

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

cc: Federal Public Defender



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

| | | |
|----------------------|---|-------------------------------|
| JESSIE HEREDIA, |) | Case No. CV 09-3669-RGK (DTB) |
| |) | |
| Petitioner, |) | |
| |) | ORDER DENYING RESPONDENT’S |
| vs. |) | EX PARTE APPLICATION FOR STAY |
| |) | PENDING APPEAL, SETTING |
| LARRY SMALL, Warden, |) | BRIEFING SCHEDULE, AND |
| |) | APPOINTING COUNSEL OF RECORD |
| Respondent. |) | FOR PETITIONER |

On April 10, 2012, the Court issued an Amended Order Accepting the Report and Recommendation of the Magistrate Judge. The Magistrate Judge had recommended that habeas relief be granted with respect to petitioner’s claim in Ground Two that the trial court violated his constitutional rights to due process and to a fair trial by invading the “sanctity of the jury’s deliberations” and dismissing Juror No. 9. The Magistrate Judge concluded that the trial court’s dismissal of Juror No. 9 violated petitioner’s Sixth Amendment rights because there was a reasonable possibility that the request for the juror’s removal was impermissibly based on his views of the merits of the case.

Pursuant to the Court’s Amended Order, Judgment was entered herein on April 10, 2012 granting a writ of habeas corpus and ordering that petitioner be released or retried within 180 days of the date of the Amended Order. On April 30, 2012,

1 respondent filed a timely Notice of Appeal from that Judgment. Concurrently,
2 respondent file an Ex Parte Application for Stay Pending Appeal (“Application”) of
3 the Court’s order granting the writ of habeas corpus, together with a supporting
4 Memorandum of Points and Authorities (“App. Mem.”). Respondent requested an
5 expedited ruling on his Application based on the 180 day compliance deadline. (App.
6 Mem. at 1.) On May 2, 2012, the District Court referred respondent’s Application
7 to the Magistrate Judge for recommendation.

8 After considering respondent’s Application, as well as the documents filed in
9 support thereof, the Court hereby DENIES respondent’s Application as respondent
10 has failed to show cause for an expedited ruling. See generally Mission Power Eng’g
11 Co. v. Cont’l Cas. Co., 883 F. Supp. 488 (C.D. Cal. 1995) (“[T]he evidence must
12 show that the moving party’s cause will be irreparably prejudiced if the underlying
13 motion is heard according to regular noticed motion procedures.”). The Court notes
14 that petitioner’s release was ordered within 180 days of the Amended Order, giving
15 respondent until October 7, 2012 to retry or release petitioner, and therefore,
16 respondent could have applied for a stay pending appeal by regular noticed motion,
17 affording petitioner the opportunity to oppose the same. As such, on the Court’s own
18 motion, the Court hereby sets a hearing on respondent’s Application for June 21,
19 2012, at 10:00 a.m. in Courtroom 4. The Court further sets the following briefing
20 schedule: Respondent shall file a motion for stay pending appeal on or before May
21 18, 2012, in compliance with Local Rules 7-4 through 7-8. Petitioner shall file an
22 opposition to the motion on or before May 31, 2012, pursuant to Local Rule 7-9.
23 Respondent shall file his reply to the opposition on or before June 7, 2012, pursuant
24 to Local Rule 7-10. Petitioner need not be present as the Court is also appointing
25 counsel hereby.

26 The Court requests that the Federal Public Defender for the Central District of
27 California locate counsel for appointment. The Federal Public Defender shall provide
28 the name of counsel for appointment to the Court within 7 days of the date of this

1 Order. Appointed counsel is directed to immediately make arrangements to review
2 the file and secure copies of whatever is necessary in order to properly consult with
3 and advise petitioner regarding the motion. The attorney assigned to this matter shall
4 enter a Notice of Appearance as soon as possible, but no later than 14 days from the
5 date of this Order.

6 The Clerk of this Court shall serve a copy of this Order on petitioner, the
7 Federal Public Defender, and counsel for respondent.

8
9 DATED: May 11, 2012



10
11
12 R. GARY KLAUSNER
13 UNITED STATES DISTRICT JUDGE

14 Presented by:



15
16
17 David T. Bristow
18 United States Magistrate Judge

NOTICE PARTY SERVICE LIST

Case No. CV 09-3669-RGK (DTB) **Case Title** JESSIE HEREDIA v. LARRY SMALL, Warden

Title of Document ORDER DENYING RESPONDENT'S EX PARTE APPLICATION

| |
|---|
| ADR |
| BAP (Bankruptcy Appellate Panel) |
| BOP (Bureau of Prisons) |
| CA St Pub Defender (Calif. State PD) |
| CAAG (California Attorney General's Office - Keith H. Borjon, L.A. Death Penalty Coordinator) |
| Case Asgmt Admin (Case Assignment Administrator) |
| Chief Deputy Admin |
| Chief Deputy Ops |
| Clerk of Court |
| Death Penalty H/C (Law Clerks) |
| Dep In Chg E Div |
| Dep In Chg So Div |
| ✓ Federal Public Defender |
| Fiscal Section |
| Intake Section, Criminal LA |
| Intake Section, Criminal SA |
| Intake Supervisor, Civil |
| MDL Panel |
| Ninth Circuit Court of Appeal |
| PIA Clerk - Los Angeles (PIALA) |
| PIA Clerk - Riverside (PIAED) |
| PIA Clerk - Santa Ana (PIASA) |
| PSA - Los Angeles (PSALA) |
| PSA - Riverside (PSAED) |
| PSA - Santa Ana (PSASA) |
| Schnack, Randall (CJA Supervising Attorney) |
| Statistics Clerk |

| |
|---|
| US Attorneys Office - Civil Division -L.A. |
| US Attorneys Office - Civil Division - S.A. |
| US Attorneys Office - Criminal Division -L.A. |
| US Attorneys Office - Criminal Division -S.A. |
| US Bankruptcy Court |
| US Marshal Service - Los Angeles (USMLA) |
| US Marshal Service - Riverside (USMED) |
| US Marshal Service -Santa Ana (USMSA) |
| US Probation Office (USPO) |
| US Trustee's Office |
| Warden, San Quentin State Prison, CA |

| |
|--|
| ADD NEW NOTICE PARTY (cc: BOTH E-MAILS LISTED BELOW) |
| |
| |
| |
| |
| |
| |
| |
| |

| |
|--|
| |
| |
| |
| |
| |

Initials of Deputy Clerk: dts