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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DOUGLAS RAY STANKEWITZ,)	Case No. 1:91-cv-616-AWI
Petitioner,)	
vs.)	<u>DEATH PENALTY CASE</u>
ROBERT WONG, Acting Warden of San Quentin State Prison,)	Memorandum and Order Granting Petition for Writ of Habeas Corpus
Respondent.)	

Petitioner Douglas Ray Stankewitz ("Stankewitz") appears before this Court pursuant to a partial remand of his petition for a writ of habeas corpus by the Ninth Circuit. *See Stankewitz v. Woodford*, 365 F.3d 706 (9th Cir. 2004). Stankewitz's initial federal petition was denied on the merits as to all claims December 22, 2000. Doc. 448.

In 2000, as the parties prepared for expert depositions in contemplation of a federal evidentiary hearing, Stankewitz for the first time produced a voluminous set of documents he represented were relied on by his experts in preparing their opinions. *See* Doc. 443, Notice of Filing, (hereafter "Jointly Filed Documents"). At the same time, the grant of an evidentiary hearing was vacated, and Stankewitz's federal petition was subsequently denied. In denying the

1 present claim, this Court found that Stankewitz had not established prejudice.
2 Doc. 448, at 83. Specifically, this Court concluded that: (1) Stankewitz was aware
3 that evidence of his background could be presented, but he had objected to any
4 such testimony; (2) Stankewitz objected at both trials to the presentation of expert
5 testimony; (3) despite Stankewitz's continued opposition to a mental defense,
6 Goodwin had introduced evidence of his background and upbringing through
7 the testimony of Joe Walden, the former director of juvenile probation for Fresno
8 County; and (4) Goodwin's use of Walden may have been a tactical choice (one
9 which this Court noted was also used by counsel at the first trial), "since as a
10 probation officer Mr. Walden could have been seen as having a higher level of
11 credibility than would Stankewitz's family, the majority of whom had either
12 criminal records, histories of drug abuse or both." Doc. 448, at 83-84.

13 While disagreeing with the Warden's contention that the aggravating
14 evidence was so overwhelming additional mitigating evidence could not have
15 made a difference, this Court nonetheless concluded that "Mr. Goodwin made an
16 impassioned plea for mercy and did present mitigating evidence to the jury
17 through Mr. Walden's testimony," that "the mitigating evidence Mr. Goodwin
18 failed to present is neither compelling nor exculpatory," and that much of it was
19 cumulative of the evidence presented at trial. *Id.*, at 84. Focusing on Stankewitz's
20 mental health claims, and referencing numerous documents from the Jointly
21 Filed Documents, this Court rejected the opinions of experts hired by Stankewitz
22 during the federal post-conviction proceedings and concluded that substantial
23 evidence at the time of the second trial supported the diagnosis of antisocial or
24 sociopathic personality disorder made by the experts from the first trial. *Id.*, at
25 16-18, 85. This Court further concluded the record supported Goodwin's
26 assertion that Stankewitz would not consent to the presentation of mitigating

1 evidence from family members, as no family members had testified at the first
2 trial. *Id.*, at 85. Finally, this Court concluded that Stankewitz could not establish
3 prejudice as it was not reasonably probable that additional mitigating evidence
4 would have resulted in a life sentence given the circumstances of the crime,
5 Stankewitz’s extensive violent criminal history, and his continuation of violent
6 behavior while in prison. Doc. 448, at 85.

7 The Ninth Circuit, after affirming this Court’s denial of the petition in all
8 other respects, remanded for an evidentiary hearing on the sole claim of
9 ineffective assistance of counsel during the penalty phase of trial, holding that
10 Stankewitz raised a colorable claim Hugh Goodwin, his attorney at his second
11 trial, rendered ineffective assistance by failing to give the jury mitigating
12 information “that might have humanized Stankewitz,” and that as a result
13 Goodwin’s performance fell below constitutionally acceptable professional
14 standards. *Stankewitz v. Woodford*, 365 F.3d at 708, 720-22, 724. In determining
15 whether Stankewitz had raised a colorable claim, the Circuit was compelled to
16 view as true all of Stankewitz’s factual allegations, included the long-disputed
17 assertion that Goodwin had not obtained or reviewed any of counsel’s records
18 from the first trial.

19 New counsel was appointed to represent Stankewitz in his federal habeas
20 proceeding December 18, 2007, and the parties subsequently agreed to brief the
21 merits of the remanded claim based on the evidence currently in the record, with
22 the provision that the briefing be without prejudice to a future request for an
23 evidentiary hearing. Stankewitz filed his brief in support of the remanded claim
24 November 19, 2008. Doc. 587. Respondent Robert Wong (“the Warden”) filed
25 his opposing brief February 18, 2009. Doc. 589. Stankewitz filed his reply brief
26 May 29, 2009. Doc. 597.

