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

DONALD BARLOW,

Petitioner,

No. CIV S-09-2151 MCE GGH P

vs.

D.K. SISTO,

Respondent.

ORDER

\_\_\_\_\_ /

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner, convicted of second degree murder in March of 1984, and sentenced to a 17-year-to-life state prison term, challenges the 2007 decision of the Board of Parole Hearings (BPH) finding petitioner unsuitable for parole in this submitted habeas petition. See Petition. Petitioner, however, has very recently filed another petition, Case No. CIV-S-10-01 65 GGH, of which the court takes judicial notice,<sup>1</sup> indicating that he is therein, for the second time, challenging the governor’s reversal of a grant of parole to petitioner by the BPH. Petition, pp. 19, 23 in CIV-S-10-0165. Within that case, petitioner includes a copy of the transcript of the September 8, 2008, BPH decision granting him parole. Petition, Exhibit A, pp.

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<sup>1</sup> Judicial notice may be taken of court records. Valerio v. Boise Cascade Corp., 80 F.R.D. 626, 635 n.1 (N.D. Cal. 1978), aff’d, 645 F.2d 699 (9th Cir.), cert. denied, 454 U.S. 1126 (1981).

1 111-119.

2           Since the most favorable outcome available to petitioner within the instant  
3 petition, should it be granted, would be that the BPH would be directed to grant a new parole  
4 hearing, or that the 2007 BPH decision denying parole be reversed subject to the governor's  
5 review, the parties will be directed to file further briefing in this matter with regard to the issue of  
6 the mootness of the 2007 BPH parole denial.

7           Accordingly, IT IS ORDERED that both petitioner and respondent file briefing,  
8 within 28 days, addressing how the claims of the instant petition have or have not been rendered  
9 moot in light of subsequent parole grants by the Board of Parole Hearings.

10 DATED: February 3, 2010

/s/ Gregory G. Hollows

11  
12 GREGORY G. HOLLOWES  
UNITED STATES MAGISTRATE JUDGE

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14 bar12151.ord  
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