a mixed petition. And although *Martinez* did not expound
15 upon *Rhines*, it addressed a related, albeit distinct issue: when a habeas petitioner
16 demonstrates cause and prejudice to excuse a procedural bar. “*Martinez* announced an
17 exception to the longstanding *Coleman* rule that ineffective assistance of PCR counsel cannot
18 establish cause to overcome procedural default.” *Dickens v. Ryan*, 08-99017, 2014 WL
19 241871, at * 12 (9th Cir. Jan. 23, 2014) (en banc). The Supreme Court held that where state
20 law requires that an ineffective assistance of trial counsel claim must be raised at the initial-
21 review collateral proceeding, and post-conviction counsel fails to raise the claim at that
22 proceeding, there is cause for the federal habeas court to review the procedurally defaulted
23 claim. *Id.* at 1320.
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1 The Supreme Court revisited and subtly extended *Martinez* in *Trevino*. *Trevino*
2 differed from *Martinez* in that the state law governing the procedural bar did not categorically
3 require that an ineffective assistance claim be raised at the initial-review proceeding. 133 S.
4 Ct. at 1918. In *Trevino*, however, the state’s post-conviction procedures severely limited
5 appellate counsel’s ability to raise the claim on direct review. *Id.* at 1921. The Court held that
6 such a scenario also demonstrated cause for the federal habeas court to review the
7 procedurally defaulted claim. *Id.*

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9 When faced with certain unexhausted claims for ineffective assistance of counsel,
10 district courts have read *Martinez* to inform the *Rhines* good cause standard. *See, e.g., Byford*
11 *v. Baker*, Case No. 11-cv-00112-JCM-WGC, 2013 WL 431340, at * 5 (D. Nev. Feb. 1, 2013)
12 (concluding—after considering *Martinez*—that post-conviction counsel’s failure to raise an
13 ineffective assistance of trial counsel claim during initial-review collateral proceedings “may
14 establish cause for failure to exhaust that claim”). For example in *Byford*, like here, the
15 petitioner raised an unexhausted claim for ineffective assistance in his federal habeas petition.
16 *Id.* at * 3. The petitioner alleged that his trial counsel was ineffective for failing to investigate
17 and present mitigating evidence during his penalty-phase trial and that his habeas counsel was
18 ineffective for failing to raise the ineffective assistance of counsel claims in his first state
19 court habeas action. *Id.* Because, under Nevada law, a claim for ineffective assistance of
20 counsel must be raised in a first state habeas action, the *Byford* court concluded that the
21 petitioner demonstrated good cause for failing to exhaust his ineffective assistance claims,
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1 which were likely procedurally defaulted. *See id.* at * 5. The court then granted the motion for
2 stay and abeyance to allow petitioner to exhaust his claims in Nevada state court.²

3 While making no determination that Yates’ ineffective assistance claims are
4 procedurally defaulted, the Court concludes that Claim One would be properly before the
5 Court under *Martinez* and *Trevino*, and that there is good cause to stay the federal habeas
6 petition so that the Washington Supreme Court “gets the first crack at new claims while
7 preserving the [petitioner’s] ability to file a federal habeas petition if relief is denied.” *Dickens*
8 2014 WL 241871 at * 20 (Callahan, J. dissenting) (citing with approval the stay procedure
9 adopted in *Trevino*).

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11 Although the Court has determined that Yates has shown good cause for failing to
12 exhaust Claim One, *Rhines* also requires that unexhausted claims must not be “plainly
13 meritless.” 544 U.S. at 277-78. Yates contends that he “has presented a substantial claim of
14 ineffective assistance at trial.” Dkt. # 18, p. 9. The First Amended Petition alleges that the
15 Pierce County Prosecuting Attorney refused to accept the plea arrangement suggested by the
16 Spokane County Prosecuting Attorney and instead sought the death penalty against Yates. *See*
17 Dkt. # 11, ¶¶ IV.A.3 and IV.B.3 – IV.B.10. It further alleges that there is reasonable doubt as
18 to whether the murders prosecuted in Pierce County actually occurred in Pierce County. *See*
19 *id.* at ¶¶ IV.A.5. – IV.A.8.; *see also* RP 7469 (prosecutor’s concession that Ms. Mercer was
20 likely murdered before her body entered Pierce County).
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25 ² The *Byford* court also reasoned that the *Rhines* good cause standard for failure to exhaust is
26 more generous than the good cause standard necessary to overcome a procedural default. *Id.* (citing
Rhines v. Weber, 408 F. Supp. 2d 844, 849 (D.S.D. 2005) (applying Supreme Court’s mandate on
remand) and discussing *Pace v. Digugliemo*, 544 U.S. 408, 416-17 (2005)).

