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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES D. RIEL,
Petitioner,
v.
WARDEN, San Quentin State Prison,
Respondent.

No. 2:01-cv-0507 LKK DAD
DEATH PENALTY CASE
ORDER

In 2009, the assigned district judge granted in part and denied in part petitioner’s motion for an evidentiary hearing in this action. (ECF No. 212.) Specifically, the assigned district judge adopted the then-assigned magistrate judge’s reasoning in her ruling on the motion for an evidentiary hearing in all but one respect. (Id.) The district judge held that the magistrate judge failed to properly consider the standards for application of California’s felony-murder rule to a nonkiller in declining to hold an evidentiary hearing on petitioner’s claim of ineffective assistance of counsel at the guilt phase and, therefore, did not adopt the recommendation in that respect. (Id. at 3-7.)

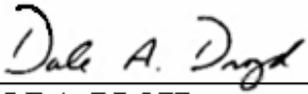
It does not appear that either party mentions these felony-murder rule standards, or the district judge’s application of them to petitioner’s case, in the briefing on the application of 28 U.S.C. § 2254(d) to this action. Accordingly, IT IS HEREBY ORDERED as follows:

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1. Within twenty days of the filed date of this order, petitioner shall file a memorandum of points and authorities explaining whether the rationales for the assigned district judge’s holding that petitioner had sufficiently shown guilt phase prejudice stemming from the ineffective assistance of counsel, discussed at pages 3 through 7 of the court’s March 27, 2009 Order, were raised in the state court. If those issues were raised in state court, petitioner shall explain whether he addressed them in his § 2254(d) briefing or explain why he did not address them. If the issues were not raised in state court, petitioner shall explain whether the issues may be considered by this court in determining whether petitioner has satisfied the § 2254(d) standards.
2. Within twenty days after petitioner has filed his memorandum, respondent shall file a responsive memorandum.
3. Within ten days thereafter, petitioner may file a reply.

Dated: June 10, 2014



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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