

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Steven Oscar Austin v. Unknown

No. 2:25-cv-2054 DAD CSK P · No. No. 2:25-cv-2054 DAD CSK P · Decided December 5, 2025

OPINION

Unknown

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 STEVEN OSCAR AUSTIN, No. 2:25-cv-2054 DAD CSK P

12 Petitioner, 13 v. ORDER

14 UNKNOWN,

15 Respondent. 16

17 I. INTRODUCTION

18 Petitioner, a state prisoner proceeding without counsel, has filed an application for a writ 19 of
habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges his 2016 conviction for 20
robbery, carjacking, felon in possession of a firearm, evading police and gun enhancements. 21
(ECF No. 16 at 1.) For the following reasons, this Court finds that the claims raised in the 22
petition are not exhausted. Petitioner is granted thirty days from the date of this order to file a 23
motion to stay this action while he exhausts his unexhausted claims. If petitioner does not file a 24
motion to stay within that time, this Court will recommend dismissal of this action.

25 II. LEGAL STANDARDS RE: EXHAUSTION AND STAY AND ABEYANCE

26 Under 28 U.S.C. § 2254(b), the exhaustion of available state remedies is required before
27 claims can be granted by the federal court in a habeas corpus case. See *Rose v. Lundy*, 455
U.S. 28 509, 515-16 (1982). The exhaustion doctrine is based on a policy of federal and state
comity, 1 designed to give state courts the initial opportunity to correct alleged constitutional
deprivations. 2 See *Picard v. Connor*, 404 U.S. 270, 275 (1971); see also *Rose*, 455 U.S. at 518. 3
Regardless of whether the claim was raised on direct appeal or in a post-conviction 4 proceeding,
the exhaustion doctrine requires that each claim be fairly presented to the state's 5 highest court.
See *Castille v. Peoples*, 489 U.S. 346, 351 (1989). A claim has been fairly 6 presented if the
petition has described both the operative facts and the federal legal theory on 7 which the claim is
based. See *Duncan v. Henry*, 513 U.S. 364, 365-66 (1995). Although the 8 exhaustion doctrine
requires only the presentation of each federal claim to the highest state court, 9 the claims must be

presented in a posture that is acceptable under state procedural rules. See 10 *Sweet v. Cupp*, 640 F.2d 233, 237 (9th Cir. 1981). Thus, an appeal or petition for post-conviction 11 relief that is denied by the state courts on procedural grounds, where other state remedies are still 12 available, does not exhaust the petitioner's state remedies. See *Pitchess v. Davis*, 421 U.S. 482, 13 488 (1979); *Sweet*, 640 F.2d at 237-38. 14 A petitioner may avoid dismissal of a petition containing unexhausted claims through 15 seeking a stay and abeyance of his petition. See *Dixon v. Baker*, 847 F.3d 714, 718-20 (9th Cir. 16 2017). The purpose of a stay and abeyance is to give a petitioner the opportunity to exhaust his 17 claims in state court before presenting them in federal court. *Id.* 18 A stay pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005) may be employed as to both 19 mixed petitions and petitions raising only unexhausted claims.¹ See *Mena v. Long*, 813 F.3d 907, 20 908 (9th Cir. 2016). A *Rhines* stay is appropriate if (1) the petitioner has good cause for his 21 failure to exhaust, (2) his unexhausted claims are potentially meritorious, and (3) there is no 22 indication that the petitioner engaged in intentionally dilatory litigation tactics. See *Rhines*, 544 23 U.S. at 277-78. 24 /// 25 1 The Court notes that the alternative procedure for staying and abeying a federal habeas petition 26 pursuant to *Kelly v. Small*, 315 F.3d 1063 (9th Cir. 2003), only applies to habeas petitions that 27 contain exhausted as well as unexhausted claims for relief. Because the instant petition is wholly unexhausted, a *Kelly* stay is not available in the present case. 28

1 III. DISCUSSION

2 The petition appears to raise the following claims: 1) conviction obtained in violation of 3 the Fourth Amendment; 2) ineffective assistance of counsel; 3) violation of *Brady v. Maryland*, 4 373 U.S. 83 (1963), Fourteenth Amendment right to due process and equal protection; and 5 4) violation of Fifth Amendment right against self-incrimination, the Takings Clause, double 6 jeopardy and *Miranda v. Arizona*, 384 U.S. 436 (1966). (ECF No. 16 at 4-5.) 7 Petitioner does not claim that he filed a habeas corpus petition in the California Supreme 8 Court. Accordingly, this Court considers only whether petitioner exhausted any of the claims 9 raised in the petition in the petition for review filed in the California Supreme Court on direct 10 appeal. 11 In the petition, petitioner states that he filed a petition for review in the California 12 Supreme Court raising the following claims: 1) failure to preserve evidence; 2) jury instruction 13 error regarding flight; 3) prosecutorial misconduct; 4) trial court erred in denying motion for new 14 trial; 5) interference with right to counsel of choice; and 6) sentencing error. (*Id.* at 2.) Petitioner 15 also claims that the California Supreme Court transferred the action back to the California Court 16 of Appeal for consideration of Senate Bill 1393. (*Id.*) 17 This Court reviewed the order by the California Court of Appeal affirming petitioner's 18 conviction on direct appeal. See *People v. Austin*, case no. F073937, 2018 WL 3373409 (Cal. 19 App. July 11, 2018). In this order, the California Court of Appeal addressed the same claims 20 petitioner claims he raised in the petition for review. See *id.* This Court finds that the petition for 21 review did not raise any of the claims raised in the instant petition. However, further discussion 22 regarding this finding is required as to petitioner's *Brady* claim raised in claim three and 23 petitioner's ineffective assistance of counsel claim raised in