1 **Standard of Review**

2 The standard for ineffective assistance of counsel claims is set forth in
3 *Strickland v. Washington*, 466 U.S. 668 (1984). Stankewitz must establish that his
4 counsel's performance was deficient and that the deficiency prejudiced the
5 outcome of his trial. *Id.* at 689, 694. Counsel's failure to investigate and present
6 mitigating evidence presents serious constitutional concerns. *Wiggins v. Smith*,
7 539 U.S. 510 (2003); *Williams v. Taylor*, 529 U.S. 362 (2000). Both cases emphasize
8 counsel's duty to conduct a thorough investigation, and *Williams* states that
9 merely presenting some evidence does not discharge counsel's duty. Rather, a
10 penalty phase ineffective assistance claim depends on the magnitude of the
11 discrepancy between what counsel did investigate and present and what counsel
12 could have investigated and presented. *Stankewitz v. Woodford*, 365 F.3d 706, 715-
13 716 (9th Cir. 2004) (citing *Wiggins* and *Williams*).

14 **Summary of the Parties' Respective Arguments**

15 Stankewitz argues he has presented sufficient evidence, which is largely
16 uncontested, which supports the finding that Goodwin's performance at the
17 penalty phase was deficient under the established principles governing counsel
18 in capital cases, and that Stankewitz was prejudiced by Goodwin's failure to
19 investigate and present any more than minimal mitigation at penalty, as well as
20 present available evidence undermining aggravation.

21 The Warden argues in opposition that the established facts of this case
22 have changed dramatically since the remand by the Ninth Circuit, especially the
23 revelation of the fact that Goodwin did obtain and review the trial counsel's files
24 from Stankewitz's first trial, and that those changes undermine the remanded
25 claim and conversely support this Court's earlier rejection of the claim.

26 Stankewitz replies that despite the Warden's assertions, the great bulk of

1 facts in the record are uncontested and are more than sufficient to justify penalty
2 phase relief. The Warden's arguments do not change the fact that (1) Goodwin
3 rendered deficient performance by not conducting an independent investigation,
4 not hiring investigators or experts, and presenting a minimal, cursory and
5 unpersuasive mitigation case, (2) Stankewitz was prejudiced by the jury's lack of
6 knowledge about his toxic upbringing; and (3) Stankewitz was further prejudiced
7 by Goodwin's failure to present available evidence that Stankewitz may not have
8 fired the shots that struck a police officer (aggravating evidence which was
9 presented by the prosecutor to show prior acts of criminal conduct).

10 **The Warden's argument**

11 Specifically, the Warden contends that Stankewitz's remanded claim
12 alleged Goodwin failed to adequately investigate and present available
13 mitigating evidence about his character and background. In support of this
14 claim, Stankewitz submitted a lengthy description of Stankewitz's background
15 and upbringing, supported primarily by declarations prepared on his behalf and
16 in a few instances by references to official records (which were not filed), and by
17 a 1995 declaration from Goodwin stating he had not obtained or reviewed the
18 files of trial or appellate counsel from the first trial. Stankewitz asserted that with
19 just the effort required to read the transcript from his first trial, Goodwin could
20 have presented some of Stankewitz's relevant background and history.

21 The Warden observes that some of the factual representations relied on by
22 the Ninth Circuit are untrue, and that Stankewitz now concedes Goodwin
23 obtained the files of counsel from his first trial, and reviewed them and the
24 transcripts. This concession means the contrary statement in Goodwin's 1995
25 declaration was false, and that Goodwin was aware of virtually all of the facts of
26 significance to Stankewitz's current claim.

1 The Warden objects to Stankewitz’s criticism of Goodwin for failing to
2 present evidence of the violence, neglect, substance abuse and criminality within
3 his family, asserting Stankewitz fails to adequately account for timelines which
4 establish he had little exposure to these family members after age six. The
5 records suggest that from the time he was removed from his family at age six,
6 until he murdered Theresa Greybeal in February 1978, at age 19, Stankewitz was
7 with his mother for a total of no more than seven months, with his father for less
8 than three weeks, and with his aunt Maggie Marquez for a total of no more than
9 nine months. While the record leaves little room for doubt about the failings of
10 Stankewitz’s parents, siblings and other family members, the Warden argues few
11 specifics are provided about the first six years of his life, and Stankewitz does not
12 attempt to correlate his accusations of family dysfunction to the relatively narrow
13 periods of time he spent with his family. The Warden contends that, while it
14 undisputed Stankewitz was taken from his home at age six after his mother beat
15 him on two occasions, the record does not include suggestions of on-going
16 physical abuse, pointing to statements by his mother that their father “never hit
17 the children” and only spanked his sister once, that she “never really spanked
18 any of the children,” and that the beatings of Stankewitz were isolated and out of
19 the ordinary. *See* Petitioner’s Supplement to Joint Submission (“SJS”), filed April
20 23, 2008, Doc. 556, Vol. 3, page 269, and Doc. 558, Vol. 9, page 1044.

21 The Warden objects to Stankewitz’s criticism of Goodwin for failing to
22 present mitigation from the time Stankewitz spent at Napa State Hospital
23 (“NSH”) and in the foster home of Ms. Bollmeyer, arguing the allegations of
24 sexual abuse and inappropriate medication and placement at NSH, as well as
25 out-of-control and disturbed behavior, requirement of heavy medication, and
26 lack of basic life skills while in foster care, are based on the thinnest of evidence,

1 almost entirely drawn from a highly questionable source, Ms. Bollmeyer's
2 daughter Rosetta.

