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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL W. BRISENO,
Petitioner,

No. C 04-1458 PJH

**ORDER REOPENING CASE;
GRANTING PETITION FOR WRIT
OF HABEAS CORPUS**

v.

JEANNE S. WOODFORD, Director,
California Dept. of Corrections,
Respondent.

_____ /

This habeas case filed under 28 U.S.C. § 2254 was remanded to this court by the Ninth Circuit on December 20, 2010. The mandate having been filed January 11, 2011, the court grants the petition for writ of habeas corpus as directed by the Ninth Circuit.

The Ninth Circuit found that it was ineffective assistance of counsel on the part of petitioner’s trial counsel not to request a certificate of probable cause on the failure of the trial judge to advise petitioner about the mandatory minimum sentence he faced on each charge. The Ninth Circuit thus held that the state court’s decision summarily denying petitioner’s claim that he was denied effective assistance of counsel in violation of the Sixth Amendment when his trial counsel failed to request a certificate of probable cause on the issue of the trial judge’s failure to inform Briseno of the mandatory minimum sentences on the charges, resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States. 28 U.S.C. § 2254 (d).

United States District Court
For the Northern District of California

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The Ninth Circuit then remanded this case with instructions that this court “grant the writ of habeas corpus on the issue reversed and order the [petitioner] released unless he is afforded an opportunity to appeal that conviction within a reasonable time.”

Accordingly, this court grants the petition and orders that respondent release petitioner from custody unless the state (presumably the California Court of Appeal) affords the petitioner an opportunity to appeal on the merits (presumably without having first obtained a certificate of probable cause) his claim that he was denied effective assistance of counsel in violation of the Sixth Amendment when his trial counsel failed to request a certificate of probable cause on the issue of the trial judge’s failure to inform him of the mandatory minimum sentences for each charge. This court determines that 90 days is sufficient to afford petitioner an opportunity to appeal and he shall commence his appeal within 90 days of the date of this order.

IT IS SO ORDERED.

Dated: January 14, 2011



PHYLLIS J. HAMILTON
United States District Judge