

MAR 07 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GEORGE PARDO,

Petitioner - Appellant,

v.

MATTHEW CATE, Secretary,

Respondent - Appellee.

No. 10-56039

D.C. No. 5:09-cv-01527-CJC-RC

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Cormac J. Carney, District Judge, Presiding

Argued and Submitted March 4, 2013
Pasadena, California

Before: HAWKINS, THOMAS, and HURWITZ, Circuit Judges.

George Pardo appeals from the district court's dismissal of his mixed habeas petition, after the court denied Pardo's motion to stay the petition and hold federal proceedings in abeyance while he exhausted his claims in state court.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

After the filing of this appeal, the California Supreme Court denied Pardo's state habeas petition, and Pardo then filed a second federal habeas petition raising the previously unexhausted claims. The record indicates that the district court has denied, without prejudice, the Warden's motion to dismiss the second petition as untimely filed.

Resolution of the issues pending in the second habeas petition may make some aspects of this appeal moot, and staying this appeal pending resolution of the second habeas petition would unnecessarily fragment the case. Therefore, in the interest of judicial economy, and in order to ensure consolidated and orderly processing and consideration of all the issues, we vacate the judgment and remand the case to the district court for further proceedings as it deems appropriate, including case consolidation.

Given this resolution, we need not — and do not — reach any issue urged by the parties on appeal.

VACATED AND REMANDED.