

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

OPINION

Nelson v. Robertson

PER CURIAM.

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