

03-9046 RHINES V. WEBER

DECISION BELOW: 346 F3d 799

LOWER COURT CASE NUMBER: 02-2990

QUESTION PRESENTED:

1. Can a federal court stay (rather than being compelled to dismiss) a §2254 habeas corpus petition which includes exhausted and unexhausted claims, when the stay is necessary to permit a petitioner to exhaust claims in state court without having the one year statute of limitations in the Antiterrorism and Effective Death Penalty Act (AEDPA) bar the right to a federal petition?
2. Is the Eighth Circuit correct that dismissal of a mixed §2254 petition is mandated by *Rose v. Lundy*, 455 U.S. 509 (1982) or are the courts of appeals for the first, second, sixth, seventh and ninth circuits correct in following the separate concurrences of Justice Souter and Justice Stevens in *Duncan v. Walker*, 533 U.S. 167 (2001) that a stay of an otherwise timely filed federal petition is permissible in light of the AEDPA?

CERT. GRANTED 6/28/2004