

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

3 MARVIN BRYANT,

No. C 06-00005 CW (PR)

4 Petitioner,

ORDER LIFTING STAY AND
DIRECTING RESPONDENT TO SHOW
CAUSE WHY THE WRIT SHOULD NOT
BE GRANTED

5 v.

6 T. FELKER, Warden,

7 Respondent.
8 _____/

9 Petitioner, a state prisoner, has filed this petition for a
10 writ of habeas corpus pursuant to 28 U.S.C. § 2254.

11 On March 15, 2007, the Court issued an Order granting
12 Petitioner's request for a stay of proceedings while he returned to
13 state court to exhaust his state judicial remedies with respect to
14 the issue of re-sentencing. In April, 2007, Petitioner informed
15 the Court that his state proceedings had concluded, and he filed an
16 amended petition containing his exhausted claim relating to the
17 issue of re-sentencing. He notes that the California Supreme Court
18 denied his state habeas petition on April 11, 2007. On May 23,
19 2007, he filed a motion entitled, "Motion to Hold Amended Petition
20 for Petitioner's Filing of Second Amended Petition." On May 29,
21 2007, he filed his second amended petition.

22 Before the Court are Petitioner's implied motion for leave to
23 file his second amended petition and his "Motion to Hold Amended
24 Petition for Petitioner's Filing of Second Amended Petition."

25 Good cause appearing, the Court lifts the stay and GRANTS
26 Petitioner leave to file his second amended petition. The Clerk of
27 the Court is directed to mark Petitioner's second amended petition
28 as filed on May 29, 2007, the date it was received.

1 The Clerk of the Court shall REOPEN this case and serve a copy
2 of this Order and the second amended petition and all attachments
3 thereto upon Respondent and Respondent's attorney, the Attorney
4 General of the State of California. The Clerk shall also serve a
5 copy of this Order on Petitioner at his most current address.

6 Respondent shall file with this Court and serve upon
7 Petitioner, within sixty (60) days of the issuance of this Order,
8 an answer conforming in all respects to Rule 5 of the Rules
9 Governing Section 2254 Cases, showing cause why a writ of habeas
10 corpus should not be issued. Respondent shall file with the answer
11 a copy of all portions of the state trial record that have been
12 transcribed previously and that are relevant to a determination of
13 the issues presented by the petition.

14 If Petitioner wishes to respond to the answer, he shall do so
15 by filing a traverse with the Court and serving it on Respondent
16 within thirty (30) days of his receipt of the answer. Otherwise,
17 the petition will be deemed submitted and ready for decision thirty
18 days after the date Petitioner is served with Respondent's answer.

19 Petitioner is reminded that all communications with the Court,
20 whether by way of formal legal motions or informal letters, must be
21 served on Respondent by mailing a true copy of the document to
22 Respondent's counsel.

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

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Petitioner's "Motion to Hold Amended Petition for Petitioner's Filing of Second Amended Petition" (docket no. 13) is denied as moot.

This Order terminates Docket no. 13.

IT IS SO ORDERED.

Dated: 6/30/09



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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

4 MARVIN BRYANT III,

5 Plaintiff,

6 v.

7 T.FELKER et al,

8 Defendant.

Case Number: CV06-00005 CW

CERTIFICATE OF SERVICE

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

11 That on June 30, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
14 in the Clerk's office.

15 Marvin Bryant T-92379
16 3-114U
17 CSP-Solano
18 P.O. Box 4000
19 Vacaville, CA 95696-4000

20 Attorney General
21 State of California
22 455 Golden Gate Avenue, #11000
23 San Francisco, CA 94102

24 Warden
25 CSP-Solano
26 P.O. Box 4000
27 Vacaville, CA 95696-4000

28 Dated: June 30, 2009

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk