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

BRUCE ARMAND CERNY,

Petitioner,

No. 2:10-cv-2190 GEB KJN P

vs.

K.L. DICKINSON, et al.,

Respondent.

ORDER

_____ /

On October 14, 2010, this court issued findings and a recommendation that this action, a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, be dismissed due to petitioner’s failure to apprise the court of his change of address, noting that three orders served at petitioner’s address of record had been returned as “Undeliverable.”

On October 22, 2010, petitioner filed a Notice of Change of Address indicating that he was released on parole on August 3, 2010, pursuant to two decisions of the United States District Court for the Central District of California, which upheld petitioner’s challenges to his 2003 and 2005 parole hearings: (1) Cerny v. California Board of Prison Terms, Case No. 5:05-cv-0190 R AJW (challenging July 2003 decision of the Board of Prison Terms), and (2) Cerny v. California Board of Parole Hearings, Case No. 2:06-cv-6891 R AJW (challenging March 2005

1 decision of the Board of Prison Terms).¹ Both decisions are now on appeal before the Ninth
2 Circuit United States Court of Appeals (Case No. 10-56094); a scheduling order has issued.
3 However, because the Ninth Circuit denied respondent's motion to stay execution of the District
4 Court's orders, petitioner remains on parole.

5 The instant action challenges the July 13, 2007 and August 4, 2008 decisions of
6 the Board of Parole Hearings denying petitioner parole. Were the decisions of the Central
7 District final, petitioner's action before this court would be moot. However, because these
8 matters remain unresolved on appeal, the court finds it appropriate to stay the instant action
9 pending a final decision by the Ninth Circuit. Should further appeals be filed, this court will,
10 seriatim, consider subsequent motions to stay this action.

11 Accordingly, IT IS HEREBY ORDERED that:

12 1. The findings and recommendations issued by this court on October 14, 2010
13 (Dkt. No. 14) are vacated;

14 2. Petitioner's motion for stay (Dkt. No. 15) is granted; this action is stayed
15 pending a final decision by the Ninth Circuit United States Court of Appeals in Case No. 10-
16 56094; and

17 3. Petitioner shall notify this court of the Ninth Circuit's decision within thirty
18 (30) days after issuance of the remittitur demonstrating the finality of the appellate court's
19 decision, and indicate therein whether a further stay is requested.

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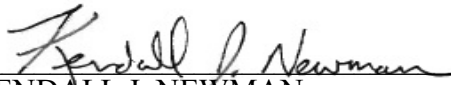
25 ¹ The Board of Prison Terms was replaced by the Board of Parole Hearings in July 2005.
26 See Cal. Penal Code § 5075(a).

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4. The Clerk of the Court is directed to administratively close this case.

SO ORDERED.

DATED: November 3, 2010


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

cern2190.stay