

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3  
4 CLIFFORD LELIKONA PARKER,

No. C 03-4924 SBA (PR)

5 Petitioner,

6 v.

**ORDER GRANTING PETITION  
FOR WRIT OF HABEAS CORPUS**

7 A. P. KANE, Warden,

8 Respondent.  
9

10 On November 4, 2003, Petitioner Clifford Lelikona Parker filed a petition in this district for a  
11 writ for habeas corpus concerning the decisions by the California Board of Parole Hearings (Board)<sup>1</sup>  
12 to deny him parole in 2001 and 2004. His petition was denied. He timely appealed to the Ninth  
13 Circuit Court of Appeals. On August 2, 2010, the Ninth Circuit affirmed in part and reversed in part  
14 the decision of the district court. As to the 2001 Board decision, the Ninth Circuit concluded that  
15 the "state court did not unreasonably conclude that some evidence supports the Board's 2001  
16 decision." (Ninth Cir. Aug. 2, 2010 Memorandum at 2.) However, as to the 2004 Board decision,  
17 the Ninth Circuit held that the "state court unreasonably concluded that some evidence supports the  
18 Board's 2004 decision." (*Id.* (citing *Hayward v. Marshall*, 603 F.3d 546, 562 (9th Cir. 2010) (en  
19 banc) ("The prisoner's aggravated offense does not establish current dangerousness 'unless the  
20 record also established that something in the prisoner's pre- or post-incarceration history, or his or  
21 her current demeanor and mental state' supports the inference of dangerousness.") (quoting *In re*  
22 *Lawrence*, 190 P.3d 535, 555 (Cal. 2008)). The Ninth Circuit reversed the district court with respect  
23 to the Board's 2004 decision and remanded with instructions to grant the writ.

24 The mandate of the Ninth Circuit issued on August 24, 2010.

25 In accordance with the Ninth Circuit's mandate, Petitioner's petition for a writ of habeas  
26 corpus is GRANTED, as directed below.

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28 <sup>1</sup> On July 1, 2005, the California Board of Parole Hearings replaced the Board of Prison  
Terms. Cal. Pen. Code § 5075(a).

1 Also before the Court is Petitioner's "Request for Relief in Compliance with Order from  
2 Ninth Circuit Court of Appeals" (docket no. 39). Respondent has filed an opposition and a  
3 supplemental opposition to the motion for relief.

4 While the aforementioned appeal was pending, the record shows that the Board granted  
5 Petitioner parole during his parole suitability hearing on September 2, 2009. (Resp't Ex. 1; Pet'r  
6 August 11, 2010 Motion at 1.) Pursuant to California Penal Code § 3041.1, the Governor requested  
7 an en banc review of the parole grant, and the Board, sitting en banc, voted to hold a rescission  
8 hearing. (Resp't Ex. 2, Dec. 31, 2009 En Banc Board Request; Ex. 3, Feb. 22, 2010 En Banc Board  
9 Decision at 2.) During the Aug. 4, 2010 rescission hearing, the Board found no good cause to  
10 rescind its decision and affirmed the 2009 decision finding Petitioner suitable for parole. (Resp't Ex.  
11 4, Aug. 4, 2010 Board Decision.) The Board's decision became final on August 25, 2010, and the  
12 Board has prepared a memorandum ordering Petitioner's release on parole. (Resp't Ex. 5, Aug. 25,  
13 2010 Board Memo.)

14 Petitioner requests for relief in compliance with the Ninth Circuit's mandate. He also argues  
15 that he is entitled to discharge from parole upon release because he should be credited against his  
16 parole with the excess time he served, stating: "Petitioner requests that this Court order him  
17 discharged from parole, since the addition of time he has served since 2004 far exceed the statutory  
18 parole period." (Pet'r August 11, 2010 Motion at 2.) Petitioner contends that his parole term is a  
19 five year parole period. (Id. at 1.) He claims that had he been released on the date to which he was  
20 entitled in 2004 (had he been found suitable for parole by the Board), his five-year parole period  
21 would have long since expired. (Id. at 1-2.) Respondent, who filed a Supplemental Opposition after  
22 the Board has issued its August 25, 2010 Memorandum ordering Petitioner's release on parole,  
23 requests that Petitioner's motion for relief be denied as moot, stating: "Parker's imminent release on  
24 parole renders this relief meaningless." (Supp. Opp'n at 3.) Respondent also opposes Petitioner's  
25 request to eliminate his parole period, stating, "Although the Ninth Circuit has determined that  
26 Parker is entitled to habeas relief, he is not entitled to the complete elimination of his parole period."  
27 (Resp't Aug. 20, 2010 Opp'n at 8.) Petitioner's motion for relief is GRANTED in part as to his

1 request for relief in compliance with the Ninth Circuit's mandate. Accordingly, this case is  
2 remanded to the Board to carry out its 2009 decision that Petitioner is suitable for parole. However,  
3 the Court will not grant Petitioner's request that this Court order him discharged from parole. The  
4 Court abstains from making this decision and instead remands to the Board for its determination of  
5 the length of Petitioner's parole term and whether he should be discharged rather than paroled.

6 **CONCLUSION**

7 Accordingly, the Court grants the petition for a writ of habeas corpus, vacates its December  
8 22, 2006 habeas denial relating to the Board's 2004 denial, and remands to the Board to implement  
9 its 2009 decision finding Petitioner suitable for parole. Petitioner's motion for relief is GRANTED  
10 in part as to his request for relief in compliance with the Ninth Circuit's mandate, and the Court  
11 abstains from ruling on Petitioner's request that this Court order him discharged from parole. The  
12 Board shall determine the length of Petitioner's parole term, if any.

13 Within **three (3) days** of the date of this Order, Respondent shall notify the Court of  
14 Petitioner's parole date. Within **three (3) days** thereafter, Respondents shall notify the Court  
15 whether Petitioner has been released. The Court retains jurisdiction to enforce its Order. The Clerk  
16 shall enter judgment and close the case.

17 This Order terminates Docket no. 39.

18 IT IS SO ORDERED.

19 DATED: 8/30/10

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

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5  
6 PARKER,

Case Number: CV03-04924 SBA

7 Plaintiff,

**CERTIFICATE OF SERVICE**

8 v.

9 CULLEN,

10 Defendant.

11  
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
Court, Northern District of California.

13 That on August 30, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said  
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
15 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
located in the Clerk's office.

16  
17  
18 Clifford L. Parker  
J-43369 BW-226U  
19 PO Box 689  
Soledad, CA 93960-0689

20 Dated: August 30, 2010

21 Richard W. Wiekling, Clerk  
By: LISA R CLARK, Deputy Clerk