

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Stewart v. Covello

544 U.S. 269 (E.D. Cal. 2025) · No. 2:25-cv-00819-DC-CKD (HC) · Decided June 25, 2025

SUMMARY

The United States District Court for the Eastern District of California adopted findings and recommendations concerning Charles Ranando Stewart, Jr.'s motion to stay his federal habeas corpus proceedings. The court denied a Rhines stay as moot, granted a Kelly stay pending exhaustion of state court remedies, and required periodic status reports and a motion to lift the stay after state-court resolution.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Dena M. Coggins
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	June 25, 2025
DOCKET	2:25-cv-00819-DC-CKD (HC)
DISPOSITION	other
PROCEDURAL POSTURE	Federal habeas petitioner moved for a stay and abeyance while exhausting state-court remedies. After he filed an amended petition omitting the unexhausted claims, the magistrate judge recommended granting a stay under Kelly v. Small and denying the alternative Rhines stay as moot. The district court conducted de novo review and adopted the findings and recommendations.
STANDARD OF REVIEW	De novo review under 28 U.S.C. § 636(b)(1)(C)
PRECEDENTIAL VALUE	unpublished
PARTIES	Charles Ranando Stewart, Jr. v. Patrick Covello

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the court should adopt the magistrate judge's recommendation to grant a stay under *Kelly v. Small* while petitioner exhausts state-court remedies.
2. Whether petitioner's request for a stay under *Rhines v. Weber* should be denied as moot after the amended petition omitted the unexhausted claims.
3. What procedural requirements should govern the stayed habeas action pending exhaustion of state-court remedies.

HOLDINGS

1. After conducting de novo review under 28 U.S.C. § 636(b)(1)(C), the district court adopted the magistrate judge's findings and recommendations in full.
2. The court granted petitioner's motion for a stay under *Kelly v. Small* and stayed the habeas action pending exhaustion of state-court remedies.
3. The court denied petitioner's request for a stay under *Rhines v. Weber* as moot because the amended petition no longer contained the unexhausted claims.

KEY QUOTATIONS

“Petitioner’s motion for a stay pending exhaustion of state court remedies under Kelly v. Small, 315 F.3d 1063 (9th Cir. 2002) (Doc. No. 2) is GRANTED and this action is STAYED and held in abeyance pending exhaustion of state court remedies;” (at 2)

FACTUAL BACKGROUND

Petitioner Charles Ranando Stewart, Jr., a state prisoner, filed a federal habeas petition under 28 U.S.C. § 2254 while three claims remained pending in state-court review. He sought a stay under *Kelly v. Small* or, alternatively, under *Rhines v. Weber*. He later filed an amended petition omitting the unexhausted claims and did not oppose the magistrate judge's recommendations.

PROCEDURAL HISTORY

Stewart filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 and moved for a stay under *Kelly v. Small* or, alternatively, *Rhines v. Weber*. He then filed an amended petition omitting three unexhausted claims. The magistrate judge recommended granting the *Kelly* stay and denying the *Rhines* request as moot. After reviewing the record de novo and receiving no opposition from petitioner, the district court adopted the recommendations, stayed the action, and imposed periodic reporting and post-exhaustion filing requirements.

DISPOSITION

other

CASES CITED

- Kelly v. Small, 315 F.3d 1063 (9th Cir. 2002)
- Robbins v. Carey, 481 F.3d 1143 (9th Cir. 2007)
- Rhines v. Weber, 544 U.S. 269 (2005)

OPINION

(HC) Stewart v. Covello

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 CHARLES RANANDO STEWART, JR., No. 2:25-cv-00819-DC-CKD (HC)

12 Petitioner,

13 v. ORDER ADOPTING FINDINGS AND

RECOMMENDATIONS

14 PATRICK COVELLO,

(Doc. No. 8) 15 Respondent. 16 17 Petitioner Charles Ranando Stewart, Jr. is a state prisoner proceeding with counsel with a 18 petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a 19 United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 20 On March 12, 2025, Petitioner filed a motion for stay and abeyance under Kelly v. Small, 21 315 F.3d 1063 (9th Cir. 2002), overruled on other grounds by Robbins v. Carey, 481 F.3d 1143 22 (9th Cir. 2007), or in the alternative, for stay and abeyance under Rhines v. Weber, 544 U.S. 269 23 (2005), because his petition contained unexhausted claims pending state court review. (Doc. No. 24 2.) On April 14, 2025, Petitioner filed a first amended petition for writ of habeas corpus, in which 25 he no longer pleads the three claims from his original petition that are unexhausted and pending 26 state court review. (Doc. No. 7.) 27 On April 14, 2025, the assigned magistrate judge issued findings and recommendations 28 recommending that Petitioner's request for a stay under Kelly be granted and that this action be 1 stayed while he exhausts state court remedies with respect to the three unexhausted claims . (Doc.

2 No. 8.) The magistrate judge also recommended Petitioner's request for a stay under Rhines be 3 denied as moot because his amended petition no longer contained unexhausted claims. (Id.) The 4 findings and recommendations were served on Petitioner and contained notice that any objections 5 thereto were to be filed within fourteen (14) days from the date of service. (Id. at 2.) On April 28, 6 2025, Petitioner filed a response to the magistrate judge's findings and recommendations noting 7 that he did not oppose the proposed recommendations. (Doc. No. 10.) 8 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a 9 de novo review of the case. Having carefully reviewed the entire file, the court finds the findings 10

and recommendations to be supported by the record and by proper analysis. 11 Accordingly, 12 1. The findings and recommendations issued on April 14, 2025 (Doc. No. 8) are 13 ADOPTED in full; 14 2. Petitioner's motion for a stay pending exhaustion of state court remedies under 15 *Rhines v. Weber*, 544 U.S. 269 (2005) (Doc. No. 2) is DENIED as moot; 16 3. Petitioner's motion for a stay pending exhaustion of state court remedies under 17 *Kelly v. Small*, 315 F.3d 1063 (9th Cir. 2002) (Doc. No. 2) is GRANTED and this 18 action is STAYED and held in abeyance pending exhaustion of state court 19 remedies; 20 4. Petitioner is directed to file a status report within ninety (90) days of the date of 21 entry of this order, and every 90 days thereafter, advising the court of what steps 22 he has taken to exhaust his claims in state court; 23 5. Within thirty (30) days after the state court issues a final order resolving the 24 unexhausted claims, Petitioner shall file a motion to lift the stay and, if he wishes 25 to pursue newly exhausted claims in this federal habeas action, Petitioner shall also 26 file a second amended federal petition setting forth all exhausted claims; and 27 6. This action is referred back to the magistrate judge for proceedings consistent with 28 this order. 3

4 IT IS SO ORDERED. □

5 | Dated: _ June 24, 2025 EIU os Dena Coggins 6 United States District Judge 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28