

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WARD FRANCIS WEAVER, JR.,

Petitioner,

v.

KEVIN CHAPPELL, Warden of San Quentin
State Prison,

Respondent.

Case No. 1:02-cv-05583 AWI-SAB

DEATH PENALTY CASE

ORDER SETTING BRIEFING SCHEDULE
FOR UNSCHEDULED CLAIMS

This matter is before the Court on the parties' July 14, 2015 joint statement regarding briefing of claims not covered by the Court's March 24, 2014 order.

On May 17, 2002, Petitioner commenced this proceeding under 28 U.S.C. § 2254 by filing a combined request for appointment of counsel and temporary stay of execution. Petitioner filed his federal petition on May 5, 2003. Petitioner filed an amended federal petition on September 1, 2009, which became the operative pleading following summary denial of exhaustion claims pending in state court. Respondent answered the amended petition on March 30, 2010.

1 On March 24, 2014, this Court denied claims 1 and 2 on the merits, and ordered further
2 briefing on therein noted issues of deficient performance by trial counsel and juror misconduct.
3 (See ECF No. 162 at 118:11-16.) On September 4, 2014, the Court issued an order scheduling
4 briefing of the issues noted in the March 24, 2014 order.

5 On April 24, 2015, the Court ordered the parties to meet and confer and file a joint
6 statement regarding briefing of the remaining claims, i.e., those not covered by the March 24,
7 2014 order.

8 The Court has reviewed the parties' July 14, 2015 joint statement (ECF No. 195) and sets
9 the following schedule for all claims not covered by the Court's March 24, 2014 order, provided
10 the Court will address merits prior to procedural defenses and retroactivity under Teague v.
11 Lane, 489 U.S. 288 (1989).

12 It is HEREBY ORDERED that:

- 13 1. By November 15, 2016, Petitioner shall file a memorandum of points and
14 authorities which substantively addresses full scope merits briefing under 28
15 U.S.C. § 2254 in support of each claim in the amended petition not covered by the
16 Court's March 24, 2014 order, including applicable 28 U.S.C. § 2254(d)
17 standard(s) and the impact of the Supreme Court's decision in Cullen v.
18 Pinholster, 131 S. Ct. 1388 (2011).
- 19 2. By May 15, 2017, Respondent shall file a memorandum of points and authorities
20 in opposition. That opposition shall include any assertion by Respondent that
21 claims are barred by the procedural default doctrine and/or retroactivity under
22 Teague.
- 23 3. By September 15, 2017, Petitioner shall file any reply memorandum of points and
24 authorities.
- 25 4. By December 15, 2017, Petitioner shall file any motion for discovery, expansion
26 of the record, and/or evidentiary hearing.
- 27 5. By February 15, 2018, Respondent shall file any opposition to Petitioner's motion
28 for discovery, expansion of the record and/or evidentiary hearing.

1 6. By April 16, 2018, Petitioner shall file any reply to Respondent's opposition.

2
3 IT IS SO ORDERED.

4 Dated: July 29, 2015



UNITED STATES MAGISTRATE JUDGE

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28