

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

XXXXXXX, :
Petitioner. : No. XXXXX
- vs. - :
DOUGLAS DRETKE, Director :
Texas Department of Criminal Justice, :
Correctional Institutions Division, :
Respondent. :

ORDER SETTING HEARING

After reading the supplemental filings, the Court finds that an evidentiary hearing is appropriate to resolve the issue of whether Petitioner was deprived of the effective assistance of counsel by his trial counsel's alleged failure to adequately investigate and present mitigation evidence at the punishment stage of his capital murder trial. In a supplemental filing, Petitioner requested that the scope of any evidentiary hearing be limited under rule 56(d) of the Federal Rules of Civil Procedure to the issue of reasonableness of trial counsel's preliminary mitigation investigation. The Court finds that Petitioner's request to limit the scope of the hearing should be denied, and that the parties should be allowed to present evidence relevant to the issue set forth above.

Pursuant to the prior orders of this Court, a date was reserved for an evidentiary hearing in this cause and supplemental briefing was required. Subsequently, the Court was notified of a need to choose a different date for any hearings scheduled in this cause due to subsequent scheduling concerns that

have arisen with the attorneys assigned to this case. Accordingly, it is hereby

ORDERED that an evidentiary hearing is scheduled for **Tuesday, October 18, 2005** beginning at **10:00** o'clock, A.M. in the courtroom of this Court. The purpose of this hearing is to allow the parties the opportunity to present additional evidence necessary to the determination of the issue before the Court. There is no need to present evidence that is already in the record being considered by this Court except for that evidence which is necessary to any credibility determinations required to resolve this issue. The parties are therefore directed to avoid the presentation of any unnecessarily duplicative evidence at this hearing. It is further

ORDERED that Petitioner's motion to further limit the scope of this evidentiary hearing is **DENIED.**

SO ORDERED on this 6th day of September, 2005.

UNITED STATES MAGISTRATE JUDGE