

1 v. Tomkins, 716 F.2d 632, 634 (9th Cir. 1983). If a post-
2 conviction challenge to a criminal conviction is pending in state
3 court, a potential federal habeas petitioner must await the outcome
4 of the challenge before his state remedies are considered
5 exhausted. See id. Moreover, the rule in Sherwood applies whether
6 or not the issue raised in the pending state petition is included
7 in the federal petition, see id., for the reason that a pending
8 state court challenge may result in the reversal of the
9 petitioner's conviction, thereby mooting the federal petition. See
10 id. (citations omitted).

11 As Petitioner has a petition currently pending in the
12 California Supreme Court, the instant petition for a writ of habeas
13 corpus is DISMISSED without prejudice to refileing once all state
14 court post-conviction challenges to Petitioner's conviction have
15 been completed, and all claims Petitioner wishes to raise in
16 federal court have been presented to the Supreme Court of
17 California. See 28 U.S.C. § 2254(b)-(c); Rose v. Lundy, 455 U.S.
18 509, 522 (1982) (holding every claim raised in federal habeas
19 petition must be exhausted).

20 The Clerk of the Court shall enter judgment and close the
21 file.

22 IT IS SO ORDERED.

23
24 Dated: 2/25/10



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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

4 JOSE REYES GUERRA,

5 Plaintiff,

6 v.

7 LARRY SMALL et al,

8 Defendant.

Case Number: CV09-03948 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 February 25, 2010, 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 Jose Reyes Guerra F-57686
16 D2-136
17 Calipatria State Prison
18 P.O. Box 5002
19 Calipatria, CA 92233-5002

20 Dated: February 25, 2010

21 Richard W. Wiekling, Clerk
22 By: Sheilah Cahill, Deputy Clerk
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