1 Yates' trial attorneys stated that they hoped to identify a strategy that would limit the
2 discretion of the Pierce County Prosecuting Attorney, but that they failed to consider bringing
3 a motion for improper venue under CrR 5.1, CrR 5.2(a), or Washington Constitution Article I,
4 § 22, which require that criminal actions be brought in the county where the crime was
5 alleged to have been committed. *See* Dkt. # 14, Hunko Decl., ¶¶ 4-5, 8; *see also* Dkt. # 13 and
6 19, Hugh Decl., ¶ 3. Further, Yates' expert, Mr. Iaria, opines that Mr. Yates' trial counsel
7 "abandoned a vital legal issue" and that this error constituted a violation of the American Bar
8 Association's Guidelines for the Appointment and Performance of Defense Counsel in Death
9 Penalty Cases (Rev. ed. 2003). Dkt. # 15, Iaria Decl., ¶¶ 36-39. Given the evidence and
10 allegations presented, and the absence of argument to the contrary by Respondent, the Court
11 does not find Claim One to be plainly without merit.
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14 In addition, the evidence does not support Respondent's argument that Yates could
15 have brought this claim earlier. Yates has filed several declarations from trial counsel and
16 post-conviction counsel that show that they did not consider the issue. *See generally* Dkt. ##
17 12-14, 16-17, 19. Yates' newly appointed federal habeas counsel states that he first identified
18 the claim in September of 2013. Dkt. # 23, p. 6. Once identified, counsel filed the First
19 Amended Petition by the deadline set by the Court as well as a new PRP before the
20 Washington Supreme Court. *See* Dkt. # 11, ¶¶ IV.A.1 – IV.C.3. There is no indication that
21 Yates acted dilatory or abusive in bringing his new claim. Thus, as Claim One satisfies the
22 *Rhines* test, a stay and abeyance is warranted.
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24 Claim Three

25 Claim Three also warrants application of a stay. The claim alleges that the Spokane
26 County convictions are constitutionally invalid such that use of the convictions by the Pierce

1 County Prosecutor to obtain a death sentence was improper. As discussed above, Yates is
2 currently challenging the constitutionality of his Spokane County convictions before the
3 Washington Supreme Court. In *Johnson v. Mississippi*, 486 U.S. 578 (1988), the Supreme
4 Court held that where a death sentence was predicated in part on a prior conviction that was
5 later vacated, the death sentence must also be vacated if the sentencing jury considered
6 evidence that was “revealed to be materially inaccurate.” *Id.* 589-90. Here, if the Washington
7 Supreme Court finds the Spokane County convictions unconstitutional, Yates contends that he
8 “will most likely file a successor PRP based on that ‘new’ evidence” in the Pierce County
9 case. Dkt. # 23, p. 5. Should the successor PRP be unsuccessful, Yates will then ask this
10 Court to apply *Johnson* to vacate the Pierce County death sentence. *Id.* Thus, until the state
11 Supreme Court addresses the merits of Yates’ constitutional challenge, this Court’s
12 consideration of Claim Three would be premature.

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15 Yates filed the unexhausted claims to preserve his right to federal habeas review
16 before expiration of the Anti-Terrorism and Effective Death Penalty Act of 1996’s one-year
17 statute of limitations. Full exhaustion of Yates’ habeas claims will serve to “reduce[]
18 piecemeal litigation . . . [and] as a result the [Court] will be more likely to review all of
19 [Yates]’ claims in a single proceeding, thus providing for a more focused and thorough
20 review.” *Rose v. Lundy*, 455 U.S. 509, 520 (1982). Accordingly, Yates’ Motion for Stay and
21 Abeyance is GRANTED.

22 23 **IV. CONCLUSION**

24 Having considered the Motion, the Response and Reply thereto, and the balance of the
25 record, the Court hereby finds and ORDERS:
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- 1 (1) Petitioner’s Motion for Stay and Abeyance (Dkt. # 18) is GRANTED;
2 (2) This action is STAYED so that Petitioner may exhaust, in state court, the unexhausted
3 claims of the First Amended Petition for Writ of Habeas Corpus;
4 (3) Following the conclusion of Petitioner’s state court proceedings, Petitioner shall,
5 within thirty (30) days, bring a motion to lift the stay.
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8 DATED this 7th day of February 2014.
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11 RICARDO S. MARTINEZ
12 UNITED STATES DISTRICT JUDGE
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