UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOSE LUIS LUNA, Petitioner, v. P. VASQUEZ, Warden, Respondent. /	CV F 05-1228 LJO DLB HC ORDER VACATING ORDER ADOPTING FINDINGS AND RECOMMENDATION AND JUDGMENT ENTERED ON DECEMBER 20, 2007, AND GRANTING PETITIONER THIRTY DAYS TO FILE OBJECTIONS TO FINDINGS AND RECOMMENDATION [Court Docs. 18, 20, 21]

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On October 12, 2007, the Magistrate Judge assigned to this action issued a Findings and Recommendation to deny instant petition for writ of habeas corpus. (Court Doc. 18.) The Recommendation was properly served on the parties at the last known address of record.[1] However, on October 18, 2007, the Recommendation mailed to Petitioner was returned to the Court with a notation "Unable to locate/No Match." (Court Doc. 19.) After the thirty day time frame expired, the Recommendation was adopted in full and judgment was entered in favor of Respondent on December 20, 2007. (Court Docs. 20, 21.)

On January 25, 2008, Petitioner informed the Court that he never received a copy of the Findings and Recommendation. (Court Doc. 22.) Petitioner states that the failure to receive the

[1] The Recommendation was properly served at Petitioner's last known address of record as identified in the change of address filed on May 4, 2007, and no new address changes have been filed. (Court Doc. 17.) Service of documents at the prior address of record of the party is effective service. Local Rule 83-182(f).

Recommendation resulted in his case being denied. (Id.) Based on Petitioner's claim that he never received the Recommendation and in the interest of justice, the Court will vacate the judgment and grant Petitioner an opportunity to file objections to the Findings and Recommendation.

Accordingly, it is HEREBY ORDERED that:

1. The Court's December 20, 2007, order adopting the Findings and Recommendation and judgment entered in favor of Respondent is VACATED;
2. Within thirty (30) days from the date of service of this order, Petitioner may file objections to the Findings and Recommendation; and,
3. Failure to file timely objections will result in the issuance of a final order resolving the instant petition.

IT IS SO ORDERED.

Dated: February 6, 2008 **/s/ Lawrence J. O'Neill**
UNITED STATES DISTRICT JUDGE