

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Young v. Cates

No. 1:24-cv-01264-KES-HBK (HC) (E.D. Cal. Apr. 24, 2025) · No. 1:24-cv-01264-KES-HBK (HC) · Decided
April 24, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 ZURI SANAKABISA YOUNG, Case No. 1:24-cv-01264-KES-HBK (HC)
12 Petitioner, FINDINGS AND RECOMMENDATIONS TO GRANT RESPONDENT’S
MOTION TO 13 v. DISMISS2 14 BRIAN CATES, Warden,1 FOURTEEN-DAY OBJECTION
PERIOD 15 Respondent. (Doc. No. 21). 16 17 Petitioner Zuri Sanakabisa Young (“Petitioner”), a
state prisoner, initiated this action by 18 filing a pro se petition for writ of habeas corpus under 28
U.S.C. § 2254 on October 24, 2024.

19 (Doc. No. 1). Currently, Petitioner’s Second Amended Petition is before the Court.3 (Doc. No.
20 13, “Petition”). In response to the Petition, Respondent filed a Motion to Dismiss (“Motion”)
and 21 22 1 Respondent asks that Brian Cates, the current warden of the California Correctional
Institution, be substituted as Respondent pursuant to Federal Rule of Civil Procedure 25(d).

(Doc. No. 21 at 1 n.1). 23 Respondent opposes the request, asserting Cates is not the warden and
“there is ‘no warden,’ only ‘captains’ acting.” (Doc. 22 at 4). The California Department of
Corrections and Rehabilitation website 24 confirms Cates is the warden of the institution where
Petitioner is incarcerated. See <https://www.cdcr.ca.gov/facility-locator/ccci/> (last visited April 24,
2025).

Accordingly, the Court will 25 grant the request to substitute. *Brittingham v. United States*, 982
F.2d 378, 379 (9th Cir. 1992). 26 2 This matter was referred to the undersigned pursuant to 28
U.S.C. § 636(b)(1)(B) and Local Rule 302 (E.D. Cal. 2022). 27 3 Petitioner’s initial and first
amended petitions were dismissed following preliminary screening and 28 Petitioner was granted
leave to file the second amended petition.

(See Doc. Nos. 7, 11). 1 lodged portions of the state court record in support. (Doc. Nos. 21, 20,
20-1 through 20-4). 2 Petitioner filed a response and Respondent filed a Reply. (Doc. Nos. 22, 23).
For the reasons set 3 forth more fully below, the undersigned recommends granting Respondent’s
Motion to Dismiss 4 and dismissing the Petition without prejudice.

5 I. BACKGROUND 6 On January 13, 2023, a jury found Petitioner guilty on three counts of
unlawful possession 7 of a sharp instrument in a penal institution. (Doc. 20-1 at 1; Doc. 20-2 at 1).

The Kern County 8 Superior Court sentenced Petitioner to 25 years to life in prison with the possibility of parole. 9 (Doc. 20-1 at 1; Doc. 20-2 at 1). 10 Petitioner appealed to the Fifth Appellate District Court, raising two issues: (1) “the trial 11 court abused its discretion by permanently revoking his in propria persona status and violating his 12 Faretta v. California (1975) 422 U.S. 806 (Faretta) rights,” and (2) “the court failed to strike his 13 prior ‘super strike’ convictions” within the meaning of the “Three Strikes” law and People v. 14 Superior Court (Romero) (19 96) 13 Cal. 4th 497, “which gives the court the power to strike a 15 prior strike conviction if it is in the ‘interests of justice’ to do so.” (Doc.

No. 20-2 at 2). On May 16 7, 2024, the appellate court affirmed Petitioner’s convictions. (Id. at 1-23). Petitioner filed a 17 petition for review in the California Supreme Court, raising only the challenge to the trial court’s 18 revocation of his pro per status. (Doc. No. 20-3 at 1-23).

