

FILED

2011 MAY 24 P 12:21

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIAIN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PHUOC VONG,

Petitioner,

vs.

KEN CLARK, Warden,

Respondent.

No. C 09-5851 JW (PR)

ORDER VACATING JUDGMENT  
AND REOPENING ACTION;  
SCHEDULING ORDER

Petitioner filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging the forfeiture of 360 days of time credits, placement in administrative segregation for one year and assessment of twenty-four unfavorable behavior points following a disciplinary hearing held at Salinas Valley State Prison wherein he was found guilty of possession of a prisoner-manufactured weapon. Doc. #1. After the Court issued an order to show cause, Respondent filed a motion to dismiss the petition on the ground that Petitioner failed to exhaust state court remedies as to one of his three claims prior to filing suit here. Doc. ## 10 & 11. Respondent's motion was unopposed.

The Court granted Respondent's motion to dismiss, but rather than dismissing the action outright, the Court gave Petitioner thirty (30) days to file a notice of

election, directing him to choose either to:

(1) dismiss the unexhausted claim and go forward in this action with only the exhausted claims; or

(2) dismiss this action and return to state court to exhaust all claims before filing a new federal petition presenting all of his claims; or

(3) move to stay these proceedings while he exhausts his unexhausted claims in the California Supreme Court. Doc. #14.


Petitioner filed a timely notice of election, which informed the Court of his desire to abandon his unexhausted claim that he was summarily denied the right to present exculpatory evidence at his disciplinary hearing and to proceed with his two remaining exhausted claims. Doc. #15. The court docket, however, did not reflect Petitioner's timely filed notice of election until after the Court: (1) issued an order dismissing the action for failing to file a timely notice of election; and (2) entered judgment against Petitioner. See Doc. ## 16 & 17.

For the foregoing reasons and for good cause, the Court hereby orders as follows:

1. The judgment entered on April 22, 2011, is hereby VACATED.
2. The clerk is directed to REOPEN the action.
3. Within **SIXTY** (60) days from the date of this order, Respondent is directed to file a responsive pleading to the Court's order to show cause regarding Petitioner's two exhausted claims. Any response by Petitioner is due within **THIRTY** (30) days of his receipt of Respondent's pleading.

IT IS SO ORDERED.

DATED: May 17, 2011

  
JAMES WARE  
United States District Chief Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

PHUOC VONG,  
Plaintiff,

Case Number: CV09-05851 JW

**CERTIFICATE OF SERVICE**

v.

KEN CLARK et al,  
Defendant.

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 24, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Phuoc Vong T-96585  
CSATF  
C7-109  
P.O. Box 5246  
Corcoran, CA 93212

Dated: May 24, 2011

Richard W. Wieking, Clerk  
By: Frank Justiliano, Deputy Clerk