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

DAVID WAYNE JOHNSON,

Petitioner,

No. CIV S-08-2392 GEB GGH P

vs.

D.K. SISTO,

Respondent.

ORDER &

FINDINGS AND RECOMMENDATIONS

_____ /

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the California Board of Parole Hearings 2007 decision, denying him parole at his second subsequent parole hearing. Upon respondent’s request for a stay, on December 24, 2008 (# 13), an order to show cause why this matter should not be stayed in light of the Ninth Circuit’s having granted rehearing en banc in Hayward v. Marshall, 512 F.3d 536 (9th Cir. 2008), issued directing petitioner’s response within twenty days. In a timely response, petitioner filed a statement of non-opposition to this matter being administratively stayed pending the outcome in Hayward. In light of petitioner’s express non-opposition, the court will now recommend a stay be granted.

Accordingly, IT IS ORDERED that the show cause order, filed on December 13, 2008 (#13) has been discharged by petitioner by his December 31, 2008 (# 14) statement of non-

1 opposition.

2 IT IS HEREBY RECOMMENDED that respondent's unopposed request for a
3 stay, filed on December 19, 2008 (#12), be granted, and this matter be administratively closed
4 pending the en banc decision in Hayward v. Marshall.

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

13 DATED: January 12, 2009

/s/ Gregory G. Hollows

14 UNITED STATES MAGISTRATE JUDGE

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