On July 15, 2024, the California 19 Supreme Court summarily denied review. (Doc. No. 20-4). 20 In his federal Petition, Petitioner raises nine grounds for relief: (1) actual innocence; (2) 21 illegal and invalidated sentence or enhancement; (3) violation of speedy trial rights; (4) 22 prosecutorial misconduct; (5) racial bias/discrimination; (6) denial of right to self-representation; 23 (7) denial of compulsory process to call and obtain witnesses for defense; (8) ineffective 24 assistance of appellate counsel; and (9) failure to give a diminished capacity jury instruction.

25 (Doc. No. 13 at 7-15). 26 Respondent moves to dismiss, arguing grounds one through five and seven through nine 27 are unexhausted. (Doc. No. 21 at 1). Respondent argues Petitioner “did not present these claims 28 to the state supreme court,” rendering the Petition a mixed petition subject to dismissal “[u]nless 1 Petitioner establishes that a stay is appropriate” or deletes his unexhausted claims and proceeds 2 on his sole exhausted claim.

(Id. at 3). 3 In response, Petitioner objects to “Respondent’s motion to dismiss based on failure to 4 state a claim in which relief must be granted” and asserts his actual innocence as an “example” of 5 how he has “raise[d] a prima facie claim.” (Doc. No. 22 at 2-3).

As to exhaustion, Petitioner 6 argues the Motion must also be denied “for lack of sufficient evidence/proof that this case was 7 not presented to the California Supreme Court” and asserts that it was presented. (Id. at 3). 8 Petitioner asserts “[t]he appointed appellate attorney ... refused to raise [Petitioner’s] nine (9) 9 claimed grounds on direct appeal and only raised two (2) claimed grounds he felt were easy.” 10 (Id.).

He argues that his state remedies should be deemed exhausted because they are futile. 11 (Id.). 12 Respondent replies that while Petitioner points to his actual innocence claim as an 13 exception to a procedural bar, “Respondent did not argue that Petitioner’s claims were untimely” 14 and “Petitioner cannot bypass the exhaustion requirement by asserting actual innocence.” (Doc.

15 23 at 1-2). Respondent highlights Petitioners assertion that “his attorney refused to raise the 16 grounds on appeal” and argues that “[t]he fact remains that claims one through five and seven 17 through nine are unexhausted,” warranting dismissal of the mixed Petition. (Id. at 3). 18 II. APPLICABLE LAW AND ANALYSIS 19 A petitioner in state custody who wishes to proceed on a federal petition for a writ of 20 habeas corpus must exhaust state judicial remedies.

28 U.S.C. § 2254(b)(1). Exhaustion is a 21 “threshold” matter that must be satisfied before the court can consider the merits of each claim. 22 *Day v. McDonough*, 547 U.S. 198, 205 (2006). The exhaustion doctrine is not a jurisdictional 23 issue but is based on comity to permit the state court the initial opportunity to resolve any alleged 24 constitutional deprivations.

See *Coleman v. Thompson*, 501 U.S. 722, 731 (1991); *Rose v. Lundy*, 25 455 U.S. 509, 518 (1982). To satisfy the exhaustion requirement, petitioner must provide the 26 highest state court with a full and fair opportunity to consider each claim before presenting it to 27 the federal court. See *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999); *Duncan v. Henry*, 513 28 U.S. 364, 365 (1995).

Exhaustion is determined on a claim-by-claim basis. *Insyxieng-May v. 1 Morgan*, 403 F.3d 657, 667 (9th Cir. 2005). And the burden of proving exhaustion rests with the 2 petitioner. *Darr v. Burford*, 339 U.S. 200, 218 (1950) (overruled in part on other grounds by *Fay 3 v. Noia*, 372 U.S. 391 (1963)). A failure to exhaust may only be excused where the petitioner 4 shows that “there is an absence of available State corrective process” or “circumstances exist that 5 render such process ineffective to protect the rights of the applicant.” 28 U.S.C. § 6 2254(b)(1)(B)(i)-(ii).

