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

GARRETT MORGAN CRANE,

Petitioner,

No. 2:09-cv-0983 MCE KJN P

vs.

DOMINGO URIBE, Jr., Warden,

Respondent.

ORDER

_____ /

Petitioner is a state prisoner proceeding without counsel, with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On October 25, 2010, this court granted petitioner’s motion to stay this action pending his exhaustion of state court remedies on an argument in support of one of petitioner’s claims pending in the instant action. That claim alleges that the trial prosecutor knowingly elicited and relied on the perjured statement of witness Kristopher Day that he was not “getting a deal” for his testimony against petitioner, and that Day anticipated a five-year term for his role in the underlying charges. However, on September 11, 2010, petitioner obtained a printout from the Siskiyou County Superior Court which indicated that Day had been sentenced on August 26, 2010, to only a two-year term. Petitioner sought to include this evidence in support of his claim alleging prosecutorial misconduct.

Respondent filed a statement of non-opposition to plaintiff’s motion to stay. The

1 court granted the stay after finding that petitioner had satisfied the criteria set forth in Rhines v.
2 Weber, 533 U.S. 269 (2005), viz., that petitioner could not previously have exhausted the
3 argument, because based on new evidence, and that petitioner had acted expeditiously.

4 Petitioner now seeks an order lifting the stay because his argument based on the
5 new evidence has now been exhausted through the state’s highest court. The California Supreme
6 Court denied petitioner’s writ of habeas corpus on March 23, 2011. Petitioner also seeks leave to
7 file an amended habeas petition that incorporates his new argument, and has attached a proposed
8 First Amended Petition that generally meets pertinent requirements.

9 Accordingly, for good cause shown, IT IS HEREBY ORDERED that:

10 1. Petitioner’s motion to lift the stay in this action (Dkt. No. 39) is granted;

11 2. Petitioner’s motion for leave to file his proposed First Amended Petition for
12 Writ of Habeas Corpus (Dkt. No. 39) is granted; the Clerk of Court shall so designate and
13 separately file the proposed petition;

14 3. Respondent shall, within thirty days after the filing date of this order,¹ file and
15 serve an answer to petitioner’s First Amended Petition. See Rule 4, Fed. R. Governing § 2254
16 Cases. The answer shall be accompanied by any additional transcripts and other documents not
17 already lodged by respondent in September 2009. See Rule 5, Fed. R. Governing § 2254 Cases.

18 4. Petitioner may, within thirty days after service of the answer, file and serve a
19 reply.

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26 ¹ Respondent is alerted to the shortened time.

1 5. The Clerk of the Court shall serve a copy of this order, and a copy of
2 petitioner's First Amended Petition for Writ of Habeas Corpus, on Michael Patrick Farrell,
3 Senior Assistant Attorney General.

4 DATED: April 14, 2011

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7 KENDALL J. NEWMAN
8 UNITED STATES MAGISTRATE JUDGE

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