(HC) Seriales v. Harrington

2009 | Cited 0 times | E.D. California | August 21, 2009

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA KEITH SERIALES,)

Petitioner,)

v.)

K. HARRINGTON,)

Respondent.) _____)

1:09-cv-00355-BAK-GSA HC ORDER DENYING PETITIONER' S MOTIONS FOR STAY OF PROCEEDINGS ON PETITION FOR WRIT OF HABEAS CORPUS (Docs. 2 & 7)

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Petitioner originally filed his federal petition in the Sacramento Division of this Court on February 23, 2009; on February 26, 2009, the case was transferred to the Fresno Division. (Docs. 1 & 5). Contemporaneous with the filing of the petition, which contains eight claims that Petitioner contends are fully exhausted, Petitioner filed a request to hold the proceedings in abeyance pending exhaustion of potentially dispositive claims in state court. (Doc. 2). In that motion, Petitioner seeks a stay of proceedings to exhaust six additional claims. (Id.). The nature of the claims is summarized in the motion as "four c laims of Ineffective Assistance of trial and appellate counsel, one Brady Violation, one Miranda Violation, and a Restitution issue." (I d. at p. 1).

Before the Court could rule on Petitioner' s February 26, 2009 motion, Petitioner filed a second motion for stay on March 9, 2009, seeking a stay in order to exhaust nine issues in state 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

The Antiterrorism and Effective Death Penalty Act of 1996 ("A EDPA), 28 U.S.C. § 1244(d). 1

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court, summarized by Petitioner as " three claims of ineffective assistance of trial and appellate counsel, one Brady violation, on Miranda violation, juror misconduct, a witness in the courtroom during testimony, the trial court's failure to grant a continue motion during sentencing and a restitution issue." (Doc . 7, p. 2).

DISCUSSION Traditionally, a district court has had the discretion to stay a petition which it may validly consider on the merits. Calderon v. United States Dist. Court (Taylor), 134 F.3d 981, 987-988 (9 th Cir. 1998); Greenawalt v. Stewar7, 105 F.3d 1268, 1274 (9 Cir.), cert. denied, 519 U.S. 1002 th (1997). However, the Ninth Circuit has held that Taylor in no way granted " district courts carte blanche to stay even fully exhausted habeas petitions." T aylor, 134 F.3d at 988 n. 11. Granting a stay is appropriate where there is no intention on the part of the Petitioner to delay or harass and in order to avoid piecemeal litigation. Id. In addition, the Ninth Circuit has indicated that it is proper for a district court, in its discretion, to hold a petition containing only exhausted claims in abeyance in order to permit the petitioner to return to state court to exhaust his state remedies. Kelly v. Small, 315 F.3d 1063, 1070 (9 Cir. 2004); Ford v. Hubbard, 305 F.3d 875, 882-883 (9 Cir. 2002); James th th v. Pliler, 269 F.3d 1124, 1126-1127 (9 Cir. 2002); Taylor, 134 F.3d 981. th

Notwithstanding the foregoing, until recently, federal case law continued to require that the Court dismiss " mixed" petitions containing both exhausted and unexhausted claims. Rose v. Lundy, 455 U.S. 509 (1982). However, on March 30, 2005, the United States Supreme Court decided Rhines v. Weber, 544 U.S. 269 (2005). Recognizing that "[a]s a result of the interpla y between AEDPA's 1-year statute of limitations and Lundy's dismissal requirement, petitioners who come to 1 federal court with 'mix ed' pe titions run the risk of forever losing their opportunity for any federal review of their unexhausted claims," the Supreme Court he ld that federal courts may now issue "stay and abey" orde rs under appropriate circumstances to permit petitioners to exhaust unexhausted claims before proceeding with their federal petitions. Rhines, 544 U.S. at 276-277. In so holding, 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 U.S. District Court E. D. California 3

the Supreme Court noted that the procedure should be " available only in limited circumstances." 544 U.S. at 277. Specifically, the Court said it was appropriate only when (1) good cause exists for petitioner's fa ilure to exhaust; (2) petitioner's une xhausted claims are not " plainly meritless" a nd (3) there is no indication that petitioner engaged in "a busive litigation tactics or intentional delay." I d. at 277-278; Robbins v. Carey, 481 F.3d 1143, 1149 (9 Cir. 2005). When a petitioner has met these th requirements, his interest in obtaining federal review of his claims outweighs the competing interests in finality and speedy resolution of federal petitions. Rhines, 544 U.S. at 278.

Here, Petitioner has alleged in both motions that all of the claims in the instant petition are exhausted; thus, the petition does not appear to be mixed. However, Petitioner now wishes to exhaust nine additional grounds in state court. Applying the Rhines standards, the Court concludes

that it must, at this juncture, deny Petitioner's motion for stay without prejudice because Petitioner has not presented sufficient information for the Court to determine whether or not, if exhausted, the additional claims are " plainly meritless." Indeed, rather than explaining the factual and legal basis for the claims he seeks to exhaust, Petitioner, in both motions, has simply presented this Court with a laundry list of potential claims in a summary fashion, e.g., "thre e claims of ineffective assistance of trial and appellate counsel," that pre cludes the Court from conducting the analysis of the potential merits of the proposed claims that is required by Rhines.

Thus, because the Court cannot determine whether Petitioner' s proposed grounds are " plainly meritless" under Rhines. 544 U.S. at 277-278, the Court is unable to determine whether a stay is justified in order to exhaust the proposed claims. Accordingly, the Court must deny both motions.

ORDER Accordingly, IT IS HEREBY ORDERED that: 1. Petitioner's reque st to hold proceedings in abeyance (Doc. 2), is DENIED for lack of specificity; and, 2. Petitioner's motion for abe yance of proceedings (Doc. 7), is DENIED for lack of specificity. IT IS SO ORDERED. Dated: August 21, 2009 /s/ Gary S. Austin 6i0kij UNITED STATES MAGISTRATE JUDGE