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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAMIEN HALL,

Petitioner,

No. C 09-5299 PJH

v.

**ORDER GRANTING MOTION
FOR RELEASE**

VINCENT CULLEN, Acting Warden
of San Quentin State Prison,

Respondent.

_____ /

On July 29, 2010, the court granted petitioner Damien Hall’s (“Hall”) petition for writ of habeas corpus, and on July 30, 2010, Hall filed a motion for release on his own recognizance. Having reviewed the motion, respondent’s opposition, and Hall’s reply, the court GRANTS Hall’s motion and ORDERS his immediate release.

The court need not resolve whether Federal Rule of Appellate Procedure 23(b) or 23(c) governs the motion in the case of conditional writs because the court concludes that release is appropriate under either section and also pursuant to the Ninth Circuit’s decision in *Marino v. Vasquez*, 812 F.2d 499, 508-09 (9th Cir. 1987). The court is not persuaded by respondent’s argument that it lacks the authority to release Hall until after respondent files its notice of appeal, and respondent has cited no authority in support of this argument.

The court notes that while on release pending his state court appeals, Hall’s release was not without conditions. His release pending any appeal to the Ninth Circuit or pending the state’s commencement of proceedings to retry him will similarly be subject to conditions. In order to implement these conditions the court ORDERS as follows:

United States District Court
For the Northern District of California

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1. The custodian shall immediately release Hall from his custody to the custody of Hall's counsel.
2. Hall's counsel shall present Hall for the setting of release conditions on the first business day following his release on the calendar of the duty Magistrate Judge in the Oakland Federal Courthouse. The duty Magistrate Judge for August is Judge Donna Ryu, who will set appropriate conditions that will include at a minimum, a bond secured by a surety other than Hall himself.

IT IS SO ORDERED.

Dated: August 6, 2010



PHYLLIS J. HAMILTON
United States District Judge