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

MICHAEL ALLEN HAMILTON
Petitioner,
vs.
Vincent Cullen, as Warden of San Quentin
State Prison,*
Respondent.

Case No. 1:90-cv-00363 OWW
DEATH PENALTY CASE
ORDER ON REMAND DENYING IN
PART AND GRANTING IN PART
WRIT OF HABEAS CORPUS

This matter is before the Court on remand from the United States Court of Appeals for the Ninth Circuit, mandate issued June 1, 2010. In its opinion issued September 18, 2009, the Ninth Circuit concluded:

[W]e reverse the district court’s judgment and remand with instructions to issue the writ and return the case to the Tulare County Superior Court to reduce [Petitioner Michael Allen] Hamilton’s sentence to life imprisonment without the possibility of parole, unless the State pursues a new sentencing proceeding within a reasonable amount of time, as determined by the district court. We affirm the district court’s denial of habeas relief as to the guilt phase issues.

Hamilton v. Ayers, 583 F.3d 1100, 1136 (9th Cir. 2009).

In accordance with this directive, Hamilton’s second amended petition for a writ of habeas corpus filed in this action on April 14, 2000 (doc. 199) is DENIED insofar as it pertains to Hamilton’s conviction and attendant special circumstance findings and GRANTED with respect to Hamilton’s death sentence. The death sentence issued in *People v. Hamilton*, Tulare County Superior Court, Case No. 20888, IS VACATED and SET ASIDE unless the State of California, within 60 days of entry of

* Vincent Cullen is substituted for his predecessor, Robert L. Ayers, as Warden of San Quentin State Prison pursuant to Federal Rule of Civil Procedure 25(d).

1 judgment herein, initiates proceedings to retry Hamilton's sentence in a new penalty trial. In the
2 alternative, the Court of Appeals has ordered the case be remanded to the Tulare County Superior Court
3 for re-sentencing to life without the possibility of parole.

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5 SO ORDERED.

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7 DATE: June 3, 2010

/s/ Oliver W. Wanger
Oliver W. Wanger
United States District Judge

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