3 The Warden disputes Stankewitz's allegation that Goodwin should have
4 further investigated and presented evidence of impaired intellectual functioning
5 and brain damage, and contends the expanded record now before the Court
6 supports the prior finding that Stankewitz was not incompetent or suffering from
7 a mental disease or disorder. The Warden also disputes the allegation that
8 Goodwin failed to present evidence of Stankewitz's drug use at the time of the
9 crime, asserting that evidence was presented of his drug use before the murder
10 and that the new evidence alleging Stankewitz used marijuana, heroin and
11 alcohol with his brother Willie in the days before the crime is not reliable and is
12 inconsistent with other evidence.

13 The Warden disputes Stankewitz's allegation that Goodwin should have
14 further investigated and presented evidence that Stankewitz's brother Johnny
15 was in the car during the 1973 CHP shootout, and that there was a strong
16 possibility Johnny, and not Stankewitz, was the shooter. The Warden asserts
17 Johnny's statement does not provide evidence he was the shooter, but incredibly
18 attempts to lay blame for the shooting on his deceased friend Eddie Davis,
19 contending that Eddie fired the shotgun out the passenger window or out the
20 back window through the small crack under the open trunk while keeping his
21 foot on the accelerator and having Stankewitz steer the car. Even if this evidence
22 is viewed as raising a doubt that Stankewitz was the shooter, the Warden
23 contends that at a minimum Stankewitz aided and abetted the shooting, so a
24 tactical choice not to present such evidence was reasonable and understandable.

25 **Stankewitz's Allegations of Non-Presented Mitigation**

26 Stankewitz's factual allegations of potential mitigation fall into three

1 categories: (1) childhood of abuse/ neglect; (2) history of mental illness; and (3)
2 substance abuse/ lack of sleep prior to the murder. In the first category,
3 Stankewitz submitted agency documents detailing the abuse and neglect which
4 resulted in his removal from home at a young age, numerous declarations from
5 family and friends relating the poverty and abuse (both physical and mental)
6 suffered by Stankewitz in his home, and medical records and declarations
7 indicating the difficulties Stankewitz experienced in subsequent state institutions
8 and foster homes. Of the 16 allegations in the first category, most are shown by
9 government or medical records, although some have questionable support.

10 1-A. Stankewitz's difficult and traumatic youth, up to age six, included:

- 11 a. a psychiatrist's description of his home as "totally lacking in love,
12 warmth and affection and frequently filled with deprivation,
13 rejection and punishment;"
- 14 b. a poverty-stricken household where there was often not enough
15 food for the children;¹
- 16 c. a house that was dirty, filled with vermin and without running
17 water or electricity;²

19 ¹ Stankewitz's parents, Marian Sample and William R. "Sonny" Stankewitz,
20 were married 1/18/55 - at which time his mother already had two children: Frank
21 Montgomery (dob: 1951) and Gary Lewis (dob: 6/7/54). Marian and Sonny had nine
22 children: Glenda, born 8/17/55; William "Willie" & Wilma "Tillie", twins born
23 3/26/57; Douglas, born 5/31/58; Johnnie, born 8/17/59; Roger, born 1/2/61; Rhonda,
24 born 1/24/62; Teddy, born 2/12/64; and Rodney, born 3/29/66. At the time
25 Stankewitz was removed, there appear to have been nine children in the home -
26 Rodney was not yet born, and a March 1965 report does not list Frank Montgomery
with the other children in the home (which is consistent with a report that Frank
lived with his maternal grandmother until he was 15). SJS 0073, Doc. 556, Vol. 1.
The ages of the children at home when Stankewitz was removed, in February of
1965, were: Gary 10, Glenda 9, Willie & Tillie 7, Douglas Stankewitz 6, Johnnie 5,
Roger 4, Rhonda 3, and Teddy 1.

² Although the Stankewitz house was reported to be dilapidated but clean in
a March 1965 report, 1965, SJS 0071 (Doc. 556, Vol. 1), subsequent inspections

- 1 d. starting to sniff paint by age five, and soon expanding into the use of
2 alcohol and harder drugs³;
- 3 e. physical and mental abuse by both parents - being taken to the
4 emergency room three times before his first birthday⁴;
- 5 f. a mother who drank excessively while pregnant with him, was also
6 physically abused by his father, who struck her repeatedly in the
7 abdomen;
- 8 g. a violent father of Native American descent who ridiculed him for
9 being light-skinned and told him not to take medication prescribed
10 to control his behavior;
- 11 h. a mother who beat him so badly with an electrical cord at age six
12 that she was jailed and he was placed into state care⁵;
- 13 i. older siblings who also abused the younger ones, especially him⁶;
- 14 j. at least one scar, "a substantial indentation on his cranium," which
15 remains as a reminder of the physical abuse.

16 _____
17 revealed sub-standard living conditions in October 1967, SJS 2055 (Doc. 559, Vol. 18,
18 relating filthy conditions and neglect of minor children) and September 1969, SJS
19 2039 (Doc. 559, Vol. 17, home "barely adequate," "care and control of said minors
20 appears to be marginal").

21 ³Stankewitz stated his increased drug and alcohol use began at age 11-12. SJS
22 235, Doc. 556, Vol. 2 (Dr. LaDue's 1989 psychological evaluation).

