

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

MATTHEW DOUGLAS WHITE,

Petitioner,

vs.

JOE LIZZARRAGA, Warden, Mule Creek
State Prison,

Respondent.

No. 2:14-cv-01797-JKS

ORDER

Matthew Douglas White, a state prisoner proceeding *pro se*, filed a Petition for a Writ of Habeas Corpus with this Court pursuant to 28 U.S.C. § 2254. By order dated December 8, 2015, this Court decided the majority of claims raised in the Petition, but concluded that limited discovery was necessary as to White's claim that his trial counsel was ineffective for failing to convey a plea bargain offer. Docket No. 20. Since that time, the parties have conferred, issued a discovery plan, and completed the depositions of White's trial counsel and the Deputy District Attorney who made the plea offer. Docket No. 23. The parties have additionally submitted to the Court further briefing on the results of discovery. Docket Nos. 25-28.

After reviewing the supplemental briefing and the evidence in support, the Court concludes that disputes of genuine issues of material fact remain. The parties apparently do not dispute that an offer of 10 years was made: the Deputy District Attorney confirmed at his deposition that an offer was made, and White's trial counsel does not deny this, although he does not remember whether an offer was, in fact, made. In any event, White apparently denies that he received such an offer. An evidentiary hearing before a Magistrate Judge will enable White to testify under oath subject to cross-examination, and enable the Magistrate Judge to consider the

testimony of the lawyers concerned, determine the credibility of all witnesses, and resolve all disputed issues of material fact.

IT IS THEREFORE ORDERED THAT this matter is **RANDOMLY REFERRED** to U.S. Magistrate Judge Edmund F. Brennan to hold an evidentiary hearing, as he deems appropriate, to determine: 1) whether trial counsel communicated the prosecution's plea bargain offer to resolve the case for a 10-year sentence to White and/or whether the prosecutor communicated such an offer to White; and 2) whether White understood and rejected the offer. Judge Brennan shall also recommend a decision as to what extent *Cullen v. Pinholster*, 131 S. Ct. 1388, 1398 (2011), limits the evidence this Court may consider pursuant to its review under 28 U.S.C. § 2254(d); and whether counsel's advice to White satisfied *Lafler v. Cooper*, 132 S. Ct. 1376, 1385-86 (2012), with respect to the 10-year plea bargain offer. The Court requests that the appointment of Benjamin Ramos as attorney for White shall continue for purposes of this evidentiary hearing. Once this Court has received the Magistrate Judge's findings of fact and recommendation and any parties' objections to the recommendation, this Court will resolve the remaining issue and enter final judgment. Until final judgment, this Court's prior order will be subject to revision in conformity with Federal Rule of Civil Procedure 54(b).

Dated: June 23, 2016.

/s/James K. Singleton, Jr.
JAMES K. SINGLETON, JR.
United States District Judge