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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 Frank Jarvis Atwood,
10 Petitioner,
11 vs.
12 Charles L. Ryan, et al.,
13 Respondents.

No. CV-98-116-TUC-JCC
DEATH PENALTY CASE

ORDER

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15 Before the Court is Respondents' Motion to Preclude Testimony of *Strickland*
16 Expert. (Doc. 434.) Petitioner previously filed notice of his intent to rely on testimony
17 from a *Strickland* expert and opposes the instant motion. (Docs. 432, 438.)

18 In both its initial scheduling order (Doc. 405) and order resetting the evidentiary
19 hearing and discovery deadlines (Doc. 428), the Court indicated that it does not favor the
20 use of *Strickland* legal experts. Petitioner asserts that expert testimony is necessary to
21 assist the Court in determining whether sentencing counsel's failures with regard to the
22 investigation and presentation of mitigation evidence were based on tactical decisions in
23 light of the standards of practice at the time. The Court has considered Petitioner's
24 arguments, in both the notice of intent to rely on a *Strickland* expert and the opposition to
25 Respondents' motion to preclude. Although, as Petitioner notes, some judges permit
26 such testimony, "it is within a district court's discretion to exclude proposed expert
27 testimony concerning a legal standard of care and to rely solely on the briefs." *Heishman*
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1 v. *Ayers*, 621 F.3d 1030, 1042 (9th Cir. 2010); *see also Hovey v. Ayers*, 458 F.3d 892,
2 910-11 (9th Cir. 2006) (finding no abuse of discretion from exclusion of expert testimony
3 concerning legal standard of care). Because this Court is well versed in the relevant law
4 and standards governing sentencing counsel's representation at the time of Petitioner's
5 trial, it finds that expert testimony concerning the prevailing standard of care would not
6 assist it in understanding the evidence or determining a fact in issue. Fed. R. Evid.
7 702(a).

8 **IT IS THEREFORE ORDERED** that Respondents' Motion to Preclude
9 Testimony of *Strickland* Expert (Doc. 434) is **GRANTED**.

10 DATED this 24th day of July, 2013.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE