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

JERRY GRANT FRYE,)
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 Petitioner,)
)
 vs.)
)
 WARDEN, San Quentin State Prison,)
)
 Respondent.)
 _____)

NO. CIV S-99-0628 LKK-KJM
DEATH PENALTY CASE
ORDER

Petitioner requests, pursuant to Local Rule 133(j), that the transcripts of depositions he recently attempted to file be made part of the record. This court previously ordered the parties to take the evidentiary hearing testimony of almost all witnesses by deposition. Aug. 20, 2008 Order (docket no. 337) at 1-2; Oct. 16, 2008 Order (docket no. 360) at 4:6-11;^{1/} see 28 U.S.C. § 2246 (“On application for writ of habeas corpus evidence may be taken orally or by deposition . . .”). The parties have taken the testimony by deposition of the following witnesses: Alice Frye, Myrtle Collins, Ted McQuinley, Dennis Sherck, Eric Bryson, Phillip Frye, Shelby Fairfield and Marilyn Cornell.

Petitioner’s counsel attempted to file the testimony of Shelby Fairfield, Alice Frye, Myrtle Collins and Phillip Frye, but counsel has informed the court that the Clerk’s Office told counsel that deposition transcripts could not be filed, pursuant to Local Rule 133(j). Thereafter, petitioner’s counsel

¹ The only witnesses the court will hear in court are Mr. Iverson, Ms. McDowell, Ms. Walle and Mr. Bricker. The parties were also given the alternative of taking that testimony by videotaped deposition.

1 refrained from filing the testimony of Ms. Cornell.

2 Because the deposition testimony of these witnesses was taken in lieu of in-court testimony,
3 that testimony is part of the evidentiary hearing record in this case. Accordingly, petitioner's August 9,
4 2010 Request for Order Authorizing Filing of Transcripts is granted. The Clerk is directed to remove the
5 "disregard" notice from docket numbers 518, 519, 520 and 521, and refile the transcripts as part of the
6 record. In addition, petitioner is authorized to file the transcript of Ms. Cornell's deposition testimony on
7 the docket.

8 IT IS SO ORDERED.

9 Dated: August 14, 2010.

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13 U.S. MAGISTRATE JUDGE
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