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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KIRK EDWARD CAMPBELL,  
Petitioner,  
v.  
WARDEN DANIEL PARAMO,  
Respondent.

No. 2:15-cv-01986-KJM-GGH

ORDER

On September 20, 2015, petitioner filed a petition for a writ of habeas corpus, challenging his convictions on possession of a firearm by a felon (Count 1) and several drug-related crimes (Counts 2 through 10). *See* Pet. for Writ of Habeas Corpus, ECF No. 1, ¶¶ 4, 5. On October 19, 2017, the magistrate judge issued findings and recommendations recommending the court grant petitioner’s habeas petition as to Counts 2 through 10 and deny the petition as to Count 1. ECF No. 28. By order filed March 31, 2019, this court adopted the findings and recommendations, with exceptions and clarifications, denying the petition as to Count 1 and granting it as to Counts 2 through 10. ECF No. 34 (“Habeas Order”). The court directed respondent to commence criminal proceedings on Counts 2 through 10 leading to retrial, or, if retrial proceedings are not commenced, to commence proceedings to have petitioner resentenced on Count 1, within 60 days. *Id.* at 10. Judgment was entered the next day. ECF No. 35.

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1           On April 18, 2019, respondent filed a motion for stay pending appeal or, in the  
2 alternative, for a temporary stay, of the March 31, 2019 Habeas Order. Mot., ECF No. 36.  
3 Petitioner responded to the motion and noted it was prematurely filed before a notice of appeal,  
4 but stated he does not oppose the motion once respondent has filed a notice of appeal. ECF No.  
5 37. Respondent has now filed a notice of appeal of the grant of habeas on Counts 2 through 10,  
6 ECF No. 38; petitioner has filed a notice of appeal of the denial of habeas on Count 1, ECF No.  
7 42.

8           In considering a motion to stay a grant of habeas pending appeal, the court  
9 considers the following factors:

10                   (1) whether the stay applicant has made a strong showing that he is  
11                   likely to succeed on the merits; (2) whether the applicant will be  
12                   irreparably injured absent a stay; (3) whether issuance of the stay will  
                      substantially injure the other parties interested in the proceeding; and  
                      (4) where the public interest lies.

13           *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

14           Respondent argues each of the four factors supports a stay of the Habeas Order  
15 pending appeal. As to the second factor, respondent argues petitioner will not be affected by a  
16 stay, because he will continue to serve his twenty-five-years-to-life sentence on Count 1 during  
17 the pendency of the appeal, regardless of whether the Habeas Order is stayed. Mot. at 3, 5. As to  
18 the third and fourth factors, respondent explains that respondent and the public interest will be  
19 harmed if no stay is issued, because government resources will be wasted retrying petitioner on  
20 Counts 2 through 10 while the appeal is pending. *Id.* 5–6. Should respondent prevail on appeal,  
21 the trial will have been a waste of government resources; should petitioner prevail on appeal, the  
22 government would have to conduct an entirely separate trial on Count 1 alone, rather than  
23 efficiently trying all the counts at once. *See id.* Such a waste of government resources is against  
24 the public interest. As noted, petitioner does not oppose respondent’s motion for a stay.  
25 Response, ECF No. 37. The second, third and fourth *Hilton* factors counsel in favor of granting  
26 the motion for a stay, and the court need not reach the first factor.

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For the foregoing reasons, it is hereby ORDERED that:

1. Respondent's motion for a stay is GRANTED;
2. Retrial of petitioner is stayed during the pendency of respondent's appeal from the judgment entered in this action (ECF No. 35); and
3. Respondent is DIRECTED to notify the court within 14 days of the resolution of its appeal.

DATED: May 28, 2019.

  
UNITED STATES DISTRICT JUDGE