

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28E-FILED on 7/3/12

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SERGIO PEREZ GONZALEZ,

Petitioner,

v.

BEN CURRY, Warden et al.,

Respondent.

No. C-08-03916 RMW

REQUEST FOR SUPPLEMENTAL
BRIEFING**Re Docket No. 5, 8, 9, 10**

Under California law, a state habeas petition that has been denied by a lower court remains "pending" for the purposes of statutory tolling under AEDPA if the petitioner files a new petition in a higher court within a reasonable time. *See Carey v. Saffold*, 536 U.S. 214, 219-20 (2002). Where there is a delay of more than 30-60 days, a petitioner must offer an adequate explanation for the delay. *See Noble v. Adams*, 676 F.3d 1180, 1184 (9th Cir. 2012). Given the lack of information in petitioner's brief concerning the 116-day delay between the denial of his Superior Court petition and the filing of his petition in the California Court of Appeal, the court requests that petitioner submit a supplemental brief offering evidence, if any, that his delay was reasonable.

If petitioner wishes to submit supplemental briefing on this issue, he must do so by August 2, 2012. Petitioner's brief is limited to 5 pages in length. If respondent wishes to file a responsive

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

brief, it must do so by August 16, 2012. Any responsive brief is also limited to 5 pages in length.
Petitioner may not file a reply brief.

It is so ordered.

DATED: 07/03/12



RONALD M. WHYTE
United States District Judge