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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 TRAVIS C. BAZE,

9 Petitioner,

v.

10 RONALD HAYNES,

11 Respondent.

CASE NO. C17-5706 BHS-TLF

ORDER ADOPTING REPORT
AND RECOMMENDATION

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13 This matter comes before the Court on the Report and Recommendation (“R&R”)
14 of the Honorable Theresa L. Fricke, United States Magistrate Judge (Dkt. 16), and
15 Petitioner Travis Baze’s (“Baze”) objections to the R&R (Dkt. 17).

16 On July 5, 2018, Judge Fricke issued the R&R recommending that the Court deny
17 Baze’s motion to stay and abey because his current petition does not include an
18 unexhausted claim. Dkt. 16. On July 19, 2018, Baze objected on the basis that his
19 unexhausted claim is still proceeding through the state courts and submitted evidence in
20 support of his position. Dkt. 17.


21 The district judge must determine de novo any part of the magistrate judge’s
22 disposition that has been properly objected to. The district judge may accept, reject, or

1 modify the recommended disposition; receive further evidence; or return the matter to the
2 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

3 In this case, Baze fails to show any error in the R&R. While it is true that Baze is
4 exhausting a double jeopardy claim in state court, Baze's current petition does not
5 include that unexhausted claim. If Baze files a motion for leave to amend his petition to
6 add his unexhausted double jeopardy claim, then he may present a mixed petition for
7 consideration and can then properly file a motion to stay and abey his amended mixed
8 petition. At his point, however, Baze has presented a petition that includes only
9 exhausted claims, and there is no reason to stay and abey that current petition. Therefore,
10 the Court having considered the R&R, Petitioner's objections, and the remaining record,
11 does hereby find and order as follows:

- 12 (1) The R&R is **ADOPTED**; and
13 (2) Baze's motion to stay and abey is **DENIED without prejudice**.

14 Dated this 30th day of August, 2018.

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17 BENJAMIN H. SETTLE
18 United States District Judge
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