23 ⁴The Warden asserts these emergency room visits were for routine childhood
24 illnesses.

25 ⁵The Warden asserts the record does not include allegations of on-going
26 physical abuse, pointing to Marian's statements that Sonny "never hit the children"
and only spanked Glenda once, that she "never really spanked any of the children,"
and that the beating of Stankewitz was isolated and out of the ordinary. SJS 269,
Doc. 556, Vol. 3, and 1044, Doc. 558, Vol. 9. This assertion is contradicted by
Glenda's statement that Marian used to regularly beat all of the kids. SJS 1255, Doc.
558, Vol. 11, (Dec. 17, 1989 interview by Howard Liptzin, Solomon Investigations).

⁶The Warden contends the allegations regarding Frank Montgomery's abuse
of his younger half-siblings are not applicable to Stankewitz, as he was removed
from the home prior to Frank's living there, and Frank was in jail by the time
Stankewitz returned home.

- 1 1-B. Stankewitz’s difficult and traumatic youth, after removal from his home,
2 included:
- 3 k. being shuffled from one state institution to another after removal
4 from home;
- 5 l. “care” at NSH that was indicative of the balance of his time as a
6 ward of the state: he was sexually abused by hospital staff⁷, heavily
7 medicated and placed among psychotic and autistic children even
8 though he was not similarly diagnosed;
- 9 m. upon transfer to the Bollmeyer foster home from NSH, he tore apart
10 the back seat of the car, was “like a wild animal” and had to be held
11 down by three teenage boys, was prescribed extremely high doses of
12 medication, would often wet and defecate in bed, smeared feces on
13 the wall, continued wetting the bed until at least age 12;⁸
- 14 n. Ms. Bollmeyer had to teach him to talk instead of grunt, use the
15 toilet, dress himself, use silverware and ask instead of grab;
- 16 o. he was removed from the Bollmeyer home and spiraled through 22
17 subsequent placements in eight years;
- 18

19 ⁷ Contradicting this assertion, Stankewitz stated his first sexual experience
20 was at age 10 in a foster home, and he recalled it as pleasurable. SJS 227-228, Doc.
21 556, Vol. 2 (4/78 interview by Ross Becker).

22 ⁸ Some of these allegations are questionable. The facts in subsections m. and
23 n. are not consistent with reports of Stankewitz’s behavior as related in NSH
24 records. To the extent the source for the allegations is the foster mother in
25 Sebastopol, Ms. Bollmeyer, her credibility may be undermined in light of lies that
26 she told to Stankewitz’s teacher, Mrs. Hunt (i.e., that Stankewitz and his siblings
were kept in cages by their parents, that he couldn’t stand up straight because his
cage was too short, that his siblings were also at NSH). See SJS 822-24, Doc. 558, Vol.
8 and SJS 821A, Doc. 561. If the source is Ms. Bollmeyer’s daughter, Rosetta, her
credibility is undermined by statements from her brother Rick of the conflict
between Rosetta and their mother and Rosetta’s resulting animosity toward the
foster children, see SJS 14, Doc. 556, Vol. 1, and by inconsistencies between her
allegations and statements made by Stankewitz.

1 p. from his placement at NSH until his arrest for the murder, a total of
2 nearly 13 years, he spent all but 16 months in some form of
3 government care, during which he was massively and unnecessarily
4 drugged, tied to beds, beaten, sexually molested, neglected,
5 deliberately tortured, and otherwise abused by staff.

6 In the second category, Stankewitz submitted opinions of three experts
7 who agree he is brain-damaged, as well as expert testimony from the first trial
8 that he appeared “not to fully appreciate the flow of events or the full
9 implications of his actions,” and medical reports indicating mental or emotional
10 problems when he was a child. Although the Ninth Circuit observed that some
11 of the habeas experts’ conclusions were rejected in denying Stankewitz’s guilt
12 phase claims of diminished capacity and insanity, they stated the remaining
13 conclusions “could have invoked sympathy from at least one juror,” especially
14 when considered in conjunction with other mitigation. *Stankewitz v. Woodford*,
15 365 F.3d at 718 n.6.

16 2. Stankewitz’s history of mental illness:

- 17 a. an expert at the first trial testified he appeared “not to be fully able
18 to appreciate the flow of events or full implications of his actions;”
- 19 b. all three habeas experts agreed he is brain-damaged;
- 20 c. Dr. Riley opined he is borderline mentally retarded, with an IQ of 79,
21 and suffers from significant brain dysfunction, perhaps attributable
22 to Fetal Alcohol Syndrome and childhood abuse;
- 23 d. Dr. Rosenthal said his brain damage “would produce problems with
24 emotional control, tendencies to be impulsive and unpredictable,
25 and to be unable to exercise adequate judgment or to understand the
26 consequences of his behavior. Furthermore, from early childhood

1 Mr. Stankewitz had intense mood shifts, profound depressions with
2 suicidal tendencies, psychotic thinking, an inability to relate to
3 reality in a rational manner, and paranoid delusional thinking;”

- 4 e. a report at age 12 reveals he suffered from problems with a “sudden
5 loss of control, during which he becomes abusive, uses vile
6 language, and actually becomes combative.” During one of these
7 fits, he was placed in a padded room at Juvenile Hall and was
8 observed “actually biting the walls.”

