

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Nelson v. Robertson

Nelson v. Robertson · No. 19-cv-08057-EMC · Decided March 9, 2023

SUMMARY

The United States District Court for the Northern District of California granted William Lloyd Nelson’s motion for a stay under Rhines v. Weber so he could exhaust unexhausted habeas claims in state court. The court found that the claims were not plainly meritless, the delay appeared unintentional, and newly discovered evidence supported good cause. The court stayed and administratively closed the action, requiring Nelson to move to reopen within thirty days after exhausting his state remedies.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Edward M. Chen
JURISDICTION	United States District Court for the Northern District of California
DECIDED	March 9, 2023
DOCKET	19-cv-08057-EMC
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner sought a stay of his federal habeas corpus proceedings to exhaust unexhausted claims in state court. The court granted the motion under Rhines v. Weber and administratively closed the action.
STANDARD OF REVIEW	A stay under Rhines v. Weber is appropriate when the petitioner shows good cause for failing to exhaust first in state court, the unexhausted claims are not plainly meritless, and the petitioner has not engaged in intentionally dilatory litigation tactics.
PRECEDENTIAL VALUE	Unpublished district court order; precedential status is unknown.
PARTIES	William Lloyd Nelson v. J. M. Robertson

TOPICS

- federal habeas corpus
- post-conviction relief
- civil procedure

PRACTICE AREAS

Federal habeas corpus

Post-conviction relief

QUESTIONS PRESENTED

1. Whether the federal habeas proceedings should be stayed under *Rhines v. Weber* to permit exhaustion of unexhausted claims in state court.
2. Whether Nelson established good cause for failing to exhaust his claims earlier, showed that at least some claims were not plainly meritless, and avoided intentionally dilatory litigation tactics.

HOLDINGS

1. The court granted a stay because Nelson met the *Rhines* criteria: at least some claims were not patently meritless, his asserted newly discovered evidence supported good cause for failure to exhaust, and his vigorous litigation indicated that the delay was unintentional.

KEY QUOTATIONS

“A stay under Rhines v. Weber, 544 U.S. 269 (2005), “is only appropriate when the district court determines there was good cause for the petitioner’s failure to exhaust his claims first in state court,” the claims are not meritless, and there are no intentionally dilatory litigation tactics by the petitioner.” (at 2)

“Nothing further will take place in this action until Mr. Nelson exhausts his unexhausted claims and, within thirty days of doing so, moves to reopen this action, lift the stay, and proceed with consideration of his petition for writ of habeas corpus.” (at 3)

FACTUAL BACKGROUND

Nelson was challenging a conviction for attempted murder of a peace officer in a federal habeas proceeding. His amended petition included unexhausted claims, which he sought to pursue in state court before returning to federal court. He asserted that newly discovered evidence supported at least some of those claims.

PROCEDURAL HISTORY

Nelson filed a pro se petition under 28 U.S.C. § 2254 challenging his conviction for attempted murder of a peace officer. The court dismissed the original petition with leave to amend, screened the amended petition, denied discovery-related motions and reconsideration, and partially granted respondent’s motion to dismiss the amended petition as a mixed petition containing unexhausted claims. After being ordered to elect how to proceed, Nelson moved for a stay to exhaust his state remedies. The court granted the stay and administratively closed the action.

DISPOSITION

other

REMAND INSTRUCTIONS

The action was stayed and administratively closed. After exhausting the unexhausted claims, Nelson was directed to return to federal court within thirty days and move to reopen the action, lift the stay, and proceed with consideration of his habeas petition.

CASES CITED

- Rhines v. Weber, 544 U.S. 269 (2005)
- Tully v. Davis, No. 18-CV-04763-EMC, 2020 WL 264667, at *2 (N.D. Cal. Jan. 16, 2020)
- Gonzalez v. Wong, 667 F.3d 965, 980 (9th Cir. 2011)
- Hernandez-Delgado v. Atchley, No. 20-CV-08108-LHK, 2021 WL 3602319, at *4 (N.D. Cal. Aug. 13, 2021)
- Leonardos v. Buddress, No. 06-CV-07769-JSW, 2007 WL 1174825, at *3 (N.D. Cal. Apr. 19, 2007)
- Lugo v. Kirkland

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
WILLIAM LLOYD NELSON, Case No. 19-cv-08057-EMC 8 Plaintiff, ORDER TO STAY AND
9 v. ADMINISTRATIVELY CLOSE THE ACTION 10 J. M. ROBERTSON, Docket No. 47 11
Defendant. 12 13 14 Petitioner William Lloyd Nelson filed this pro se action for a writ of habeas
corpus 15 pursuant to 28 U.S.C. § 2254 to challenge his conviction for attempted murder of a
peace officer.

