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28IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES EDWARD KING,

No. C 00-01988 SI

Petitioner,

**ORDER SCHEDULING EVIDENTIARY  
HEARING**

v

MICHAEL S. EVANS, Warden,

Respondent.  

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The Court has considered the parties' letter briefs, filed February 13 and 21, and has determined that an evidentiary hearing is necessary in order to evaluate petitioner's claim for ineffective assistance of counsel on the basis of his trial attorney's failure to either consult a medical sexual assault expert or to present expert witness testimony in his defense. The Court recognizes that "a federal court may not grant an evidentiary hearing without first determining whether the state court's decision was an unreasonable determination of the facts." *Earp v. Ornoski*, 431 F.3d 1158, 1166-67 (9th Cir. 2005). A petitioner is entitled to an evidentiary hearing, however, if he can show that "the merits of the factual dispute were not resolved in the state hearing . . . ." *Id.* at 1167 (citation omitted). In this case it is uncontested that the California courts denied the claims at issue here solely on procedural grounds without reaching the merits. Accordingly, the Court concludes that petitioner is entitled to an evidentiary hearing.

An evidentiary hearing shall be conducted **at 10:00 a.m. on April 8, 2009**. As discussed in the parties' letter briefs, petitioner's witnesses will be John Howell (petitioner's trial counsel) and Lee Coleman, M.D. (petitioner's medical expert); respondent will offer Dr. Valerie Barnes as a medical expert.

**IT IS SO ORDERED.**

Dated: March 9, 2009



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SUSAN ILLSTON  
United States District Judge