

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

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

ALBERT CECIL HOWARD,)	Case No. 1:93-cv-05726-LJO
)	
Petitioner,)	<u>DEATH PENALTY CASE</u>
)	
vs.)	ORDER DISMISSING ACTION
)	
ROBERT K. WONG, as Acting Warden of)	
San Quentin State Prison,*)	
)	
Respondent)	

Petitioner Albert Cecil Howard (“Howard”) commenced this action on October 25, 1993 by filing a combined application for appointment of counsel and request for a stay of execution of his death sentence. Through counsel, he timely filed a petition in this Court on March 14, 1997 containing exhausted and unexhausted claims (doc. 79) (the “federal petition”). As part of his prayer for relief, he requested the Court to hold federal proceedings in abeyance to permit exhaustion of his state remedies before the California Supreme Court. On April 23, 1997, Howard filed a petition for a writ of habeas corpus in the California Supreme Court (the “state petition”). Over the objection of Respondent Robert K. Wong, as Acting Warden of San Quentin State Prison (the “Warden”), the Court entered an order holding federal proceedings in abeyance on May 30, 1997 (doc. 89). On November 1, 2005, Howard reported to the Court his expectation that the California Supreme Court would soon issue an order on the state petition (*see* doc. 132), and accordingly, he filed his amended federal petition on November 1, 2005 (doc. 133) (the “amended federal petition”). From March 1, 2006, forward, Howard filed quarterly

* Robert K. Wong is substituted for his predecessors, Eddie Ylst, as Acting Warden of San Quentin State Prison pursuant to Federal Rule of Civil Procedure 25(d).

1 status reports outlining the progress of state exhaustion proceedings before the California Supreme
2 Court. His final status report was filed on June 2, 2009 (doc. 155).

3 On January 19, 2010, Howard's appointed attorney filed a notice that Howard died on August
4 12, 2009 (doc. 156). The delay in filing this notice arose because of errors contained in the Marin
5 County death certificate and efforts to get that certificate corrected.

6 In light of Howard's death, this federal habeas corpus action IS DISMISSED.

7 The Clerk is directed to enter judgment forthwith.

8
9 IT IS SO ORDERED.

10
11 DATE: January 20, 2010

12 /s/ Lawrence J. O'Neill
13 Lawrence J. O'Neill
14 United States District Judge