

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

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

MILTON OTIS LEWIS,

Petitioner,

No. CIV S-02-0013 FCD GGH DP

vs.

**DEATH PENALTY CASE**

ROBERT AYERS, Warden

Respondent.

ORDER

\_\_\_\_\_ /

The undersigned is in receipt of the parties' submissions regarding petitioner's present competency to proceed in this habeas action. The undersigned agrees to the need for an evidentiary hearing.

However, the undersigned disagrees with petitioner that, after this nearly three-quarter year's long process to determine whether petitioner can proceed with this action, more discovery and investigation are needed prior to an evidentiary hearing. This is a medical issue concerning petitioner's mental abilities, and neither petitioner's expert nor respondent's have indicated that they suffer from any significant lack of information about this issue. Moreover, the most important evidence will be the opinions that the experts have formed, the reasonableness of those opinions, and the presently available basis for them. Given that the expert reports have been exchanged, depositions prior to hearing will not be of much assistance

1 to the undersigned, or for that matter, to the parties. Therefore, the undersigned orders that the  
2 parties meet and confer forthwith about the precise scheduling of an evidentiary hearing in  
3 October 2009, also in consultation with the courtroom deputy clerk.

4           The parties shall also discuss the provision to the court of joint exhibits, e.g.,  
5 medical records.

6           Not later than September 11, 2009, the parties shall file respective witness and  
7 exhibit lists. At that time, exhibits, excepting those which have been the subject of stipulation  
8 and which the parties already jointly possess, shall be exchanged. The exchange may be in paper  
9 format or electronic pdf format. Any objections to exhibits must be raised in a filing with this  
10 court no later than September 18, 2009.

11 Dated: 07/28/09

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

13 GGH:gh:035  
14 lewi0013.sche