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

WILLIE B. COLEMAN, III,

Petitioner,

No. CIV S-09-0020 DAD P

vs.

D.K. SISTO,

Respondent.

ORDER

\_\_\_\_\_ /

Petitioner is a state prisoner proceeding with appointed counsel with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On January 14, 2011, the parties appeared before the undersigned for a status conference to consider the scheduling of an evidentiary hearing with respect to petitioner’s ineffective assistance of counsel claim. At the conclusion of that status conference the court set an evidentiary hearing for May 4, 2011, limited to: (1) the receipt of testimony from petitioner’s trial counsel regarding the issues generally described by the court at the January 14, 2011 hearing; and (2) the receipt of testimony from the alleged alibi witness, if so desired by either party, as described by the court at the January 14, 2011 hearing.

The Supreme Court recently issued a decision in Cullen v. Pinholster, \_\_\_ U.S. \_\_\_, 2011 WL 1225705 (Apr. 4, 2011). In Cullen, the court held that “review under § 2254(d)(1) is

1 limited to the record that was before the state court that adjudicated the claim on the merits” and  
2 that “evidence introduced in federal court has no bearing on § 2254(d)(1) review.” (Id. at \*8 &  
3 \*10.) In light of the Supreme Court’s recent decision in Cullen, the evidentiary hearing  
4 previously set for May 4, 2011 in this action will be vacated at this time.

5 Accordingly, good cause appearing, IT IS HEREBY ORDERED that:

6 1. The evidentiary hearing set for May 4, 2011 at 9:00 a.m. in Courtroom 27 is  
7 vacated; and

8 2. Within thirty days from the date of this order the parties shall simultaneously  
9 file supplemental briefs addressing the impact of the Cullen decision on the issue of whether the  
10 holding of an evidentiary hearing is appropriate in this action.

11 DATED: April 6, 2011.

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DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

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