9 In the third category, Stankewitz submitted numerous declarations
10 detailing his severe substance abuse starting at age 10, and a co-defendant’s
11 declaration that Stankewitz injected heroin just prior to the murder. Only the
12 allegations that Stankewitz was sleep-deprived at the time of the murder and that
13 the heroin dose was the “largest he’d ever had” have questionable support.

14 3. Stankewitz’s substance abuse and lack of sleep prior to the murder:

- 15 a. he claims that, for at least the 48 hours before the murder, he had
16 binged on substantial quantities of alcohol, heroin and
17 methamphetamine, and had not slept;
18 b. he also claims to have injected the largest dose of heroin he had ever
19 taken shortly before the murder, which he claims lessened his
20 already diminished ability to control his behavior;
21 c. he had a “very severe” substance abuse problem dating back from as
22 early as age 10 or younger which likely aggravated his unstable
23 emotional state and limited mental capacity.

24 **Analysis**

25 Even accepting the Warden’s objections to some of Stankewitz’s
26 allegations, the evidence shows Stankewitz was already severely emotionally

1 damaged by the time he was removed from his home at age six. He was out of
2 control and exhibited acting out behavior, had frequent temper tantrums,
3 including hitting, kicking and biting, and was often only controlled with extreme
4 measures (restraints or drugs). SJS 056-057, Doc. 556, Vol. 1 (March 1965 letter
5 from Probation Officer Joe Walden). "While in the County Hospital, the minor
6 presented almost uncontrollable behavior problems and the hospital staff had to
7 use physical restraints to keep Douglas under control. . . . He was transferred to
8 [a] foster home by a social worker and while in route, he ran away from her and
9 when she caught him, he kicked and hit her before she was able to subdue him.
10 His placement in this foster home lasted for only 24 hours due to the fact that the
11 foster parents were not able to control Douglas. While in the first foster home,
12 Douglas threw chairs and threatened to run away and kept the foster parents
13 awake all night long. The following day, this officer and a social worker
14 transported Douglas to a second foster home. Upon arrival there, Douglas
15 attempted to run away and kicked and hit this officer, as well as attempting to
16 bite him. The foster parents were unable to control Douglas and he was removed
17 from this foster home eight hours later and placed in Juvenile Hall" SJS 87-
18 88, Doc. 556, Vol. 1 (Dec. 8, 1965 probation report by Joe Walden).

19 Stankewitz was somewhat stable for the four years he spent in Ms.
20 Bollmeyer's foster home in Sebastopol, although he was eventually returned to
21 Fresno in 1970 at Ms. Bollmeyer's request because he was uncontrollable. By
22 then, at age 12, Stankewitz had "many emotional problems . . . and at many
23 times, [wa]s hostile and require[d] physical restraint to be used in order to
24 control him. . . . when he [wa]s pressed or put in a frustrating situation, he often
25 react[ed] by becoming violent." Despite these problems, the evaluation of
26 Stankewitz's prognosis was good, and it was believed that with the planned

1 involvement in his case, he would come around and learn to control his
2 emotional outbursts. SJS 105-106, Doc. 556, Vol. 1 (May 1970 report by Probation
3 Officer Roger Nelson).

4 However, in 1971 the assaults on others began: August 9 - he was with
5 three adults during an assault and robbery of an older man; August 19 - he hit
6 and injured a smaller boy at Juvenile Hall. In 1972, he was sent to CYA, mainly
7 for being out of control. At this point, Stankewitz had been through *at least* 14
8 placement changes in the 25 months since his removal from the Bollmeyer foster
9 home. After nine months in CYA, he was paroled to his aunt Maggie Marquez,
10 and then went to live with his mother when she was paroled to Fresno.

11 On April 24, 1973, just three and a half months after his release from CYA,
12 Stankewitz was involved in the assault of George Key and robbery of his car, and
13 a subsequent CHP chase and shooting, which ended with the killing of co-
14 participant Eddie Davis. Stankewitz was returned to CYA, where he exhibited
15 “no remorse for what had happened - except that he had been caught, no
16 assurance that parallel occurrences would not happen when again on the streets.
17 . . . Doug feels no responsibility for depriving anyone of property, health or even
18 life, enjoying the excitement of the chase. Although ingratiating and pleasant, I
19 have come to believe this to be surface stuff only. I look upon this youth as
20 dangerous.” SJS 164, Doc. 556, Vol. 2 (June 1973 Youth Authority report by
21 Edward Mueller).

22 The reports from this period also indicate (1) Stankewitz was extremely
23 violence prone, and diagnosed with an antisocial personality; (2) there were
24 numerous incidents at CYA during which Stankewitz relied on prison-type
25 intimidation and pressure in his interaction with other wards, and was not
26 amenable to influence or external controls by the authorities; and (3) Stankewitz

1 saw aggressive behavior, even hurting or killing others, as the solution to his
2 frustrations.