7 Federal courts cannot consider petitions that contain both exhausted and unexhausted 8 claims, often referred to as “mixed” petitions. See *Rose*, 455 U.S. at 522 (holding a district court 9 must dismiss a federal habeas petition containing both unexhausted and exhausted claims).

The 10 filing of a mixed petition renders it subject to dismissal on its face. *Id.* at 519. To remedy this 11 problem, a petitioner may, at his option, withdraw the unexhausted claims and go forward only 12 with the exhausted claims. *Anthony v. Cambra*, 236 F.3d 568, 574 (9th Cir. 2000) (“district 13 courts must provide habeas litigants with the opportunity to amend their mixed petitions by 14 striking unexhausted claims as an alternative to suffering dismissal.”).

Alternatively, under 15 certain circumstances and as long as adequately supported, a petitioner may seek leave to amend 16 or to seek a stay and abeyance of the federal habeas action while the petitioner exhausts any 17 unexhausted claims in state court. See *Dixon v. Baker*, 847 F.3d 714, at 719 (9th Cir. 2017) (“we 18 have repeatedly warned the district courts that they ‘may not dismiss a mixed petition without 19 giving the petitioner the opportunity to delete the unexhausted claims....

This warning is 20 compelled by the fact that, unless either a stay of the habeas proceedings or leave to delete the 21 unexhausted claims is granted, a federal habeas petitioner will lose the opportunity to have his 22 properly exhausted federal claims heard in federal court simply because they were submitted in a 23 mixed petition.”). 24 Two procedures are available to federal habeas petitioners who wish to proceed with 25 exhausted and unexhausted claims for relief: one provided for by *Rhines v. Weber*, 544 U.S. 269 26 (2005), and the other by *Kelly v. Small*, 315 F.3d 1063 (9th Cir.

2002). Under *Rhines*, stay and 27 abeyance is appropriate if “the petitioner had good cause for his failure to exhaust, his 28 unexhausted claims are potentially meritorious, and there is no indication that the petitioner 1 engaged in intentionally dilatory litigation tactics.” *Rhines*, 544 U.S. at 278; *Bolin v. Baker*, 994 2 F.3d 1154, 1156 (9th Cir. 2021).

Under *Kelly*, “(1) a petitioner amends his petition to delete any 3 unexhausted claims, (2) the court stays and holds in abeyance the amended, fully exhausted 4 petition, allowing petitioner the opportunity to proceed to state court to exhaust the deleted 5 claims; and (3) the petitioner later amends his petition and re-attaches the newly exhausted claims 6 to the original petition.” See *King v. Ryan*, 564 F.3d 1133, 1135 (9th Cir.

2009). The Court notes 7 that the *Kelly* procedure is a riskier one for a habeas petitioner because it does not protect the 8 unexhausted claims from becoming time-barred during the stay. See *id.* at 1140-41; see also 9 *Duncan*, 533 U.S. at 178 (unlike the filing of a state habeas petition, the filing of a federal habeas 10 petition does not toll the statute of limitations).

11 Here, as Respondent argues, Petitioner failed to present his grounds one through five and 12 seven through nine to the state courts. To the extent Petitioner asserts his claims are exhausted 13 because his case was presented to the California Supreme Court, such is insufficient to satisfy the 14 exhaustion requirement. Rather, Petitioner was required to present the substance of each 15 individual claim to the state courts, “including a reference to a federal constitutional guarantee 16 and a statement of facts that entitle the petitioner to relief.” *Gulbrandson v. Ryan*, 738 F.3d 976, 17 992 (9th Cir.

2013). Because nothing before the Court indicates Petitioner presented the claims in 18 grounds one through five and seven through nine to the state courts, his claims are unexhausted. 19 Such renders the Petition a mixed petition subject to dismissal under *Rose*. 455 U.S. at 519. 20 Petitioner’s assertion that he presented his claims to his appellate counsel, but appellate 21 counsel refused to bring the claims, can be construed as an argument that a *Rhines* stay is 22 warranted because his failure to exhaust is due to ineffective assistance of appellate counsel.

