

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

OPINION

(HC) Stewart v. Covello

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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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 // 28 // 1 6. This action is referred back to the magistrate judge for
proceedings consistent with 2 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
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