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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GLENN CORNWELL, Jr.,

Petitioner,

v.

**WARDEN, SAN QUENTIN STATE
PRISON,**

Respondent.

No. 2:06-cv-0705 TLN KJN DP

DEATH PENALTY CASE

ORDER

Petitioner is a state prisoner under sentence of death. On March 19, 2019, the district court adopted the findings and recommendations on the application of 28 U.S.C. § 2254(d) to claims in the amended petition, and referred this matter back to the undersigned for further proceedings. Pursuant to the undersigned’s order, the parties filed a joint status report. (ECF No. 131.)

1. Procedural Default Challenges

According to respondent, the procedural default challenges are limited to Claim 3(e), whether trial counsel unreasonably failed to rebut the prosecutor’s argument that because petitioner was not insane at the time of the 1983 and 1992 crimes, there was no mitigation; and Claim 34, ineffective assistance of state habeas counsel.¹ Respondent proposed that the

¹ As stipulated by the parties (ECF No. 82), the court deferred ruling on the procedural default aspects of respondent’s May 11 motion to dismiss until resolution of the 28 U.S.C. § 2254 issues.

1 procedural bars be addressed in post-discovery or evidentiary hearing briefing when the parties
2 brief the merits of the remaining claims. Petitioner raised no objection. Good cause appearing,
3 the court will so order.

4 2. Discovery

5 Petitioner will seek discovery as to all sub-claims of Claim 3,² and Claim 34. Due to other
6 death penalty litigation demands, petitioner requests an additional 90 days in which to file a
7 motion for discovery. While respondent does not oppose such request, respondent may oppose
8 the discovery motion. Petitioner's request is granted.

9 Respondent anticipates seeking an order to obtain trial counsel's defense file. Petitioner
10 did not address whether he would oppose such request.

11 Good cause appearing, petitioner shall file his motion for discovery as to all sub-claims of
12 Claim 3, and Claim 34 within ninety days from the date of this order. Respondent's opposition
13 shall be filed sixty days thereafter. Petitioner's reply shall be filed thirty days after the opposition
14 is filed.

15 Respondent shall file a motion for order to obtain trial counsel's defense file within sixty
16 days from the date of this order. Petitioner's opposition shall be filed thirty days thereafter;
17 respondent's reply, if any, shall be filed thirty days after the opposition is filed.

18 3. Evidentiary Hearing

19 Petitioner will seek an evidentiary hearing on Claim 3, which motion is contemplated to
20 be filed after the completion of the discovery process. Petitioner proposes a deadline of 45 days
21 after such completion in which to file the motion.

22 Upon the completion of the discovery process involving all sub-claims of Claims 3, and
23 Claim 34, petitioner shall have 45 days in which to file a motion for evidentiary hearing.

24 Accordingly, IT IS HEREBY ORDERED that:

25 1. The procedural default challenges, limited as set forth above, shall be addressed in

26 _____
(ECF No. 85 at 2.)

27 ² Claim 3 relates to allegations of ineffective assistance of counsel at the penalty phase. See ECF
28 No. 52 at 143-260 (sub-claims 3(a) through 3(h)).

1 post-discovery or evidentiary hearing briefing when the parties brief the merits of the remaining
2 claims.


3 2. Petitioner shall file his motion for discovery as to all sub-claims of Claim 3, and Claim
4 34 within ninety days from the date of this order. Respondent's opposition shall be filed sixty
5 days thereafter. Petitioner's reply shall be filed thirty days after the opposition is filed.

6 3. Respondent shall file a motion for order to obtain trial counsel's defense file within
7 sixty days from the date of this order. Petitioner's opposition shall be filed thirty days thereafter;
8 respondent's reply, if any, shall be filed thirty days after the opposition is filed.

9 4. Forty-five days following completion of the discovery process involving all sub-claims
10 of Claims 3, and Claim 34, petitioner shall file a motion for evidentiary hearing.

11 Dated: March 25, 2021

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE