

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

FENIX DHAITY,

Petitioner,

v.

WARDEN,

Respondent.

3:07-CV-1810 (CSH)

MEMORANDUM OPINION
AND ORDER

HAIGHT, Senior District Judge:

Pending before the Court is respondent's motion to stay or dismiss Fenix Dhaity's petition for a writ of habeas corpus [doc. #7] on the ground that it is a so-called "mixed petition" containing both exhausted and unexhausted claims. Specifically, respondent argues that claims one, three, and four of Dhaity's petition are unexhausted because Dhaity failed to pursue them when he sought certification for appeal from the Connecticut Supreme Court. Respondent concedes that the remaining claim in Dhaity's petition, claim two, is exhausted as Dhaity pursued it in seeking certification from the Connecticut Supreme Court.

Respondent asks the Court to either (a) dismiss Dhaity's petition in its entirety, or (b) dismiss only the unexhausted claims and stay proceedings on the other claims while Dhaity seeks further review of the unexhausted claims in state court. Subsequent to the filing of respondent's motion to stay or dismiss, Dhaity moved this Court for leave to amend his petition and pursue only the exhausted claim contained in his petition. [See doc. # 10]. This is permitted under *Burton v. Stewart*, 549 U.S. 147 (2007) ("[P]risoners filing mixed petitions may proceed with only the exhausted claims") (citing *Rose v. Lundy*, 455 U.S. 509, 520-521 (1982) ("[A federal habeas petitioner] can always amend the petition to delete the unexhausted claims, rather than

returning to state court to exhaust all of his claims.”).

Dhaity’s motion for leave to amend his petition is hereby GRANTED. Petitioner may file and serve an amended petition in the form attached to his motion papers on or before January 9, 2009. The effect of that amendment is to delete the unexhausted claims from petitioner’s pleading.

Respondent’s motion to stay or dismiss the remaining, exhausted claim is DENIED. It’s motion to dismiss the unexhausted claims is DENIED as moot.

It is SO ORDERED.

Dated: New Haven, Connecticut
December 12, 2008

/s/ Charles S. Haight, Jr.
SENIOR UNITED STATES DISTRICT JUDGE