

United States District Court
For the Northern District of California

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

DUNG TRAN,

Petitioner,

v.

JEFF MACOMBER, Warden,

Respondent.¹

No. C 11-0877 CW (PR)

ORDER GRANTING MOTION
TO LIFT STAY AND
REOPEN ACTION; ORDER
TO SHOW CAUSE

(Docket no. 14)

This action was stayed and administratively closed so that Petitioner, Dung Tran, could exhaust state court remedies as to several of his claims for habeas relief. Petitioner has filed a "motion to lift stay and reopen action." In the motion, he reports that he has exhausted his state court remedies and is ready to proceed with consideration of his amended petition which has been filed at docket number 15.

Good cause appearing, the Court GRANTS Petitioner's motion to lift the stay and reopen the action. The stay is lifted. The Clerk of the Court will reopen this action. Petitioner may proceed with his amended petition, which is deemed to supersede the original petition.

Petitioner has also filed a request for the Court to take judicial notice of state court records pertaining to his conviction. Good cause appearing, this motion is granted.

¹ In accordance with Habeas Rule 2(a) and Rule 25(d)(1) of the Federal Rules of Civil Procedure, the Clerk of the Court is directed to substitute Warden Jeff Macomber as Respondent because he is Petitioner's current custodian.

1 The Court hereby issues the following orders:

2 1. The Clerk shall serve a copy of this Order and the
3 amended petition (docket no. 15) and all attachments thereto upon
4 Respondent and Respondent's attorney, the Attorney General of the
5 State of California. The Clerk also shall serve a copy of this
6 Order on Petitioner at his current address.

7 2. No later than sixty days from the date of this Order,
8 Respondent shall file with this Court and serve upon Petitioner an
9 Answer conforming in all respects to Rule 5 of the Rules Governing
10 Section 2254 Cases, showing cause why a writ of habeas corpus
11 should not be issued. Respondent shall file with the Answer all
12 portions of the state record that have been transcribed previously
13 and are relevant to a determination of the issues presented by the
14 petition.

15 If Petitioner wishes to respond to the Answer, he shall do so
16 by filing a Traverse with the Court and serving it on Respondent
17 no later than thirty days from his receipt of the Answer. If he
18 does not do so, the petition will be deemed submitted and ready
19 for decision on the date the Traverse is due.

20 3. No later than sixty days from the date of this Order,
21 Respondent may file with this Court and serve upon Petitioner a
22 motion to dismiss on procedural grounds in lieu of an Answer, as
23 set forth in the Advisory Committee Notes to Rule 4 of the Rules
24 Governing Section 2254 Cases.

25 If Respondent files such a motion, Petitioner shall file with
26 the Court and serve on Respondent an opposition or statement of
27 non-opposition to the motion within twenty-eight days of receipt
28 of the motion, and Respondent shall file with the Court and serve

1 on Petitioner a reply within fourteen days of receipt of an
2 opposition.

3 4. It is Petitioner's responsibility to prosecute this
4 case. Petitioner must keep the Court informed of any change of
5 address by filing a separate paper with the clerk headed "Notice
6 of Change of Address," and must comply with the Court's orders in
7 a timely fashion. He also must serve on Respondent's counsel all
8 communications with the Court by mailing a true copy of the
9 document to Respondent's counsel. Failure to do so may result in
10 the dismissal of this action, pursuant to Federal Rule of Civil
11 Procedure 41(b), for failure to prosecute.

12 5. Extensions of time are not favored, though reasonable
13 extensions will be granted. Any motion for an extension of time
14 must be filed no later than ten days prior to the deadline sought
15 to be extended.

16 6. The Clerk of the Court shall substitute Jeff Macomber as
17 Respondent.

18 7. This Order terminates Docket no. 14.

19 IT IS SO ORDERED.

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21 Dated: 3/18/2014


CLAUDIA WILKEN
United States District Judge

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