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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

RODNEY BERRYMAN, Sr.,)	Case No. 1:95-cv-05309-AWI
)	
Petitioner,)	<u>DEATH PENALTY CASE</u>
)	
vs.)	ORDER DENYING BERRYMAN'S
)	REQUEST FOR AUTHORIZATION TO
ROBERT K. WONG, as Acting Warden of)	PRESENT A MOTION FOR
San Quentin State Prison,)	RECONSIDERATION
)	
Respondent)	

This matter is before the Court on the request of Petitioner Rodney Berryman, Sr. ("Berryman"), through his appointed counsel, for authorization to research and present a motion for reconsideration regarding the Court's Memorandum Decision filed July 10, 2007 (doc. 351). As grounds for this request, he recites that his last opportunity for full briefing on the Petition was his traverse, filed June 14, 2000 (doc. 228), and his last opportunity for briefing on the evidentiary hearing motion was his reply brief, filed July 29, 2002 (doc. 314). While he concedes that the Court performed independent, updated research as reflected in the July 10, 2007 Memorandum Decision, he refers to at least one Supreme Court case and one Ninth Circuit case published since 2007. He argues that new constitutional doctrines can interact in unexpected ways.

The July 10, 2007 Memorandum Decision denied on the merits all claims with the exception of Claim 18. The Memorandum Decision is a 272-page, comprehensive analysis of all Berryman's allegations. With respect to Claim 18, the Court authorized further evidentiary development of his contention that one of his trial attorneys slept during substantial portions of the penalty phase proceedings. Due to a misunderstanding by Berryman's litigation team of the scope of the authorization,

1 his evidentiary development of Claim 18 was not completed until January 2009. At no time between
2 July 10, 2007 and April 7, 2009 (when the within request was filed) has Berryman sought funding to
3 challenge the findings and conclusions in the Memorandum Decision.

4 The request for authorization to research and present a motion for reconsideration of the July 10,
5 2007 Memorandum Decision is denied. Any perceived errors in the Memorandum Decision can be
6 addressed after the Court issues an order on Berryman's entitlement to a Certificate of Appealability.

7 IT IS SO ORDERED.

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9 DATE: April 16, 2009

/s/ Anthony W. Ishii
Anthony W. Ishii
United States District Judge

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