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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AARON ASHLEY,

Petitioner,

v.

GARY SWARTHOUT,

Respondent.

No. C 12-1882 JST (PR)

**ORDER LIFTING STAY AND
REOPENING CASE; DIRECTING
RESPONDENT TO SHOW CAUSE
WHY PETITION SHOULD NOT BE
GRANTED**

(Docket Nos. 7, 9)

Petitioner, a state prisoner proceeding pro se, filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.¹ By order filed May 23, 2012, the Court granted petitioner's motion to stay the petition pending the outcome of his state habeas petition, which was then pending before the California Supreme Court. (Dkt No. 6.) Petitioner has now filed a motion to lift the stay and also has filed proposed first and second amended petitions containing only exhausted claims.

Good cause appearing, the motion to lift the stay and reopen the case will be granted. Petitioner may proceed with his second amended petition, which is deemed to supersede the first amended petition.

¹ Petitioner initially named Tim Virga, warden of California State Prison – Sacramento, as the respondent in this action. The California Department of Corrections online inmate locator service shows plaintiff has been transferred to California State Prison – Solano (“CSP-Solano”). Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Gary Swarthout, the current warden of CSP-Solano, is hereby SUBSTITUTED as respondent in place of petitioner's prior custodian.

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The Court hereby issues the following orders:

1. Petitioner’s request to reopen is **GRANTED**, and the Clerk is directed to **ADMINISTRATIVELY REOPEN** the instant action.

2. The Clerk shall serve by certified mail a copy of this order and the second amended petition (Dkt. No. 10) and all attachments thereto upon respondent and respondent’s attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this order on petitioner.

3. The Clerk shall substitute Warden Gary Swarthout on the docket as the respondent in this action. The Clerk shall also change petitioner’s address to Aaron Ashley, #AA-3143, California State Prison – Solano, P.O. Box 4000, Vacaville, CA 95696-4000.

4. No later than **sixty (60)** days from the date of this order, respondent shall file with this Court and serve upon petitioner an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. Respondent shall file with the answer all portions of the state record that have been transcribed previously and are relevant to a determination of the issues presented by the petition.

If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the Court and serving it on respondent no later than **thirty (30)** days from his receipt of the answer. If he does not do so, the petition will be deemed submitted and ready for decision on the date the traverse is due.

5. No later than **sixty (60)** days from the date of this order, respondent may file with this Court and serve upon petitioner a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases.

If respondent files such a motion, petitioner shall file with the Court and serve on respondent an opposition or statement of non-opposition to the motion within **twenty-eight**

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(28) days of receipt of the motion, and respondent shall file with the Court and serve on petitioner a reply within **fourteen (14)** days of receipt of an opposition.

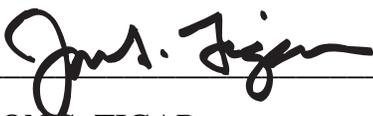
6. It is petitioner's responsibility to prosecute this case. He must keep the Court and respondent informed of any change of address and comply with the Court's orders in a timely fashion. He also must serve on respondent's counsel all communications with the Court by mailing a true copy of the document to respondent's counsel.

7. Extensions of time are not favored, though reasonable extensions will be granted. Any motion for an extension of time must be filed no later than ten days prior to the deadline sought to be extended.

This order terminates Docket Nos. 7 and 9.

IT IS SO ORDERED.

DATED: February 27, 2013



JON S. TIGAR
United States District Judge