

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

3 CLARENCE ADIE HARVEY,

No. C 11-06232 SBA (PR)

4 Petitioner,

**ORDER (1) VACATING JANUARY 19, 2012 ORDER DISMISSING ACTION WITHOUT PREJUDICE; (2) REOPENING ACTION; AND (3) DIRECTING RESPONDENT TO SHOW CAUSE WHY THE PETITION SHOULD NOT BE GRANTED**

5 v.

6 G. SWARTHOUT, Warden,

7 Respondent.

8 \_\_\_\_\_/

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 10 Petitioner, a state prisoner, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C.  
 11 § 2254. In an Order dated January 19, 2012, the Court dismissed the petition because Petitioner had  
 12 not paid the filing fee or provided the proper forms in support of his in forma pauperis (IFP)  
 13 application.<sup>1</sup> However, the record shows that Petitioner had in fact filed a complete IFP application  
 14 along with a certificate of funds and his prisoner trust account statement on January 13, 2012.<sup>2</sup>  
 15 However, this form was not entered into the Court's electronic database until January 31, 2012,  
 16 more than a week after the dismissal order was issued. In view of this, it is clear that the present  
 17 petition was dismissed erroneously. Therefore, the Court's January 19, 2012 Order of Dismissal  
 18 Without Prejudice is VACATED.

19 The Court now reviews the present petition. It does not appear from the face of the petition  
 20 that it is without merit. Good cause appearing, the Court hereby issues the following orders:

- 21 1. The Court's January 19, 2012 Order of Dismissal Without Prejudice is VACATED.  
 22 The Clerk of the Court shall REOPEN this action.
- 23 2. Petitioner's application to proceed IFP is GRANTED.
- 24 3. The Clerk serve a copy of this Order and the petition and all attachments thereto upon  
 25 Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk  
 26 shall also serve a copy of this Order on Petitioner at his current address.

27 \_\_\_\_\_  
 28 <sup>1</sup> The Court notes that its January 19, 2012 Order was entered into the Court's electronic database on January 25, 2012.

<sup>2</sup> The Court notes that the envelope containing the complete IFP application was mailed by prison officials on January 13, 2012; however, it was not received by the Clerk until January 23, 2012.

1           4.       Respondent shall file with this Court and serve upon Petitioner, within **one-hundred**  
2 **and twenty (120) days** of the issuance of this Order, an Answer conforming in all respects to Rule 5  
3 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not  
4 be issued. Respondent shall file with the Answer a copy of all portions of the relevant state records  
5 that have been transcribed previously and that are relevant to a determination of the issues presented  
6 by the petition.

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

11          6.       Respondent may file with this Court and serve upon Petitioner, within **sixty (60) days**  
12 of the issuance of this Order, a motion to dismiss on procedural grounds in lieu of an Answer, as set  
13 forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If  
14 Respondent files such a motion, Petitioner shall file with the Court and serve on Respondent an  
15 opposition or statement of non-opposition to the motion within **sixty (60) days** of receipt of the  
16 motion, and Respondent shall file with the Court and serve on Petitioner a reply within **fifteen (15)**  
17 **days** of receipt of any opposition.


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

22          8.       Extensions of time are not favored, though reasonable extensions will be granted.  
23 Any motion for an extension of time must be filed no later than **ten (10) days** prior to the deadline  
24 sought to be extended.

25          9.       This Order terminates Docket no. 5.

26               IT IS SO ORDERED.

27 DATED: 2/15/12

  
SAUNDRA BROWN ARMSTRONG  
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF  
CALIFORNIA

CLARENCE ADIE HARVEY,

Plaintiff,

v.

G. SWARTHOUT et al,

Defendant.

Case Number: CV11-06232 SBA

**CERTIFICATE OF SERVICE**

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

That on February 15, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Clarence Adie Harvey F-18007  
California State Prison - Solano  
2100 Peabody Road  
Vacaville, CA 95696

Dated: February 15, 2012

Richard W. Wiekling, Clerk  
By: Lorene DeBose, Deputy Clerk