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

GLENN CORNWELL, JR.,

Petitioner,

No. 2:06-cv-00705 JAM KJN

vs.

DEATH PENALTY CASE

WARDEN,
San Quentin State Prison,

Respondent.

FINDINGS AND RECOMMENDATIONS

_____ /
Petitioner notified this court that the Sacramento County Superior Court has initiated proceedings to set an execution date for petitioner. (Dkt. No. 40.) Local Rule 191(h) provides for stays of execution to permit this court to consider a capital habeas petitioner’s first petition filed pursuant to 28 U.S.C. § 2254. In recent years, the court has often chosen not to enter a stay because execution dates were not pursued during the pendency of the first federal petition. A stay was denied shortly after this case was filed because no execution date had been set so there was, technically, nothing to stay. (Dkt. No. 3.)

However, this court recognizes that it would be a waste of judicial resources for the state court to start the process of setting an execution date that inevitably will be stayed by this court. Under Local Rule 191(h)(1), “[u]pon the filing of a habeas corpus petition, unless the

1 petition is patently frivolous, the Court shall issue a stay of execution pending final disposition of
2 the matter.” On February 22, 2007, petitioner filed a protective petition containing 68 claims.
3 (Dkt. No. 15.) There is no question this petition is not “patently frivolous.” Accordingly, IT IS
4 HEREBY RECOMMENDED that petitioner’s April 15, 2010 Motion for Stay of Execution be
5 granted and all court and other proceedings related to the execution of his sentence of death,
6 including preparation for execution and the setting of an execution date, be stayed pending final
7 disposition of this matter.

8 These findings and recommendations are submitted to the United States District
9 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
10 one days after being served with these findings and recommendations, any party may file written
11 objections with the court and serve a copy on all parties. Such a document should be captioned
12 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
13 objections shall be filed and served within fourteen days after service of the objections. The
14 parties are advised that failure to file objections within the specified time may waive the right to
15 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

16 DATED: April 27, 2010

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20 KENDALL J. NEWMAN
21 UNITED STATES MAGISTRATE JUDGE
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