FILED

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U.S. COURT OF APPEALS

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| ROBERT WADE MORSE,<br><br>Petitioner - Appellant,<br><br>v.<br><br>MICHAEL BUDGE; et al.,<br><br>Respondents - Appellees. | No. 04-16890<br><br>D.C. No. CV-02-00290-DWH<br><br>MEMORANDUM[*] |

Appeal from the United States District Court
for the District of Nevada
David W. Hagen, District Judge, Presiding

Submitted March 8, 2006[**]

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.

Nevada state prisoner Robert Wade Morse appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas corpus petition challenging

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[*] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

[**] This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

his 1998 jury conviction for felony murder, burglary, and coercion. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

Morse contends that the district court should have offered him the opportunity to stay his mixed habeas petition so that he could return to state court to exhaust his unexhausted claims. We review for abuse of discretion the district court's decision to grant or deny a "stay and abeyance" of a habeas petition. *See Rhines v. Weber*, 544 U.S. 269, 125 S. Ct. 1528, 1534-35 (2005).

No abuse of discretion occurred here. After determining that Morse's habeas petition was mixed, the district court gave him the opportunity to exercise his options under *Rose v. Lundy*, 455 U.S. 509, 510 (1982), and offered Morse an administrative closure procedure that was the equivalent of a stay and abeyance. Morse rejected that procedure and knowingly and voluntarily elected to abandon the unexhausted claims in order to proceed with the exhausted claims.

**AFFIRMED.**