

1 substitute Warden Kelly Harrington as the respondent to the petition.

2 As the Court found in its prior order, petitioner has stated a cognizable claim for relief
3 with respect to his 1998 convictions for attempted murder and assault with a deadly weapon,
4 for which petitioner was sentenced to thirty years to life in state prison. Specifically,
5 petitioner has stated a claim for ineffective assistance of counsel, as based on petitioner's
6 discovery in 2006 that his trial attorney had never advised him that the District Attorney, in
7 April 1997, had conveyed an offer to petitioner's attorney that would have allowed petitioner
8 to plead guilty to assault with a deadly weapon in exchange for a determinate sentence of
9 twenty-one years, which plea, petitioner states, he would have accepted had he been so
10 advised.

11 Accordingly, respondent will be ordered to respond to the petition, as set forth below.

12 CONCLUSION

13 For the reasons stated above, the Court orders as follows:

14 1. The Clerk of the Court shall substitute Warden Kelly Harrington as the respondent
15 in this action.

16 2. The Clerk shall serve by certified mail a copy of this order, the amended petition
17 (Docket No. 13), and all attachments thereto, on respondent and respondent's counsel, the
18 Attorney General for the State of California. The Clerk shall also serve a copy of this order
19 on petitioner.

20 3. Respondent shall file with the Court and serve on petitioner, within **ninety (90)**
21 days of the date this order is filed, an answer conforming in all respects to Rule 5 of the
22 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not
23 be granted based on petitioner's cognizable claims. Respondent shall file with the answer
24 and serve on petitioner a copy of all portions of the state trial record that have been
25 transcribed previously and that are relevant to a determination of the issues presented by the
26 petition.

27 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with
28 the Court and serving it on respondent's counsel within **thirty (30)** days of the date the

1 answer is filed.

2 4. In lieu of an answer, respondent may file, within **ninety (90)** days of the date this
3 order is filed, a motion to dismiss on procedural grounds, as set forth in the Advisory
4 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files
5 such a motion, petitioner shall file with the Court and serve on respondent an opposition or
6 statement of non-opposition within **thirty (30)** days of the date the motion is filed, and
7 respondent shall file with the Court and serve on petitioner a reply within **fifteen (15)** days of
8 the date any opposition is filed.

9 5. Petitioner is reminded that all communications with the Court must be served on
10 respondent by mailing a true copy of the document to respondent's counsel.

11 6. It is petitioner's responsibility to prosecute this case. Petitioner must keep the
12 Court and respondent informed of any change of address and must comply with the Court's
13 orders in a timely fashion. Failure to do so may result in the dismissal of this action for
14 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

15 7. Upon a showing of good cause, requests for a reasonable extension of time will be
16 granted provided they are filed on or before the deadline they seek to extend.

17 IT IS SO ORDERED.

18 DATED: April 19, 2010

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20 MAXINE M. CHESNEY
21 United States District Judge
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