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

ROBERT E. LEE,

Petitioner,

No. CIV S-03-2197 LKK KJM P

vs.

MARK SHEPHERD, Warden,

Respondent.

ORDER

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Petitioner, a state prisoner proceeding with counsel, has filed this application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On December 10, 2009, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty days. Petitioner has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds some of the findings and recommendations to be supported by the record and by proper analysis. Specifically, the court adopts the magistrate judge's findings and

1 recommendations as to petitioner's Fourteenth Amendment claim concerning the trial court's  
2 withdrawal of its plea offer and as to petitioner's ineffective assistance of counsel claim due to  
3 his trial counsel's failure to preserve this plea offer.

4 The court, however, does not adopt the findings and recommendations as to petitioner's  
5 ineffective assistance of counsel claim for petitioner's trial counsel's failure to investigate his  
6 competence to plead. The court holds that petitioner has presented sufficient evidence of his  
7 incompetence at the time he entered his plea to warrant an evidentiary hearing on this issue.


8 Accordingly, IT IS HEREBY ORDERED that:

9 1. The findings and recommendations filed December 10, 2009, are adopted as to  
10 all sections but Section IV.b;

11 2. Petitioner's application for a writ of habeas is denied only as to his claims that  
12 the trial court violated his Fourteenth Amendment rights when it reneged on the twenty-two year  
13 plea agreement and that counsel was ineffective in failing to preserve this plea offer; and

14 3. The magistrate judge shall conduct an evidentiary hearing as to whether  
15 petitioner's trial counsel was ineffective in failing to investigate petitioner's competence to enter  
16 the no contest pleas.

17 DATED: March 8, 2010.

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20 LAWRENCE K. KARLTON  
21 SENIOR JUDGE  
22 UNITED STATES DISTRICT COURT  
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