

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

MAXWELL HOFFMAN,
Petitioner-Appellant,

v.

ARVON J. ARAVE, Warden, Idaho
Maximum Security Institution,
Department of Correction, State of
Idaho,

Respondent-Appellee.

No. 02-99004

D.C. No.

CV-94-00200-S-

BLW

District of Idaho,

Boise

ORDER

Filed February 14, 2008

Before: Harry Pregerson, William A. Fletcher, and
Ronald M. Gould, Circuit Judges.

ORDER

In *Hoffman v. Arave*, 455 F.3d 926 (9th Cir. 2006), we affirmed in part and reversed in part the district court's habeas corpus order in this death penalty case. In relevant part, we granted Hoffman's habeas petition with respect to his claim that he received ineffective assistance of counsel during the plea bargaining phase of his criminal case. 455 F.3d at 945.

Following our decision, the State of Idaho petitioned for writ of certiorari, which the Supreme Court granted. *Arave v. Hoffman*, 128 S. Ct. 532 (2007). Before the Supreme Court heard this case, however, Hoffman moved the Court to vacate the portion of our decision addressing his claim that counsel was ineffective during plea bargaining. *Arave v. Hoffman*, 128 S. Ct. 749, 749-50 (2008) (per curiam). Hoffman represented that he wished to withdraw his claim so that he could proceed

with the resentencing ordered by the district court. *Id.* The State agreed that Hoffman's request mooted his claim, and asked the Court to grant his motion. *Id.*

The Court granted Hoffman's motion. *Id.* The Court agreed that Hoffman's motion mooted his claim of ineffective assistance of counsel during plea bargaining. *Id.* Accordingly, the Court vacated our judgment to the extent that it addressed that claim, and remanded for further proceedings. *Id.*

We now instruct the district court to dismiss with prejudice Hoffman's claim of ineffective assistance of counsel during plea bargaining. The district court's grant of Hoffman's habeas petition on his claims of ineffective assistance of counsel with respect to sentencing still stands. The State of Idaho should proceed with the resentencing of Hoffman as ordered by the district court.

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