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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARQUIMEDES MENDOZA,  
Petitioner,  
v.  
MATTHEW CATE,  
Respondent.

No. 2:09-cv-1710 MCE DB P

ORDER

Petitioner is a former state prisoner proceeding through counsel with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. An evidentiary hearing is presently scheduled for February 27, 2017, which is limited to petitioner’s claim that he received ineffective assistance as a result of his trial counsel’s failure to advise him that the charge to which he pled guilty was a “strike” under California’s Three Strikes Law and that he was prejudiced by his counsel’s ineffective performance.

On February 14, 2017, petitioner filed a status report outlining his efforts to contact his trial counsel. See Pet.’s Status Report (ECF No. 105). These efforts have proven unsuccessful, and trial counsel has now passed away. See id. Ex. B. In addition, petitioner has been unable to

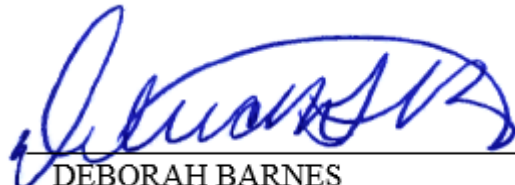
1 locate trial counsel's trial file, and a deposition of the trial judge also proved unfruitful. Id. at 8;  
2 Ex. A (ECF No. 105 at 15).

3 In the absence of any evidence to admit at the evidentiary hearing, testimonial or  
4 otherwise, petitioner suggests vacating the hearing. Respondent has filed a response concurring in  
5 the recommendation to vacate the evidentiary hearing. (ECF No. 107.) Both parties have  
6 requested an opportunity to further brief the merits of the claim.  
7

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. The February 24, 2017, telephonic conference is vacated;
- 10 2. The February 27, 2017, evidentiary hearing is vacated; and
- 11 3. The parties shall file merits briefs as follows:
  - 12 a. Petitioner shall file a brief within thirty (30) days from the date of this order;
  - 13 b. Respondent shall file a brief fourteen (14) days after service of petitioner's  
14 brief; and
  - 15 c. Petitioner shall file a reply seven (7) days after service of respondent's brief.  
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17 Dated: February 24, 2017

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21 DEBORAH BARNES  
22 UNITED STATES MAGISTRATE JUDGE

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