

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

FRANK KENNETH BENSON,

Petitioner,

vs.

D. K. SISTO, Warden, California State
Prison, Solano,

Respondent.

No. 2:07-cv-02244-JKS

ORDER

[Re: Motion at Docket No. 24]

At Docket No. 19 the Court entered its Memorandum Decision granting Frank Kenneth Benson's Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254, and Judgment thereon at Docket No. 20. At Docket No. 21 Respondent timely filed a Notice of Appeal from the Memorandum Decision and Judgment of this Court. At Docket No. 24 Respondent filed an Application for a Stay of the Court's August 12, 2010, Order. The Court's order provides that "if the Board of Parole Hearings has not held a hearing within 120 days of the date that this decision becomes final, i.e., no longer subject to direct review, the Secretary, California Department of Corrections and Rehabilitation, must release Benson to parole status." It is this provision that Respondent seeks to have stayed pending resolution of the appeal. Because the 120 days does not start to run until the Judgment of this Court becomes final, which by the terms of the Judgment itself will not occur until the Respondent has exhausted his appellate remedies, a further stay in this matter pending appeal is unnecessary.

IT IS THEREFORE ORDERED THAT Respondent's Application for a Stay of the Court's August 12, 2010, Order at Docket No. 24 is **DENIED** as moot.

Dated: September 16, 2010.

/s/ James K. Singleton, Jr.
JAMES K. SINGLETON, JR.
United States District Judge