16 Docket No. 1. The Court dismissed the original 375-page petition with leave to amend. Docket
17 No. 9. Mr. Nelson both moved for reconsideration and filed an 80-page amended petition. The
18 Court denied Mr. Nelson's motion for reconsideration, screened the amended petition, and
ordered 19 Respondent to address the amended petition. Docket No. 16. 20 Mr. Nelson then
appealed the dismissal of his original petition to the Ninth Circuit, Docket 21 No. 18, which
appeal was dismissed, Docket No. 24.

Mr. Nelson filed various discovery motions, 22 which the Court denied. Docket No. 35. Mr.
Nelson moved for reconsideration of that denial, and 23 the Court denied his reconsideration
motion. 24 Respondent moved to dismiss the amended petition, arguing it was a mixed petition 25
containing unexhausted claims.

The Court granted the dismissal motion in part and denied it in 26 part, and ordered Mr. Nelson to
elect how to proceed as to his unexhausted claims. Docket No. 27 38. Mr. Nelson moved for
reconsideration of the partial grant of the dismissal motion.

The Court 1 as to his unexhausted claims. Docket No. 46. 2 Mr. Nelson now moves for a stay of
these proceedings so that he may exhaust state court 3 remedies for his unexhausted claims before,
if necessary, presenting them in his federal habeas 4 action. Docket No. 47. Respondent opposes
this motion. Docket No. 48.

For the reasons stated 5 below, Mr. Nelson’s motion is GRANTED. 6 A stay under Rhines v. Weber, 544 U.S. 269 (2005), “is only appropriate when the district 7 court determines there was good cause for the petitioner's failure to exhaust his claims first in state 8 court,” the claims are not meritless, and there are no intentionally dilatory litigation tactics by the 9 petitioner.

Id. at 277-78. 10 When his motion is liberally construed, Mr. Nelson has met the criteria for a stay under 11 Rhines. At least some of the claims in the amended petition are not patently meritless, and Mr. 12 Nelson’s vigorous litigation of this action suggests the delay was unintentional. Respondent 13 argues that Mr. Nelson has failed to fulfill Rhines’s good cause element.

Docket No. 48 at 4-5, 14 However, Mr. Nelson purports to have newly discovered evidence which was not put before a 15 California court. See Docket No. 47 at 7; see also Docket No. 48 at 5 (referring to Mr. Nelson’s 16 claim of having new evidence). Courts, including this one, previously have found that good cause 17 exists where an unexhausted claim is based on a change in law or newly discovered evidence.

See 18 Tully v. Davis, No. 18-CV-04763-EMC, 2020 WL 264667, at *2 (N.D. Cal. Jan. 16, 2020) 19 (concluding that petitioner demonstrated good cause where petitioner's unexhausted claims were 20 based upon “new evidence” or “new law”).¹ 21 For these reasons, Mr. Nelson’s motion for a Rhines stay is GRANTED. Docket No. 47. 22 Mr. Nelson is cautioned that he must act diligently to pursue his habeas petition in the state courts 23 24 1 See also Gonzalez v. Wong, 667 F.3d 965, 980 (9th Cir.

2011) (remanding action to district court “with instructions that it stay and abey the habeas proceedings” to allow petitioner to exhaust 25 claims based on new evidence); Hernandez-Delgado v. Atchley, No. 20-CV-08108-LHK, 2021 WL 3602319, at *4 (N.D. Cal. Aug. 13, 2021) (granting Rhines stay where petitioner had failed to 26 exhaust a claim based on new law and new evidence); Leonardos v. Buddress, No. 06-CV-07769- JSW, 2007 WL 1174825, at *3 (N.D.

Cal. Apr. 19, 2007) (concluding that “newly discovered 27 evidence weighs in favor of finding good cause”); Lugo v. Kirkland, No. 05-cv-00580-JF, 2006 1 and must promptly return to federal court after his state court proceedings conclude. See Rhines, 2 544 U.S. at 277-78. 3 This action is now STAYED, and the Clerk shall ADMINISTRATIVELY CLOSE the 4 action. Nothing further will take place in this action until Mr. Nelson exhausts his unexhausted 5 claims and, within thirty days of doing so, moves to reopen this action, lift the stay, and proceed 6 with consideration of his petition for writ of habeas corpus.

7 This order disposes of Docket No. 47. 8 9 IT IS SO ORDERED. 10 11 Dated: March 9, 2023 12 13 _____ EDWARD M. CHEN 14 United States District Judge 15 16 17 18 19 20 21 22 23 24 25 26 27

