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

ERIC DEAN,

No. 2:07-cv-01531-MMM

Petitioner,

vs.

THOMAS CAREY, Warden, et al.,  
Respondents

ORDER DENYING STAY

22 Respondent Thomas Carey moves for a stay pending appeal of the Court's  
23 October 5, 2010 Order granting Eric Dean's petition for habeas corpus. In  
24 deciding whether to grant a stay pending appeal, the Court considers four factors:  
25 (1) whether the stay applicant has made a strong showing of likely success on the  
26 merits; (2) whether the applicant will be irreparably injured absent a stay; (3)  
27 whether issuance of a stay will substantially injure the other party; and (4) where  
28 the public interest lies. Golden Gate Restaurant Ass'n v. City and County of San  
29 Francisco, 512 F.3d 1112, 1115 (9th Cir. 2008).

30 Here, the Court finds that the factors do not support granting a stay. Carey

1 has not shown a strong likelihood of success on the merits. Carey argues that the  
2 Court erred by reviewing the parole board's decision to deny Dean parole because  
3 the "some evidence" requirement is a state-created procedure that is not part of the  
4 state liberty interest in parole, and thus is not a procedural protection required  
5 under federal law. The Ninth Circuit has already considered and rejected this  
6 argument. See Pearson v. Muntz, 606 F.3d 606, 608-10 (9th Cir. 2010), rehearing  
7 en banc denied \_\_\_ F.3d \_\_\_, 2010 WL 4227461 (9th Cir. Oct. 26, 2010); see also  
8 Haggard v. Curry, \_\_\_ F.3d \_\_\_, 2010 WL 4015006, at \*5 (9th Cir. Oct. 12,  
9 2010); Cooke v. Solis, 606 F.3d 1206 (9th Cir. 2010); Hayward v. Marshall, 603  
10 F.3d 546 (9th Cir. 2010).

11 Carey will not be irreparably injured absent a stay, and a stay is not  
12 necessary to protect the public interest. When it granted Dean's habeas petition,  
13 the Court ordered only that the parole board give Dean a new parole hearing that  
14 conforms to California's due process requirements. The Court did not order that  
15 Dean be released. See Haggard, 2010 WL 4015006, at \*5-6 (9th Cir. Oct. 12,  
16 2010). In any event, denial of the stay does not affect Carey's option to appeal the  
17 denial or his option for further proceedings following the parole hearing. At the  
18 same time, the issuance of a stay will substantially injure Dean because it will  
19 deprive him of the new parole hearing to which he is entitled under California law.

1 Id. at \*6.

2 Accordingly, Carey's motion for a stay pending appeal is DENIED.

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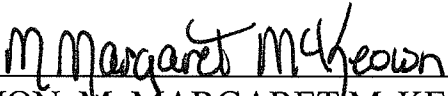
4 Dated: November 22, 2010

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HON. M. MARGARET McKEOWN  
UNITED STATES CIRCUIT JUDGE  
Sitting by Designation