UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MANUEL SHOTWELL, Petitioner, v. A. A. LaMARQUE, Respondent.	1:04-CV-6496-LJO-JMD-HC ORDER REGARDING EXPANSION OF THE RECORD

Petitioner is a state prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

After reviewing the record and the transcript of the April 27, 2009 evidentiary hearing, the Magistrate Judge issued a Findings and Recommendation ("F&R") recommending that the petition be denied with prejudice. See Doc. No. 68. On March 24, 2010, Petitioner filed objections. See Doc. No. 69. On April 12, 2010, the Court adopted in part the F&R denying Petitioner's claims for relief. See Doc. No. 70. The Court reserved judgment on Petitioner's ineffective assistance of counsel claim with respect to counsel's investigation of the diminished actuality defense pending expansion of the record. Id. The Court referred the case to the Magistrate Judge for the purpose of expanding the record regarding whether Petitioner was prejudiced by counsel's performance. Id.

Habeas Rule 7 permits the Court to direct the parties to expand the record by submitting additional materials relating to the petition and to authenticate such materials, which may include letters predating the filing of the petition, documents, exhibits, affidavits, and answers under oath to

written interrogatories propounded by the judge. See Rule 7 (a), (b) of the Rules Governing Section 2254 Cases. In the instant matter, Petitioner shall submit evidence in support of his claim that he was prejudiced by his counsel's failure to assert the defense of diminished actuality.

ORDER

Petitioner shall submit evidence within ninety (90) days of service of this order on the narrow issue of whether Petitioner was prejudiced by his counsel's failure to assert the defense of diminished actuality.

IT IS SO ORDERED.

Dated: March 30, 2011

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE