

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

NATHANIEL R. ROUSE,)	No. C 08-02426 SBA (PR)
)	
Petitioner,)	<u>ORDER DENYING MOTION FOR</u>
)	<u>STAY</u>
v.)	
)	
ROBERT L. AYERS, JR.,)	
)	
Respondent.)	(Docket No. 22)
)	
_____)	

On September 9, 2010, Petitioner Nathaniel Rouse’s pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 was granted and judgment was entered in his favor. The petition challenged the decision of the Governor of California to deny parole in 2007. In the order granting the petition, Respondent was ordered, within twenty days, to calculate a term for Petitioner and set an imminent date for his release in accordance with Section 3041(a) of the California Penal Code. On September 16, 2010, Respondent filed a motion for a stay of the order and judgment of September 9, 2010, pending appeal or, alternatively, a temporary stay of the order and judgment to allow respondent time to seek a stay in the Ninth Circuit. On the same day, Respondent also filed a notice of appeal.

On September 17, 2010, Respondent’s motion for a stay was granted in part, and the order and judgment were temporarily stayed to permit Respondent time to seek a stay in the Ninth Circuit. Respondent sought a stay from the Ninth Circuit, but the Ninth Circuit denied the stay on January 13, 2011.

On January 24, 2011, Respondent filed another motion to stay the order and judgment of September 9, 2010, in this Court based on the recent decision by the United States Supreme Court in Swarthout v. Cooke, No. 10-333, slip op. 1, 4-5 (U.S. Jan. 24, 2011). Once a notice of appeal is filed, however, the district court loses jurisdiction over the matters being appealed. Natural Res. Def. Council, Inc. v. Southwest Marine Inc., 242 F.3d 1163, 1166 (9th Cir. 2001); United Nat’l Ins. Co. v. R&D Latex Corp., 242 F.3d 1102, 1109 (9th Cir. 2001). As the notice of appeal has been

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1 filed, and this case is now pending in the Ninth Circuit, this Court lacks jurisdiction over the order
2 and judgment being appealed. Although a district court also retains jurisdiction during the pendency
3 of an appeal to act to preserve the status quo, Mayweathers v. Newland, 258 F.3d 930, 935-36 (9th
4 Cir. 2001), in light of the Ninth Circuit's denial of a stay, the stay presently requested of this Court
5 would change the status quo.

6 Accordingly, Respondent's motion for a stay (docket number 22) is DENIED. Respondent
7 may, of course, seek such a stay from the Ninth Circuit.

8 IT IS SO ORDERED.

9 DATED: 1/31/11


SAUNDRA BROWN ARMSTRONG
United States District Judge

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