

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Harms v. Silva

Harms · No. 2:25-cv-01048-DC-CSK (HC) · Decided July 17, 2025

SUMMARY

The United States District Court for the Eastern District of California adopted findings and recommendations granting Gregory Allen Harms’s motion to stay his federal habeas corpus action under *Kelly v. Small*. The court dismissed specified unexhausted claims without prejudice, stayed the action pending state-court exhaustion, and imposed periodic status-report and post-exhaustion filing requirements.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 GREGORY ALLEN HARMS, No. 2:25-cv-01048-DC-CSK (HC) 12
Petitioner, 13 v. ORDER ADOPTING FINDINGS AND RECOMMENDATIONS 14 EDWARD
SILVA, (Doc. No. 5) 15 Respondent. 16 17 Petitioner Gregory Allen Harms is a state prisoner
proceeding with counsel with a petition 18 for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The petition raises three claims for relief. 19 (Doc. No. 1 at 2–3.) In claim one, Petitioner alleges
ineffective assistance of his trial counsel. (Id. 20 at 2.) In claim two, which contains three subparts
that Petitioner refers to as “subclaims,” 21 Petitioner alleges jury instruction errors (subclaims A,
C) and alleges the trial court committed a 22 sentencing error (subclaim B).

(Id. at 2- 3.) In claim three, Petitioner alleges that he was denied 23 his right to an impartial jury.
(Id. at 3.) This matter was referred to a United States Magistrate 24 Judge pursuant to 28 U.S.C. §
636(b)(1)(B) and Local Rule 302. 25 On May 1, 2025, Petitioner filed a motion for a stay under
Kelly v. Small, 315 F.3d 1063 26 (9th Cir. 2002), overruled on other grounds by *Robbins v. Carey*,
481 F.3d 1143 (9th Cir.

2007) 27 to exhaust claims one, three, and subclaim C of claim two. (Doc. No. 4.) On May 6,
2025, the 28 assigned magistrate judge issued findings and recommendations recommending that
Petitioner’s 1 motion under *Kelly* be granted and that this action be stayed while Petitioner
exhausts state court 2 remedies with respect to claims one, three, and subclaim C of claim two.

(Doc. No. 5.) The 3 findings and recommendations were served on Petitioner and contained notice
that any objections 4 thereto were to be filed within fourteen (14) days from the date of service.
(Id. at 3–4.) To date, 5 no objections to the findings and recommendations have been filed, and the

time in which to do 6 so has now passed. 7 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a 8 de novo review of the case.

Having carefully reviewed the entire file, the court finds the findings 9 and recommendations to be supported by the record and by proper analysis. 10 Accordingly, 11 1. The findings and recommendations issued on May 6, 2025 (Doc. No. 5) are 12 ADOPTED in full; 13 2. Petitioner's motion for a stay pending exhaustion of state court remedies under 14 Kelly v. Small, 315 F.3d 1063 (9th Cir.

2002) (Doc. No. 2) is GRANTED; 15 3. Petitioner's claims one, three, and subclaim C of claim two are dismissed without 16 prejudice as unexhausted; 17 4. This case is STAYED and held in abeyance pending exhaustion of state court 18 remedies; 19 5. Petitioner is directed to file a status report within ninety (90) days of the date of 20 entry of this order, and every 90 days thereafter, advising the court of what steps 21 he has taken to exhaust his claims in state court; 22 6.

Within thirty (30) days after the state court issues a final order resolving the 23 unexhausted claims, Petitioner shall file a motion to lift the stay and, if he wishes 24 to pursue newly exhausted claims in this federal habeas action, Petitioner shall also 25 file a first amended federal petition setting forth all exhausted claims; and 26 ///// 27 ///// 28 ///// 1 7.

This action is referred back to the magistrate judge for proceedings consistent with 2 this order. 3 4 IT IS SO ORDERED. □ 5 | Dated: _ July 17, 2025 LY 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