

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ZANE JACK FIELDS,)	
)	
Petitioner,)	Case No. CV 95-0422-S-EJL
)	
v.)	<u>CAPITAL CASE</u>
)	
JOE KLAUSER, Warden,)	ORDER
)	
Respondent.)	
_____)	

The Court previously denied Petitioner’s request to enter an order staying this capital habeas case pending the resolution of a state post-conviction action in which Petitioner is pursuing DNA and other scientific testing in an effort to show that he is actually innocent. (Docket No. 156, p. 1.) Since that time, Petitioner contends that DNA test results have excluded him as the source of material taken from underneath the victim’s fingernails and from hairs found on the victim. (Docket No. 208, pp. 2-3; Docket No. 236, pp. 1-2.) Recently, Petitioner has submitted for testing an envelope that may contain the DNA of an alternate suspect, and those results are expected soon. (Docket No. 246.)

After re-weighing the interests in this matter, the Court on its own initiative concludes a stay is warranted at least until the present action in state district court has concluded. While the federal case has been held in abeyance before, and the Court is mindful of the State’s strong interest in finality, the Court anticipates that any additional delay awaiting the state district court’s decision will be brief. Furthermore, Petitioner’s claim of actual innocence has developed since the Court last denied his request for a stay, and the principles of federalism, comity, and judicial efficiency weigh

in favor of allowing the state court to resolve that matter before the federal habeas action continues. *See Rhines v. Weber*, 544 U.S. 269 (2004). In light of the new DNA evidence, Petitioner's claim is not clearly meritless, and if Petitioner obtains relief in state court the federal case would likely become moot.

The Court will re-evaluate the necessity for continuing the stay after the state district court issues its final decision in pending Ada County Case No. SP 0T 0200590D. At that time, Petitioner shall notify this Court of the decision and shall provide a copy of any written opinion.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that this habeas corpus matter shall be STAYED pending the completion of Ada County Case No. SP 0T 0200590D.

IT IS FURTHER ORDERED that Petitioner shall immediately notify this Court of any final decision in the state district court case and shall provide a copy of the state court's written opinion, if any.

IT IS FURTHER ORDERED that, in light of the stay, Respondent's Motion to Strike (Docket No. 238) is DISMISSED without prejudice to renewal once the stay has been lifted. If the motion is renewed, Respondent may incorporate his prior briefing by reference.



DATED: **August 27, 2008**

A handwritten signature in black ink that reads "Edward J. Lodge". The signature is written in a cursive style and is positioned above a horizontal line.

Honorable Edward J. Lodge
U. S. District Judge