3 He was furloughed to his aunt Maggie Marquez after two and a half years
4 in CYA, but arrested on battery charges six days later. He was returned to CYA,
5 and paroled after three and a half months. By this time, at age 18, he was
6 hardened by the years of criminal associations and surroundings. Stankewitz
7 had a “deprived background, being institutionalized early in his life and
8 essentially raised in institutions. He has a history of assaultive behavior, both in
9 the community and in Youth Authority institutions.” SJS 007, Doc. 556, Vol. 1
10 (May 1977 Probation Report by Dean Thompson). “From an early life
11 developmental standpoint, [Stankewitz] has suffered from early childhood
12 losses, prolonged separation from parents, poor institutional surrogate care. This
13 has resulted in poor social adjustment as manifested by frequent runaways,
14 behavior problems, scholastic under-achievement and finally culminating in anti-
15 social behavior which has occurred both in and out of institutional placements.”
16 SJS 228, Doc. 556, Vol. 2 (May 1978 Social Evaluation by Ross Becker).

17 Stankewitz was arrested two and a half months later and although the
18 initial charges were dropped, he was charged with assault on a booking officer
19 and sentenced to county jail. He was released after nine months on January 14,
20 1978. He and an accomplice (who had a gun) robbed a gas station on January 20,
21 and later the same night he robbed two massage parlor customers. On January
22 25, he assaulted customers of a Sacramento card room and attempted to commit
23 robbery. On February 8, 1978, he and his accomplices kidnapped, car jacked, and
24 ultimately murdered Theresa Graybeal, then later the same evening attempted to
25 rob Jesus Meraz, a.k.a. Valenti Cordero.

26 Although some of the mitigation allegations in the first category (listed on

1 pages 8-11 above) have limited support or are undermined by other documents,
2 the record as a whole shows Stankewitz was psychologically and emotionally
3 damaged by his upbringing. See Summary Chronology of Stankewitz's
4 Childhood, Appendix A. Dr. James Missett testified at the first trial Stankewitz's
5 upbringing included the criteria for developing an anti-social personality.

6 [T]he criteria we look for [in the development of an antisocial
7 personality] are perhaps 20 in number, most of which Mr.
8 Stankewitz has shown at one time or others [sic]. . . . There is a
9 history of sociopathic or violent behavior in the home. There's very
often a history of the individual being abused, especially physically,
but not necessarily just physically. If there is [sic] a lot of put-downs
in the home, that, also, can contribute to it.

10 There is, in the individual's family, usually, histories of
11 alcoholism, sometimes, but again not always, criminal behavior,
12 difficulty with work, difficulty in marital relationships, a history of
13 disregard for societal institutions so far as the importance of school in
14 one's life, the importance of work, the importance of obeying laws,
15 or in any way responding to what the dictates are of society. There's
16 – in the individual, himself – and this was evident, also, in Mr.
17 Stankewitz, a history of bed wetting that goes beyond the usual
18 accepted time of it stopping. The usual accepted time of it stopping
is sometime between age three and four. Mr. Stankewitz went – had
episodes of bed wetting up through ages 10 and 11. There are also
episodes of fire setting, and I don't remember if he had episodes of
fire setting or not, of truancy, difficulty with all types of authorities,
outside the home, of poor work habits. As far as I know he has
none. I'm not aware of his having been exposed to that situation at
all, a tremendous amount of difficulty with peers, with anybody in
relationship of authority.

19 1978 trial RT, Vol. 22, pages 4697-98, testimony of Dr. James Missett; SJS 661, Doc.
20 557, Vol. 6 (Summary of mental health expert testimony by Quinn Denvir).

21 The Ninth Circuit made the following findings on remand: (1) "Stankewitz
22 has alleged facts that, if true, would establish that Goodwin was ineffective for
23 failing to investigate and uncover the important mitigating evidence outlined
24 above," *Stankewitz v. Woodford*, 365 F.3d at 722; (2) "[a] more complete
25 presentation, including even a fraction of the details Stankewitz now alleges,"
26 could have made a difference in Stankewitz's sentence, *id.*, at 724; and (3) "there

1 was a reasonable probability that the jury would not have sentenced Stankewitz
2 to death had it been presented with the evidence of the numerous deprivations
3 and abuses Stankewitz alleges that he suffered." *Id.*, at 725. Since many of
4 Stankewitz's allegations are proved by official documents in the record, the
5 requirements for his ineffective assistance of counsel claim as set forth in the
6 remand opinion are satisfied. Even assuming that Goodwin's decision not to
7 present the entirety of the available mitigating evidence was a tactical choice, the
8 Ninth Circuit found such a choice unreasonable, and the result prejudicial. *Id.*

9 **Order**

10 Having considered all the pleadings, lodged and expanded records,
11 submitted evidence, and arguments of the parties, the Court determines, as
12 detailed above, that many of Stankewitz's allegations of mitigation evidence are
13 true. Stankewitz's petition for a writ of habeas corpus is granted as to the
14 remanded claim alleging ineffective assistance of counsel at the penalty phase of
15 his second trial. A writ of habeas corpus shall issue directing the State of
16 California to vacate and set aside the death sentence in *People v. Douglas Ray*
17 *Stankewitz*, Fresno County Superior Court Case No. 227015-5, unless within 90
18 days of the entry of judgment of this order, the State of California initiates
19 proceedings to retry Stankewitz's sentence. In the alternative, the State of
20 California shall re-sentence Stankewitz to life without the possibility of parole.

