

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

John Edward Kirby v. Warden Brienbach

Kirby · No. 3:24-cv-00002-ART-CSD · Decided November 25, 2025

SUMMARY

The United States District Court for the District of Nevada granted John Edward Kirby’s motion to stay his federal habeas proceedings while he pursues exhaustion of an unexhausted claim in state court. The court denied the respondents’ motion to dismiss without prejudice, granted their motion to seal specified exhibits, and granted Kirby’s motion for an extension of time. The action was administratively closed pending a motion to reopen after completion of state proceedings.

CASE DETAILS

COURT	United States District Court for the District of Nevada
WRITING FOR THE COURT	Anne R. Traum
JURISDICTION	United States District Court for the District of Nevada
DECIDED	November 25, 2025
DOCKET	3:24-cv-00002-ART-CSD
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner sought a stay of his federal habeas proceeding while returning to state court to exhaust an unexhausted claim. Respondents moved to dismiss the unexhausted claim and to seal two exhibits, and petitioner moved for an extension of time.
STANDARD OF REVIEW	For a Rhines stay, the court applied the requirements that the petitioner show good cause for failing to exhaust, that the unexhausted claims be potentially meritorious, and that the petitioner not have intentionally engaged in dilatory litigation tactics. For sealing, the court applied the compelling-need standard discussed in Kamakana.
PRECEDENTIAL VALUE	unpublished district court order; precedential status unknown

TOPICS

- federal habeas corpus
- post-conviction relief
- motions to dismiss
- civil procedure
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the federal habeas proceeding should be stayed under Rhines while Kirby returns to state court to exhaust Ground Three.
2. Whether respondents' motion to dismiss Ground Three as unexhausted should be denied without prejudice during the stay.
3. Whether respondents should be permitted to file specified exhibits under seal.
4. Whether Kirby had good cause for an extension of time to file his reply supporting the motion to stay.

HOLDINGS

1. A district court may stay a habeas proceeding under Rhines when the petitioner establishes good cause for failing to exhaust, the unexhausted claim is potentially meritorious, and there is no indication of intentionally dilatory litigation tactics. Kirby satisfied those requirements, so the court granted a stay while he pursued state-court remedies.
2. Respondents' motion to dismiss was denied without prejudice, allowing respondents to reassert any applicable defenses in a renewed motion to dismiss after the stay and a scheduling order directing a response.
3. The motion to seal was granted because the compelling need to protect Kirby's safety, privacy, and personal identifying information outweighed the public interest in open access to the records.

KEY QUOTATIONS

“Under the Rhines test, “a district court must stay a mixed petition only if: (1) the petitioner has ‘good cause’ for his failure to exhaust his claims in state court; (2) the unexhausted claims are potentially meritorious; and (3) there’s no indication that the petitioner intentionally engaged in dilatory litigation tactics.”” (at 2)

“The Court is unable to conclude that all of his claims are plainly meritless without conducting a merits analysis, including review of the trial transcripts and alleged new evidence.” (at 3)

FACTUAL BACKGROUND

Kirby challenges convictions arising from guilty pleas to burglary, grand larceny involving property valued at \$3,500 or more, and possession of a stolen motor vehicle involving property valued at \$3,500 or more. He received an aggregate sentence of 56 to 144 months. His amended federal habeas petition includes Ground Three, which respondents contend is unexhausted; Kirby asserted that newly discovered information may allow him to overcome state procedural bars.

PROCEDURAL HISTORY

Kirby pleaded guilty in Nevada state court and received an aggregate sentence of 56 to 144 months. After the state court denied his state habeas petition and the Nevada Court of Appeals affirmed, he filed a federal habeas petition and later a counseled first amended petition. Respondents moved to dismiss Ground Three as

unexhausted; the district court granted a stay, denied the motion to dismiss without prejudice, granted the motion to seal, granted the motion for an extension, and administratively closed the case pending exhaustion.

DISPOSITION

other

CASES CITED

- Rhines v. Weber, 544 U.S. 269, 273-75, 278 (2005)
- Mena v. Long, 813 F.3d 907, 912 (9th Cir. 2016)
- Wooten v. Kirkland, 540 F.3d 1019, 1023 (9th Cir. 2008)
- Riner v. Crawford, 415 F. Supp. 2d 1207, 1210 (D. Nev. 2006)
- Pace v. DiGuglielmo, 544 U.S. 408, 416 (2005)
- Shinn v. Ramirez, 566 U.S. 366 (2022)
- Dixon v. Baker, 847 F.3d 714, 722 (9th Cir. 2017)
- Kamakana v. City and County of Honolulu, 447 F.3d 1172 (9th Cir. 2006)
- Lawrence v. Florida, 549 U.S. 327, 335 (2007)