

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**Petitioner,** : **Case No.** \_\_\_\_\_

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v.

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**(Judge \_\_\_\_\_)**

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**THIS IS A CAPITAL CASE**

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**Respondents**

**MEMORANDUM**

Petitioner, \_\_\_\_\_, a state prisoner sentenced to death following his convictions for first-degree murder and related charges, filed a motion for leave to proceed in forma pauperis and for appointment of federal habeas corpus counsel on \_\_\_\_\_. (Doc. \_\_\_\_.) The court granted the motion on \_\_\_\_\_, and petitioner was directed to file a petition for writ of habeas corpus on or before \_\_\_\_\_. (Doc. \_\_\_\_.) In that order, the court also stayed any state proceedings for the execution of petitioner pending disposition of the anticipated habeas petition. (Id.) However, on \_\_\_\_\_, the Governor of Pennsylvania signed a warrant scheduling petitioner’s execution for \_\_\_\_\_. (See Doc. \_\_\_\_.) As a result, the court issued an order reaffirming the stay of execution on \_\_\_\_\_. (Doc. \_\_\_\_.) On \_\_\_\_\_, petitioner timely filed his habeas petition. (Doc. \_\_\_\_.) Pending before the court is petitioner’s motion to stay the federal proceedings or, in the alternative, dismiss the petition without prejudice to permit petitioner to exhaust claims in state court. (Doc. \_\_\_\_.) In his motion, petitioner contends that he has not exhausted state remedies for some of the claims raised in the habeas petition before the court.

In Rhines v. Weber, 544 U.S. 269 (2005), the United States Supreme Court found that under certain circumstances it is appropriate to stay and abey the federal habeas proceedings while the petitioner exhausts his unexhausted claims in state court. Id. at 277-78. In particular, the Supreme Court held that “it likely would be an abuse of discretion for a district court to deny a stay and to dismiss a mixed petition if the petitioner had good cause for his failure to exhaust,

his unexhausted claims are potentially meritorious, and there is no indication that the petitioner engaged in intentionally dilatory litigation tactics.” Id. at 278.

Under the circumstances presented in these habeas proceedings, Rhines counsels in favor of a stay of litigation in this case while petitioner exhausts state remedies for some of the claims raised in the habeas petition before the court. However, this stay will be conditioned upon petitioner returning to federal court within thirty (30) days of the conclusion of his state court proceedings. See id., 544 U.S. at 278 (“district courts should place reasonable time limits on a petitioner’s trip to state court and back”) (citing Zarvela v. Artuz, 254 F.3d 374, 381 (2d Cir. 2001) (thirty days is a reasonable time interval to give a petitioner to return to federal court following pendency of state court proceedings)). See also Crews v. Horn, 360 F.3d 146, 154 (3d Cir. 2004).

An appropriate order follows.

\_\_\_\_\_  
United States District Judge

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**ORDER**

**AND NOW**, this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, **IT IS HEREBY ORDERED THAT:**

1. Petitioner's motion to stay the federal proceedings (Doc. \_\_\_) is **GRANTED**. Litigation in this habeas corpus proceeding is **STAYED** pending exhaustion of state court remedies of any unexhausted claims.
2. The stay of execution issued by the court in the order of \_\_\_\_\_, \_\_\_\_\_ (Doc. \_\_\_), shall **REMAIN IN EFFECT**.
3. Petitioner shall have thirty (30) days to file his application for state post-conviction relief, if he has not already done so.
4. If petitioner is denied state post-conviction relief, either party shall notify the court within thirty (30) days from the time of final denial and request that the stay of litigation be vacated.

\_\_\_\_\_  
United States District Judge