

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

3 NICK R. HUGHES,

No. C 11-01185 SBA (PR)

4 Petitioner,

**ORDER DIRECTING RESPONDENT TO  
 SHOW CAUSE WHY THE PETITION  
 SHOULD NOT BE GRANTED AS TO  
 ONE SUB-CLAIM OF CLAIM TWO**

5 v.

6 JOHN MARSHALL, Warden,

7 Respondent.  
 8 \_\_\_\_\_/

9 Petitioner filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254  
 10 challenging the constitutional validity of his state conviction. In an Order dated April 20, 2011, the  
 11 Court ordered Respondent to show cause why the petition should not be granted. Respondent filed a  
 12 motion to dismiss the petition based on untimeliness and lack of exhaustion.

13 In an Order dated December 20, 2011, the Court denied Respondent's motion to dismiss the  
 14 petition as untimely and, instead, determined that the present petition was a mixed petition with one  
 15 exhausted claim and several unexhausted claims. The Court ordered Petitioner to make an election  
 16 regarding how he wanted to proceed with regard to his unexhausted claims. The Order required  
 17 Petitioner to file a notice in which he stated whether he elected to: (1) dismiss the unexhausted  
 18 claims and go forward in this action with only the one exhausted claim; (2) terminate this action and  
 19 return to state court to exhaust all of his claims before returning to federal court to present all of his  
 20 claims in a new petition; or (3) request a stay of the proceedings while he completes the exhaustion  
 21 of his unexhausted claims in the California Supreme Court.

22 On March 20, 2013,<sup>1</sup> Petitioner filed a notice in which he elected to dismiss his unexhausted  
 23 claims and proceed with only the one exhausted claim. Pursuant to Petitioner's notice, all the  
 24 unexhausted claims are dismissed from this action.

25 In light of the dismissal of the unexhausted claims, the petition appears to contain only one  
 26 \_\_\_\_\_

27 <sup>1</sup> This action was initially dismissed without prejudice on January 30, 2012 because  
 28 Petitioner had not responded to the Court's December 20, 2011 Order within thirty days. Thereafter,  
 Petitioner filed a motion for relief from judgment, claiming that he never received the December 20,  
 2011 Order. In an Order dated December 10, 2012, the Court granted Petitioner's motion for relief  
 from judgment and directed the Clerk of the Court to re-open this action. After this action was re-  
 opened, Petitioner filed his March 20, 2013 notice.

1 exhausted claim (a sub-claim of claim two relating to ineffective assistance of trial counsel for  
2 failing to file a notice of appeal), which should be addressed on its merits. The Court now sets a  
3 new schedule for the parties to file their briefs pursuant to the April 20, 2011 Order To Show Cause.

4 **CONCLUSION**

5 1. Petitioner has elected to proceed with his only exhausted claim: one sub-claim of  
6 claim two -- the aforementioned ineffective assistance of counsel claim. Therefore, all of  
7 Petitioner's remaining claims are DISMISSED based on his voluntary dismissal of those claims in  
8 his March 20, 2013 notice.

9 2. Respondent shall file with this Court and serve upon Petitioner, within **sixty (60)**  
10 **days** of the issuance of this Order, an Answer conforming in all respects to Rule 5 of the Rules  
11 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued as  
12 to the aforementioned ineffective assistance of counsel claim. Respondent shall file with the  
13 Answer a copy of all portions of the relevant state records that have been transcribed previously and  
14 that are relevant to a determination of the issues presented by the petition.


15 3. If Petitioner wishes to respond to the Answer, he shall do so by filing a Traverse with  
16 the Court and serving it on Respondent within **sixty (60) days** of his receipt of the Answer. Should  
17 Petitioner fail to do so, the petition will be deemed submitted and ready for decision **sixty (60) days**  
18 after the date Petitioner is served with Respondent's Answer.

19 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep the Court  
20 and Respondent informed of any change of address and must comply with the Court's orders in a  
21 timely fashion. Petitioner must also serve on Respondent's counsel all communications with the  
22 Court by mailing a true copy of the document to Respondent's counsel.

23 5. Extensions of time are not favored, though reasonable extensions will be granted.  
24 Any motion for an extension of time must be filed no later than **fourteen (14) days** prior to the  
25 deadline sought to be extended.

26 IT IS SO ORDERED.

27 DATED: 5/21/13

28   
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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

4  
5  
6 NICK R HUGHES,  
7 Plaintiff,

Case Number: CV11-01185 SBA

**CERTIFICATE OF SERVICE**

8 v.

9 JOHN MARSHALL et al,  
10 Defendant.

11  
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
Court, Northern District of California.

13 That on May 23, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said  
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
15 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
located in the Clerk's office.

16  
17 Nick R. Hughes  
18 110 Whispering Pines Court  
Scotts Valley, CA 95066

19  
20 Dated: May 23, 2013

Richard W. Wiekling, Clerk  
By: Lisa Clark, Deputy Clerk

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