21 The Clerk is directed to enter judgment in this case.

22 IT IS SO ORDERED.

23 DATED: September 21, 2009

24 /s/ Anthony W. Ishii

25 Chief United States District Judge

Appendix A

Summary Chronology of Stankewitz's childhood

Excerpts from Jointly Filed Documents (Notice of Filing: Doc. No. 443) and Supplemental to Joint Submission Documents (Doc. Nos. 556-559, 561).

5/31/58 Date of Birth, Douglas Stankewitz

11/18/64 reported beating to Fresno Police Department, police picked him up "in shock," Sonny was in jail

2/13/65 taken to police by neighbor, found at their door after beating

2/26/65 in Fresno Co. Hospital (removal from home due to abuse)

3/9/65 released from hospital

3/9-10/65 2 unsuccessful foster home placements, runaway threats & attempts, threat to throw chair/self through window, hitting, kicking, etc.

3/10-23/65 in Juvenile Hall pending placement, problems in younger boys unit, transferred to girls unit

3/11/65 Psych Eval., Dr. Simmang: erratic and unpredictable behavior, required restraints, rapid mood changes, average normal intelligence, no signs of psychosis, recommend further exam at Napa State Hospital

3/16/65 Joe Walden (Fresno Co. Probation) letter to Napa State Hospital requesting admission

3/23/65 Napa State Psychiatric Hospital (uncorroborated allegations of sexual abuse while here, assumption made by Rosetta Bollmeyer based on ambiguous statement by Stankewitz)

3/25/65 Donn Beddle, Ph.D.: average intellectual potential, difficulties controlling himself emotionally

5/24/65 C.W. Brackenridge, Ph.D.: mild hyperactivity, some aggressiveness, IQ of 85

6/16/65 Napa Hospital: diagnosis of adjustment reaction of childhood, conduct disturbance; emotionally disturbed, severe tantrums, extremely aggressive behavior, immature speech

11/12/65 letter recommending discharge from Napa Hospital and for foster care, diagnosis - not mentally ill

1	12/15/65	released from Napa Hospital, no appropriate foster homes in Fresno
2	4/1/66	placed in Santa Rosa/Sebastopol foster home of Rosamond Bollmeyer
3		
4	1968	Stankewitz alleges first sexual experience about age 10, also same approximate age began sniffing paint/gas, using wide range of drugs & alcohol including hallucinogens
5		
6	2/10/70	removed from Bollmeyer's home (Bollmeyer stated he was difficult to handle, uncontrollable and requested his removal)
7	2/17/70	returned to Juvenile Hall by new foster parents, who stated he was out of control (over next 6-7 weeks: rotated between being with mother, in foster care or juvenile hall)
8		
9	4/30/70	police report of Stankewitz & his brother chasing & threatening girls at Dinkey Playground, mother says she had sent him to Juvenile Hall numerous times as she could not control him at home
10		
11	5/6/70	Psych Eval. w/ EEG, Dr. Zeifert: sudden loss of control, becomes abusive, uses vile language, combative, ample evidence of neurotic disturbance (bitten fingernails and bed-wetting) may be due to emotional instability, recommend stable program & medication
12		
13	5/20/70	probation report: adjustment in Juvenile Hall has been less than satisfactory, numerous write-ups regarding his behavior have often resulted in the use of physical restraints & holding room
14		
15	5/25/70	James Caffee, M.D.: although abnormal EEG, doubt outbursts are caused by seizure because triggered by frustration and not followed by sleep, no evidence of psychic depression
16		
17	5-6/70	various tests, treatments ordered by juvenile court
18		
19	6/30/70	letter from probation officer recommending private school
20		
21	7/24/70	C.W. House, Ph.D.: impulse-ridden child, normal intelligence, but processes are impaired regarding judgment, impulse control, appreciation of rules and regulations, limited concern for the needs of others, severe characterological disorder, impulses expressed without concern for the consequences
22		
23	8/11/70	to Borrego Palms School
24	11/24/70	transfer to Awhanee Schools (closer to home)
25	4/14/71	ran away to mother's house, taken to Juvenile Hall when refused to return to Awhanee
26	5/6/71	Probation Report/Social Study, Juvenile Ct, ran away from Awhanee

