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

MICHAEL JOSEPH PRATT,

Petitioner,

No. CIV S-02-0872 MCE JFM P

vs.

MIKE EVANS, Warden,

Respondent.

ORDER

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Petitioner is a state prisoner proceeding through counsel with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On October 10, 2007, this court conducted an evidentiary hearing. At the conclusion of the hearing, petitioner’s request for an additional period of thirty days in which to request further proceedings in this matter was granted. The court also set a schedule for post-hearing briefing.

On November 13, 2007, petitioner filed a request to delay submission of this matter and for a thirty day extension of time to file a request for additional proceedings. On November 15, 2007, respondent filed a statement of non-opposition to petitioner’s request, reserving therein his right to object to any additional evidence petitioner might seek.

On November 26, 2007, petitioner filed requests for leave to conduct discovery and to expand the record, as well as a request to reset the schedule for post-hearing briefing. By the request for leave to conduct discovery, petitioner seeks to propound two interrogatories to

1 respondent. By the request to expand the record, petitioner seeks to add to the record his own  
2 declaration and respondent's response to the two interrogatories. In the declaration, petitioner  
3 refutes the testimony of his trial attorney, Eric Ross, given at the October 10, 2007 evidentiary  
4 hearing, that petitioner was "not interested in 'a mental defense. He did not want to pursue  
5 that.'" Petitioner's Request to Expand the Record with Petitioner's Declaration and With  
6 Answers to Interrogatories, filed November 26, 2007, at 2 (quoting Transcript of October 10,  
7 2007 Evidentiary Hearing, at 62.) By the interrogatories, petitioner seeks to inquire whether Mr.  
8 Ross stated to respondent's counsel, or an agent of respondent's counsel, that petitioner had  
9 stated before trial that he did not want to pursue a mental health defense and, if so, why that  
10 statement was not included in Mr. Ross' declaration. Petitioner's Request to Conduct Discovery  
11 Through Two Interrogatories, filed November 26, 2007, at 1.

12 Respondent opposes both requests.

13 Rule 6 of the Rules Governing Section 2254 Cases in the United States District  
14 Courts (hereafter Habeas Rules) provides in relevant part that "[a] judge may, for good cause,  
15 authorize a party to conduct discovery . . . ." Rule 6, 28 U.S.C. foll. § 2254. Rule 7 of the  
16 Habeas Rules authorizes expansion of the record to include "additional materials relating to the  
17 petition." Rule 7, 28 U.S.C. foll. § 2254.

18 After review of the documents filed in support of an in opposition to both  
19 motions, petitioner's request to expand the record with his own declaration will be granted.  
20 Petitioner's request to conduct discovery will be denied. With these orders, the record in this  
21 matter is closed. The court will, therefore, set a new schedule for post-hearing briefing in this  
22 matter.

23 In accordance with the above, IT IS HEREBY ORDERED THAT:

24 1. Petitioner's November 13, 2007 request to delay submission of evidence is  
25 granted;

26 2. Petitioner's November 26, 2007 request to expand the record is granted in part;

1                   3. The record is expanded to include the Declaration of Michael Pratt, dated  
2 November 12, 2007 and filed November 26, 2007;

3                   4. Petitioner's November 26, 2007 request for leave to conduct discovery is  
4 denied;

5                   5. Petitioner's November 26, 2007 request to set a new briefing schedule is  
6 granted;

7                   6. Petitioner's post-hearing brief shall be filed and served not later than thirty  
8 days from the date of this order;

9                   7. Respondent's response shall be filed and served not later than two weeks after  
10 service of petitioner's opening brief; and

11                   9. Petitioner' closing brief shall be filed and served not later than one week  
12 thereafter.

13 DATED: February 6, 2008.

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16 UNITED STATES MAGISTRATE JUDGE

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