

1 cannot establish that a plea offer was not conveyed to him. (ECF No. 68 at 2; ECF No. 68-2 at
2 2).² Petitioner contests Respondent's interpretation of the minute order and proffers evidence it
3 intends to offer at the evidentiary hearing of a plea offer that was not conveyed to Petitioner.
4 (ECF No. 75)

5 After substantial briefing and consideration, the assigned District Judge directed the
6 undersigned to hold an evidentiary hearing on Petitioner's ineffective assistance of counsel
7 claim. Nothing in Respondent's motion provides a basis to decline to hold such a hearing at this
8 time. Respondent has put forth evidence it will certainly introduce at that hearing. Petitioner
9 intends to put forth its own evidence. An evidentiary hearing remains appropriate. The Court
10 will not preview some of the evidence and predict the outcome before hearing all the evidence,
11 as directed by the District Judge.

12 As there are disputed issues of fact regarding whether trial counsel communicated the
13 alleged nineteen-year plea offer to Petitioner, the Court finds that an evidentiary hearing is
14 necessary to determine whether Petitioner is entitled to habeas relief.

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. Respondent's motion to vacate the evidentiary hearing (ECF No. 68) is DENIED;
- 17 2. The hearing on the motion to vacate scheduled for April 25, 2017 is VACATED; and
- 18 3. The evidentiary hearing will proceed as scheduled on May 5, 2017, at 9:00 a.m.

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20 IT IS SO ORDERED.

21 Dated: April 24, 2017

21 /s/ Eric P. Grogan
22 UNITED STATES MAGISTRATE JUDGE

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² Page numbers refer to ECF page numbers stamped at the top of the page.