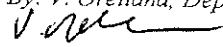


FILED

AUG 20 2010

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: V. Orellana, Deputy



SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

In the Matter of the Application of:
INEZ TITO LUGO [JERRY
RUTHERFORD] *et al.*,
Petitioner,
for a Writ of *Habeas Corpus*.

Case No.: SC135399A
ORDER ON RESPONDENTS' MOTION
TO DISMISS

The court has received, read, and considered Respondents' submissions filed July 6, 2010, Petitioners' submissions filed July 22, 2010 and Respondents' reply papers filed July 30, 2010.

As the court noted in its order filed June 4, 2010, this case has been pending since May, 2004—for over six years. Shortly before the petition was filed the backlog of overdue hearings¹ was 3,200.

According to Respondents, the backlog as of May 2010 has been reduced to 51—an impressive accomplishment. Petitioners do not dispute the backlog numbers.

Petitioners disagree with Respondents' methodology for determining the number of hearings held during the 13 months between May 1, 2009 and May 31, 2010. This

¹ Defined as hearings which were not held within the time limits set forth in Penal Code §§ 3041 and 3041.5 as then constituted.

1 number is significant because it affects the extent to which Respondents have met the
2 goal set forth in Paragraph 10 of the parties' stipulated procedures, filed March 23,
3 2006. In that agreement the parties stated that:

4
5 When the backlog has been reduced to not more
6 than five percent (05%) of the monthly hearings and
7 remains at that level or less continuously for 12
8 consecutive months, Respondents will be considered in
9 compliance with this remedial plan and the Court will
10 order this matter dismissed.

11 Respondents' own figures demonstrate that in the 13 months ended May 31, 2010
12 they have never come close to the 5% goal. Over that period the backlog averaged 28%
13 of the monthly hearings, using Respondents' methodology² for calculating the number
14 of monthly hearings. The best months were March and April, 2010, when the backlog
15 was 15%; the worst month was September, 2009, when the backlog was 52%.

16 Respondents argue that the 5% agreement set forth in paragraph 10 of the March
17 23, 2006 stipulation "does not provide a clear or useful method for determining whether
18 the Board has substantially remedied the backlog," and that it is "a stab in the dark that
19 was made at a time when [Respondents'] understanding of the backlog and the problems
20 that caused it was far from complete."³

21 In making this argument, Respondents are in essence asking to be relieved of their
22 stipulation. To do so might be appropriate at some time in the future, but it is not
23 appropriate now. After years of delay—the original stipulated deadline for elimination
24 of the backlog was September 23, 2007—the backlog still has not been eliminated,
25 although it has been reduced substantially. The court wants to see sustained

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27
28 ² The court will not make a determination at this time as to what cases should properly be included in the category of
"monthly hearings" as that term is used in Paragraph 10 of the March 23, 2006 order.

³ Respondents' Supplemental Brief filed July 6, 2010, 7:24-8:2, *seriatim*.

1 performance in the matter of backlog reduction over a period of time before this petition
2 is dismissed.⁴

3 For the foregoing reasons, Respondents' motion to dismiss is denied without
4 prejudice. The court sets this matter for a status hearing on July 15, 2011 at 8:30 A.M.
5 in Department J, for the purpose of reviewing Respondents' compliance with the
6 remedial plan, with particular reference to the relationship between the number of
7 monthly hearings and the backlog.

8 The parties are ordered to file written status reports addressing all issues regarding
9 Respondents' compliance with the remedial plan on or before June 30, 2011.
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11
12 Dated: August 20, 2010

13 Verna A. Adams
14 Verna A. Adams
15 Judge of the Superior Court
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28 ⁴ Back in July 2001, a judge of the Marin County Superior Court dismissed a *habeas corpus* application relating to delayed parole eligibility hearings, based on Respondents' representations that the backlog (which was then 2,058 cases) would be eliminated in 21 months. Instead of the backlog being eliminated, by 2004 it had increased by 55%, to 3,200 cases. In re Sanders, SC118989A.

STATE OF CALIFORNIA)
COUNTY OF MARIN)

IN RE **JERRY RUTHERFORD**

ACTION NO.: **SC135399A**

(PROOF OF SERVICE BY MAIL – 1013A, 2015.5 C.C.P.)

I AM AN EMPLOYEE OF THE SUPERIOR COURT OF MARIN; I AM OVER THE AGE OF EIGHTEEN YEARS AND NOT A PARTY TO THE WITHIN ABOVE-ENTITLED ACTION; MY BUSINESS ADDRESS IS CIVIC CENTER, HALL OF JUSTICE, SAN RAFAEL, CA 94903. ON **August 24, 2010** I SERVED THE WITHIN **ORDER ON RESPONDENTS' MOTION TO DISMISS** IN SAID ACTION TO ALL INTERESTED PARTIES, BY PLACING A TRUE COPY THEREOF ENCLOSED IN A SEALED ENVELOPE WITH POSTAGE THEREON FULLY PREPAID, IN THE UNITED STATES POST OFFICE MAIL BOX AT SAN RAFAEL, CA ADDRESSED AS FOLLOWS:

INEZ TITO LUGO H-22121 CALIFORNIA MEDICAL FACILITY P.O. BOX 2500 VACAVILLE, CA 95696	ATTORNEY GENERAL DEPARTMENT OF JUSTICE ATTN: DAMON MCCLAIN CORRECTIONAL WRITS & APPEALS SECTION 455 GOLDEN GATE AVENUE, SUITE 11000 SAN FRANCISCO, CA 94102-7004
DONALD SPECTER PRISON LAW OFFICE 1917 FIFTH STREET BERKELEY, CA 94710-1916	KEITH WATTLEY/THOMAS MASTER C/O UNCOMMON LAW 220 FOURTH STREET, SUITE 201 OAKLAND, CA 94607

I CERTIFY (OR DECLARE), UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: 8-24-10



V. ORELLANA