claim two. 24 The opinion of the California Court of Appeal on direct appeal reflects that petitioner 25 raised a claim alleging failure to preserve evidence. See Austin, 2018 WL 3373409, at *7. The 26 California Court of Appeal described the failure to preserve evidence claim as based on the trial 27 court's abuse of discretion in denying a motion to dismiss the case in light of discovery violations 28 by the prosecution team. See id. Petitioner "pointed to the failure to retain the items from which 1 the latent fingerprints were obtained, and the AFIS list of potential matches to those prints." Id. 2 Petitioner claimed that "the trial court should have excluded the fingerprint evidence or otherwise 3 imposed sanctions, and the abuse of its discretion denied him his federal constitutional rights to 4 the effective assistance of counsel and due process of law." Id. In analyzing this claim, the 5 California Court of Appeal cited Brady. See id. at *10. The California Court of Appeal denied 6 petitioner's failure to preserve evidence claim, finding no due process violation and no ineffective 7 assistance of counsel. See id. at *11. 8 Although claim three in the instant petition raises a Brady claim, claim three is not based 9 on the failure to preserve evidence claim raised in the petition for review. In claim three, 10 petitioner claims, 11 The petitioner was denied adequate discovery prior to preliminary examination and trial which prevented him from challenging Fourth 12 Amendment violations and illegal arrest claims since his name was not on any probable cause forms or warrants for arrest and had no 13 record and his vehicle was registered to him and therefore no probable cause existed to arrest or detain him and no justification in 14 searching vehicle and illegally seizing his property which would support exclusion of such evidence, defending current, prior or future 15 prosecution. Denial of discovery denied him meritorious defense which would have been prevailing, denied him of fair hearing and 16 trial and caused him to face material and prejudicial evidence/testimony without opportunity for meaningful cross- 17 examination, impeachment and proving falsity and prosecutor misconduct and factual innocent claim. 18 19 (ECF No. 16 at 5.) 20 Because petitioner's Brady claim raised in claim three is not based on the failure to 21 preserve evidence claim raised in the petition for review, this Court finds that claim three is not 22 exhausted by the petition for review. 23 Although claim two in the instant petition raises an ineffective assistance of counsel 24 claim, this claim is not based on the ineffective assistance of counsel claim related to the failure 25 to preserve evidence claim raised in the petition for review. In claim two, petitioner claims, 26 The petitioner has been provided ineffective assistance of counsel on multiple levels under Strickland and Cronin standards which caused 27 a structural error of a constitutional magnitude. Counsels have failed to investigate or present illegal search and seizure claim, obtain 28 petitioner's identifying documents back to support lack of personal 1 jurisdiction claim, provided inadequate legal advice regarding suppression motion based on illegal arrest and illegal search and 2 seizure and double jeopardy claims, failed to adequately consult with petitioner and provide discovery he was entitled to and colluded with 3 the opposition in order to fraud the court and the petitioner, steal his property, coerce him into taking plea deals or abandon meritorious 4 defenses and kept critical information from petitioner which would be beneficial to defense. Counsel was at a time

completely absent at 5 critical stages and when petitioner was absent stipulated to facts without his consent or did not ensure his right to present and 6 contribute to his defense was upheld which contributed to the petitioner's convictions and loss of defenses. 7 8 (Id. at 4.) 9 Because claim two does not raise the ineffective assistance of counsel claim related to the 10 failure to preserve evidence claim raised in the petition for review, this Court finds that claim two 11 is not exhausted by the petition for review. 12 This Court observes that in the petition, petitioner cites three cases he allegedly filed in 13 the California Supreme Court: S250686, S253363 and S284875.2 (ECF No. 16 at 49.) This 14 Court below discusses these cases and finds that they did not exhaust any of the claims raised in 15 the instant petition. 16 Records from the California Supreme Court reflect that California Supreme Court case no. 17 S250686 was the petition for review filed by petitioner from the order by the California Court of 18 Appeal in case no. F073937 affirming petitioner's conviction. The docket from the California 19 Supreme Court in case no. S250686 reflects that on October 24, 2018, the California Supreme 20 Court granted the request for consideration of an additional issue in the petition for review and 21 granted the petition for review. The California Supreme Court transferred the matter back to the 22 California Court of Appeal with directions to vacate its decision and reconsider in light of Senate 23 Bill 1393.

