

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

GLENN CORNWELL, JR.,

Petitioner,

No. 2:06-cv-00705 JAM KJN

vs.

DEATH PENALTY CASE

WARDEN,
San Quentin State Prison,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding with counsel, has filed an 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 Rule 302.

On October 25, 2011, 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 fourteen days. Neither party has filed objections to the findings and recommendations.

The court has reviewed the file and finds the findings and recommendations to be supported by the record and by the magistrate judge’s analysis. Accordingly, IT IS HEREBY ORDERED that:

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

1. The findings and recommendations filed October 25, 2011, are adopted in full;

2. Petitioner’s amended federal petition, filed here on February 8, 2011, is timely under 28 U.S.C. § 2254(d);

3. Petitioner’s claims 2(g)-(n) and 21(E) are not unexhausted;

4. Petitioner’s claim 21(C) is exhausted;

5. To the extent petitioner makes new factual allegations regarding the California Supreme Court’s consideration of capital cases in subsection (J) of claim 21, which are not contained in the exhausted portions of claim 21, those new factual allegations constitute an unexhausted claim;

6. To the extent allegations in subsection (J) of claim 21 summarize factual allegations contained in the exhausted portions of claim 21, those allegations are exhausted; and

7. The court will defer a ruling on the procedural default aspects of respondent’s May 11 motion to dismiss until resolution of the 28 U.S.C. § 2254(d) issues, as stipulated by the parties in the October 13, 2011 Joint Statement. (Dkt. No. 82.)

DATED: December 15, 2011

/s/ John A. Mendez

U. S. DISTRICT COURT JUDGE