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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DOUGLAS RAY STANKEWITZ,
Petitioner,
vs.
ROBERT WONG, Acting Warden
of San Quentin State Prison,
Respondent.

Case No. 1:91-cv-616-AWI
DEATH PENALTY CASE
Order Granting in Part and
Denying in Part Petitioner's
Motion to Expand the Record
(Doc. 588)

Petitioner Douglas Ray Stankewitz ("Stankewitz"), seeks to expand the record with documents, lodged in these proceedings, from the post-conviction proceedings of Troy Jones, California Supreme Court Case No. S16628. Specifically, Stankewitz seeks expansion of the record with the transcript of the testimony of trial counsel Hugh Goodwin ("Goodwin") during the October 1992 reference hearing held before the Merced Superior Court in *In Re Troy Jones*, as well as the subsequent Reference Report issued by Judge William Ivey. Stankewitz asserts these documents are relevant to the deposition of his claim that Goodwin rendered ineffective assistance of counsel during the penalty re-trial of his case.

Stankewitz asserts Goodwin's testimony during the reference

1 hearing in the *Jones* case includes facts about his general practices, and is
2 relevant to whether his performance was deficient in this case. Stankewitz
3 contends Goodwin testified that in 1982, the year before Stankewitz's trial,
4 he did not have a secretary and was practicing out of his home, and
5 admitted that (1) it was his general practice to go out and talk to witnesses
6 himself, (2) he never thought about obtaining funds for experts,
7 investigators or paralegals, (3) he obtained no school, medical, correctional
8 or other records regarding Mr. Jones, and (4) he did everything he needed
9 himself. Stankewitz argues Goodwin's testimony documents the standard
10 of practice he employed in trying capital cases in the year before
11 Stankewitz's trial, and supports the recollection of Stankewitz's first trial
12 counsel, Sal Sciandra, that Goodwin was practicing out of his house and
13 did not employ co-counsel, investigators, paralegals, or consultants.

14 In the report following the reference hearing in *Jones*, Judge Ivey
15 concluded that Goodwin failed to adequately investigate mitigation in
16 preparation for the penalty phase of Mr. Jones' capital trial, that substantial
17 mitigation evidence existed which Goodwin never investigated or
18 presented, and that Goodwin's failure to apply for funds for investigators
19 and experts was unreasonable and deprived the defense of valuable
20 resources. Stankewitz argues Goodwin's performance in the *Jones* case,
21 which was found deficient, was identical to his performance in this case,
22 and given the similarities and similar time period, the finding of deficient
23 performance in *Jones* is relevant to the evaluation of Goodwin's
24 performance here. Stankewitz contends, as stated in Judge Reinhardt's
25 concurrence from *Wade v. Calderon*, 29 F.3d 1312 (9th Cir. 1994), that
26 evidence of counsel's deficient performance in one case can show that

1 deficient performance in another case was not an aberration.

2 The Warden objects to expansion of the record, contending this Court
3 has previously found past history irrelevant to whether Goodwin provided
4 effective assistance in this case. The Warden argues that individualized
5 prejudice must still be shown as required under *Strickland*, despite a
6 pattern and practice of ineffective assistance, *Sanders v. Ratelle*, 21 F.3d
7 1446, 1460-61 (9th Cir. 1994); *Berkey v. United States*, 21 F.3d 768, 774 (7th
8 Cir. 2003), and that the inquiry should not be transformed into a general
9 inquisition of defense counsel's record and reputation. *Bonin v. Calderon*,
10 59 F.3d 815, 828 (9th Cir. 1995).

11 Stankewitz replies that Goodwin's testimony about the manner in
12 which he represented Troy Jones in a capital case the year before
13 Stankewitz's trial provides powerful corroboration for Goodwin's 1989
14 declaration submitted in support of Stankewitz's petition, as well as
15 corroborates Sal Sciandra's declaration regarding Goodwin's standard of
16 practice. In light of the fact that Goodwin's testimony during the *Jones*
17 hearing was subject to cross-examination, that Goodwin is now deceased,
18 and that the Warden has questioned the validity of statements contained in
19 Goodwin's past declarations, Stankewitz contends the testimony reveals
20 important details about Goodwin's standard of practice in capital cases.
21 Additionally, Stankewitz notes the findings of the reference judge, that
22 Goodwin did nothing to prepare for the penalty phase in the *Jones* case and
23 that he rendered grossly ineffective assistance, are relevant to the
24 disposition of this case.

25 Habeas Rule 7 grants a district court the discretion to expand the
26 record with additional materials which are relevant to the petition. Rule

1 7(a) of Rules Governing Section 2254 Cases. The rule is intended to help
2 district courts "clarify the relevant facts." *Vasquez v. Hillery*, 474 U.S. 254,
3 258 (1986). The court may order the record expanded either in place of, or
4 in addition to, holding an evidentiary hearing. *See* Advisory Committee
5 Note to Habeas Rule 7; *Harris v. Nelson*, 394 U.S. 286, 300 (1969).

6 Stankewitz's request to expand the record with documents from the
7 reference hearing of Troy Jones is GRANTED in part and DENIED in part.
8 Expansion of the record is GRANTED as to Goodwin's testimony at the
9 reference hearing. To the extent the testimony describes Goodwin's
10 general practice in a capital trial at a similar time to his representation of
11 Stankewitz, it is relevant to the issue before the Court. Expansion of the
12 record is DENIED as to the Reference Report of Judge Ivey. The
13 determination that Goodwin rendered deficient performance in the Troy
14 Jones case has little relevance to the issue before the Court.

15
16 IT IS SO ORDERED.

17 **Dated: July 13, 2009**

/s/ Anthony W. Ishii
CHIEF UNITED STATES DISTRICT JUDGE