24 Records from the California Supreme Court reflect that California Supreme Court case no. 25 S253363 was a petition for review opened on January 4, 2019 and denied on February 13, 2019. 26 2 This Court takes judicial notice of the California Supreme Court records in case nos. S250686, 27 S253363 and S284875. See Fed. R. Evid. 201(b); Reyn's Pasta Bella LLC v Visa USA, Inc., 442 F.3d 741, 746 n.6 (9th Cir. 2006) (observing that the court "may take judicial notice of court 28 filings and other matters of public record."). 1 This petition for review appears to have challenged the December 3, 2018 order by the California 2 Court of Appeal in case no. F073937 reconsidering its opinion in light of Senate Bill 1393. See 3 People v. Austin, 2018 WL 6303822 (Cal. App. Dec. 3, 2018). Based on Senate Bill 1393, the 4 California Court of Appeal remanded the matter to the trial court with discretion to resentence 5 petitioner. See id. at *25. 6 Records from the California Supreme Court reflect that California Supreme Court case no. 7 S284875 was a petition for review from California Court of Appeal case no. F086583. In case 8 no. S284875, on June 12, 2024, the California Supreme Court denied the petition for review. To 9 put case no. S284875 in context, this Court makes the following observations. After the 10 California Court of Appeal in case no. F073937 remanded the matter to the trial court for the first 11 time, the trial court exercised its discretion to strike the punishment for the California Penal 12 Code § 667(a) enhancement but then unstayed the California Penal Code § 667.5(b) 13 enhancement. See People v. Austin, 2021 WL 222351 (Cal. App. Jan. 22, 2021). In case no. 14 F079651, the California Court of Appeal reviewed the trial court's resentencing of petitioner 15 following the remand in case no. F073937. In case no. F079651, the California Court of Appeal 16 struck the California Penal Code § 667.5(b) enhancement, vacated the sentence and remanded the

17 matter to the trial court for a second time to conduct a new sentencing hearing. See *id.* at *2. 18 Following the second remand, the trial court sentenced petitioner to 27 years, four months in 19 prison. See *People v. Austin*, 2022 WL 4354618, at *1 (Cal. App. Sept. 20, 2022). In case no. 20 F083888, the California Court of Appeal reviewed the trial court's latest resentencing of 21 petitioner and ordered the \$900 probation report fee stricken, vacated the sentence and remanded 22 the matter to the trial court for a third time to pronounce judgment in compliance with AB 518 23 and all other laws in effect at the time. See *id.* at *4. In case no. F086583, the California Court of 24 Appeal considered petitioner's appeal of the trial court's resentencing ordered in case no. 25 F083888 following the third remand. See *id.* at 1-3. In case no. F086583, the California Court of 26 Appeal affirmed the judgment and did not remand for further resentencing. See *id.* at *3. In case 27 no. S284875, the California Supreme Court denied the petition for review filed from California 28 Court of Appeal case no. F086583.] In conclusion, the petition for review filed in California Supreme Court case no. \$250686 2 || addressed the claims raised in petitioner's direct appeal filed in the California Court of Appeal, 3 || none of which are raised in the instant petition. The petitions for review filed in California 4 | Supreme Court case nos. \$253363 and S284875 raised claims regarding petitioner's sentence, 5 || none of which are raised in the instant petition. 6 Because no claims raised in the instant petition have been presented to the California 7 || Supreme Court, petitioner is granted thirty days from the date of this order to file a motion to stay 8 | this action pursuant to *Rhines* while he exhausts his claims. In the motion to stay, petitioner shall 9 || address the three factors for a *Rhines* stay discussed above. If petitioner does not file a motion to 10 || stay within thirty days, this Court will recommend dismissal of this action.?

11 | IV. REQUEST FOR APPOINTMENT OF COUNSEL

12 Petitioner has requested the appointment of counsel. (ECF No. 16 at 7.) There currently 13 || exists no absolute right to appointment of counsel in habeas proceedings. See *Nevius v. Sumner*, 14 | 105 F.3d 453, 460 (9th Cir. 1996). However, 18 U.S.C. § 3006A authorizes the appointment of 15 || counsel at any stage of the case "if the interests of justice so require." See Rule 8(c), Fed. R. 16 || Governing § 2254 Cases. In the present case, the Court does not find that the interests of justice 17 || would be served by the appointment of counsel at the present time. 18 In accordance with the above, IT IS HEREBY ORDERED: 19 1. Petitioner's request for appointment of counsel is denied; and 20 2. Petitioner is granted thirty days from the date of this order to file a motion to stay 21 || pursuant to *Rhines*; failure to comply with this order will result in a recommendation of dismissal 22 | of this action. (i \L 23 || Dated: December 5, 2025 \ Lf. ODYV —

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24] Aust2054.0rd(4)/2 UNITED STATES MAGISTRATE JUDGE 25 | 3 Petitioner is cautioned that the habeas corpus statute imposes a one year statute of limitations 26 || for filing non-capital habeas corpus petitions in federal court. In most cases, the one year period will start to run on the date on which the state court judgment became final by the conclusion of 27 || direct review or the expiration of time for seeking direct review, although the statute of limitations is tolled while a

properly filed application for state post-conviction or other collateral 28 | review is pending. 28
U.S.C. § 2244(d).

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