1	6/15/71	with aunt Maggie Marquez
2	8/9/71	return to Juvenile Hall (assault/robbery), 2 weeks prior spent with uncle Joe Lopez around Fresno
3		
4	8/19/71	Incident report, Juvenile Hall, hit smaller boy, recommend transfer to A Unit
5	8/31/71	to aunt Maggie Marquez
6	10/27/71	to Juvenile Hall (probation violation, failure to attend school)
7	2/22/72	to father; spent much of this time at aunt Maggie Marquez's or on the streets, exposed to large quantities of drugs/violence with father's motorcycle gang
8		
9	3/13/72	to Juvenile Hall (runaway)
10	4/21/72	received at NRCC (No. Reception Center Clinic)
11	5/8/72	Social Evaluation, NRCC, pre-CYA commitment
12	5/18/72	to Los Guilucos School
13	6/5/72	Transfer Report, Los Guilucos School, behavior hostile & aggressive, not able to accept rules, verbally and physically abusive, required force to restrain, recommend transfer to O.H. Close School
14		
15	10/4/72	to NRCC, medical furlough
16	10/6/72	return to O.H. Close School
17	12/7/72	Placement Request, O.H. Close School: diagnosis of neurotic acting out, has made progress in controlling his temper, growing in self- awareness, doing well in school, continues to be a very unstable young man, recommend discharge to aunt Maggie Marquez
18		
19	1/11/73	paroled to aunt Maggie Marquez
20	3/9/73	returned to mother after her return from LA following parole on manslaughter charge, probation report recommended it would be better if Stankewitz worked rather than attended school
21		
22	3/18/73	arrested, drunk
23	3/20/73	released on parole
24	4/24/73	George Key assault/GTA, subsequent CHP chase & shooting of Eddie Davis
25		
26	6/11/73	to NRCC

1 6/13/73 Recommitment Report

2

3 6/26/73 Social Evaluation, NRCC: "There was no remorse for what had
4 happened – except that he had been caught, no assurance that
5 parallel occurrences would not happen when again on the streets."
6 Feels no responsibility for depriving anyone of health, property or
7 even life, believe his ingratiating and pleasant characteristics are
8 surface only, look upon him as dangerous.

9 7/6/73 to O.H. Close School

10 8/5/73 Psych Eval., Dr. Melges, "extremely violence prone," concur with dx
11 of antisocial personality made by Edward Hodgson, M.D. at NRCC
12 on 6/28/73

13 2/8/74 Psych Eval., Dr. Melges, 2nd session: substantial gains, would like to
14 see some kind of moral sense, an ethical concern for others, despite
15 improvements, at this stage Stankewitz sees man as an individual
16 alone - hasn't grasped the concept of men interdigitating with others

17 2/27/74 Probation Report, Juvenile Ct, recommend release to Aunt Maggie
18 Marquez

19 4/6/74 Psych Eval., Dr. Melges, 3rd session: Stankewitz initiated, difficulty
20 controlling anger, quite overtly violent

21 5/6/74 Transfer Order, O.H. Close School: since arrival not participated in
22 academic or treatment programs, numerous incidents, grossly
23 misplaced with other 16 year olds due to physical size and reliance
24 on classic prison-type methods of pressuring and intimidation,
25 potential for threats & explosiveness, not amenable to influence or
26 external controls, recommend transfer to Karl Holton School

27 5/30/74 Psych Eval., Karl Holton School, Adolf Pfefferbaum, M.D.: slightly
28 below normal intelligence, but may be from profound lack of insight,
29 no evidence of hallucinations, delusions or psychotic thought
30 process, sees aggressive behavior, hurting and even killing people as
31 the solution to his frustration, agree with past dx of Sociopathic
32 Personality, antisocial type, considerable allegiance to criminal
33 element, potential for future violence is quite high

34 7/7/74 Incident report, CYA, attempted escape

35 12/74 re-evaluation at NRCC (7 write-ups at Karl Holton School): not
36 motivated to change

37 1/9/75 report: drug of choice - hallucinogens

38 2/7/75 Psych Eval., Karl Holton School, A. Pfefferbaum, M.D.: 9 additional
39 months for infractions, not motivated to change, no evidence of

1 obsessions, hallucinations, thought broadcasting, suicidal ideation or
2 severe depression, diagnosis of sociopathic personality, antisocial
3 3/17/75 YTS (Chino), add'l 18 mos. for infractions (then 15 mos. cut for good
4 progress, obtained high school diploma, taken college courses)
5 7/20/75 assault on employee of CYA
6 10/3/75 Psych Eval., S. Resnick, Ph.D.: diagnosis of antisocial personality,
7 possible psychomotor epilepsy, no evidence of hallucinations,
8 delusions, psychotic thinking or behavior, denies any depression
9 5/1/76 Disability Survey, Dx: Sociopathic personality
10 8/4/76 admission to Emotional Behavior Program rejected, prognosis for
11 improvement via psychotherapy judged to be poor
12 9/27/76 Psych Eval., H.T. Rondeau, M.D.: no evidence of thinking disorder,
13 disturbance in affect, delusions or hallucinations, oriented to time,
14 place and person, guess IQ to be high normal, Dx: sociopathic
15 personality, guarded prognosis but feel further institutionalization
16 might reverse the gains he has made
17 10/18/76 8 day training furlough, released to aunt Maggie Marquez
18 10/24/76 arrest, battery (returned to CYA)
19 2/2/77 paroled from CYA, to mother
20 4/18/77 arrest (charges dropped); scuffle with booking officers at the
21 Sacramento County jail resulted in assault charges
22 6/2/77 sentenced
23 1/14/78 released from Sacramento Co. jail
24 1/20/78 robs gas station in Sacramento, accomplice with a gun; later same
25 night robs two massage parlor customers
26 1/25/78 assault to commit robbery in card room, Sacramento
27 2/8/78 Theresa Graybeal kidnapping/murder; Jesus Meraz, a.k.a. Valenti
Cordero attempted robbery