23 However, such argument is unavailing. First, it is unclear that ineffective assistance of appellate 24 counsel qualifies as good cause under *Rhines*. See *Blake v. Baker*, 745 F.3d 977, 980

(9th Cir. 25 2014) (“There is little authority on what constitutes good cause to excuse a petitioner’s failure to 26 exhaust.”). More problematic, however, is Petitioner’s failure to present any evidence beyond his 27 mere assertion to support that he raised these issues to appellate counsel and appellate counsel 28 refused to bring them. “An assertion of good cause without evidentiary support will not typically 1 amount to a reasonable excuse justifying a petitioner’s failure to exhaust.” Id. at 982.

Thus, 2 Petitioner has not shown that a Rhines stay is warranted. 3 Finally, further weighing in favor of dismissal is the fact that the statute of limitations for 4 Petitioner to seek federal review has not yet expired.

The California Supreme Court denied 5 review on June 7, 2024, such that Petitioner’s conviction became final on September 5, 2024, 6 when the ninety-day period to seek review from the United States Supreme Court expired.

Thus, 7 Petitioner currently has until September 5, 2025, to timely file a new federal petition.⁴ 28 U.S.C. 8 § 2244(d)(1)(2) (one-year statute of limitations for bringing federal habeas claim begins to run on 9 “the date on which the judgment became final by the conclusion of direct review or the expiration 10 of the time for seeking such review”).

Thus, because over four months remain for Petitioner to 11 exhaust his state remedies and refile his federal petition, this is not a situation as in Rhines where 12 dismissal would mean Petitioner was forever barred from seeking federal review. 544 U.S. at 13 275. 14 Accordingly, it is RECOMMENDED: 15 1. Respondent’s Motion to Dismiss (Doc. No. 21) be GRANTED unless, within the time 16 outlined below for the filing of objections, Petitioner files (1) a request that his 17 unexhausted claims be dismissed and he be allowed to proceed on his sole exhausted 18 claim, or (2) a properly supported motion to stay under either Rhines or Kelly.

19 2. The Petition be DISMISSED without prejudice to refile after Petitioner exhausts his 20 state court remedies. 21 3. The Clerk of Court is directed to substitute Brian Cates as Respondent in this matter. 22 NOTICE TO PARTIES 23 These Findings and Recommendations will be submitted to the United States District 24 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1).

Within 14 days 25 4 Additionally, “[t]he time during which a properly filed application for State post-conviction or 26 other collateral review with respect to the pertinent judgment or claim is pending shall not be 27 counted toward any period of limitation under this subsection.” 28 U.S.C. § 2244(d)(2).

Thus, if Petitioner seeks state post-conviction relief to exhaust his claims, such will likely extend the 28 deadline for filing his federal petition. 1 | after being served with a copy of these Findings

and Recommendations, a party may file written 2 | objections with the Court. Id.; Local Rule 304(b).

The document should be captioned, 3 | “Objections to Magistrate Judge’s Findings and Recommendations” and shall not exceed fifteen 4 | (15) pages. The Court will not consider exhibits attached to the Objections. To the extent a party 5 | wishes to refer to any exhibit(s), the party should reference the exhibit in the record by its 6 | CM/ECF document and page number, when possible, or otherwise reference the exhibit with 7 | specificity.

Any pages filed in excess of the fifteen (15) page limitation may be disregarded by 8 || the District Judge when reviewing these Findings and Recommendations under 28 U.S.C. § 9 | 636(b)U)(C). A party’s failure to file any objections within the specified time may result in the 10 | waiver of certain rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.

2014). 11 7 | Dated: _ April 24, 2025 Mihaw. fareh Zack 13 HELENA M. BARCH-KUCHTA 4
UNITED STATES MAGISTRATE JUDGE 15 16 17 18 19 20 21 22 23 24 25 26 27 28