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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,)	Order Regarding Respondent's Motion for Reconsideration of Order Granting Petition and Vacating December 14, 2009
Respondent.)	Hearing

An order granting the petition for writ of habeas corpus filed by Petitioner Douglas Ray Stankewitz ("Stankewitz") was issued September 22, 2009, and judgment entered concurrently. On October 1, 2009, Respondent Robert Wong ("the Warden") filed a request for stay of the judgment and a motion for reconsideration, setting a hearing on the motion for Monday, December 14, 2009, at 2:30 p.m. An order granting the Warden's request for a stay of the judgment pending resolution of the motion for reconsideration was issued October 15, 2009. Stankewitz filed an opposition to the motion for reconsideration November 30, 2009.

The Warden presents two objections to the order granting the petition:

1 1. This Court's conclusion granting the petition fails to recognize the extent to
2 which the factual allegations relied on by the Ninth Circuit were decimated
3 on remand and misconstrues the extent to which the Ninth Circuit's
4 prejudice assessment dictated the conclusion in light of those changed
5 facts.

6 The Warden asserts the Ninth Circuit's opinion was rendered under the
7 assumption that Stankewitz's allegations were true in finding that trial counsel
8 was ineffective in failing to adequately investigate and present mitigation, and
9 that it became clear on remand Stankewitz's allegations included falsehoods,
10 misrepresentations, and exaggerations which completely undermined the claim.¹
11 In light of these changes, the Warden asserts the Ninth Circuit's conclusion that a
12 "more complete presentation" could have made a difference in Stankewitz's
13 sentence, and that "there was a reasonable probability that the jury would not
14 have sentenced Stankewitz to death" with the presentation of this evidence, has
15 been completely undermined.

16
17 ¹ The Warden notes the following questionable allegations: (1) trial counsel's
18 declaration stating he had not obtained or reviewed records from Stankewitz's first
19 trial and appeal (which has been found to be false); (2) assertions of sexual abuse at
20 Napa State Hospital (which have no credible support and appear based on the
21 account of a troubled individual with no first-hand knowledge); (3) background
22 information regarding troubled members of Stankewitz's family and claims of abuse
23 by, and drug and alcohol use at the hands of, those family members (which is
24 undermined by the fact that Stankewitz lived with his family for only a few months
25 between age six and the time of Theresa's murder); (4) habeas experts' assertions
26 that Stankewitz is brain-damaged (which are contradicted by extensive psychiatric
and psychological examinations finding Stankewitz did not suffer from a mental
disease); (5) implication of abuse or neglect in the assertion that Stankewitz was
taken to the emergency room three times before his first birthday (where records
reveal two of the visits were for common maladies); (6) claim that Stankewitz
witnessed the murder of one of his father's fellow gang members (where there is no
evidence of the time, place, or victim of such a murder); (7) assertion that Stankewitz
was "partying" with his brother William in the days prior to Theresa's murder
(where William's interview indicates he had not seen Stankewitz for more than a
year); and (8) the lengthy social history (which was revealed to be merely a conduit
for Stankewitz's untested statements).

1 The Warden contends that Stankewitz’s emotional outbursts and acts of
2 violence over the course of his life, as chronicled in the order granting the
3 petition,² do not establish prejudice but simply confirm the numerous diagnoses
4 that Stankewitz was a sociopath. The Warden asserts there is no reasonable
5 probability that presentation of such evidence would have impacted the sentence
6 imposed by jurors in both of Stankewitz’s trials, and that it is highly improbable
7 that the failure to present this evidence was prejudicial.

8 Stankewitz responds that the Warden’s motion rehashes arguments made
9 in his brief on remand, which remain unavailing. Stankewitz urges the Court to
10 make additional findings of prejudice due to trial counsel’s failure to present
11 evidence of his sub-average intellectual functioning, his drug use around the time
12 of the crime, and further evidence of his family history.

13 Accepting the Warden’s argument that Goodwin’s review of the
14 investigation files from Stankewitz’s first trial would satisfy the performance
15 prong of *Strickland*, and so undermine the Ninth Circuit’s conclusion that trial
16 counsel was ineffective for failing to investigate, it does not undermine the Ninth
17 Circuit’s conclusion of prejudice: that a “more complete presentation, including
18 even a fraction of the details Stankewitz now alleges,” could have made a
19 difference in the sentence. *Stankewitz v. Woodford*, 365 F.3d 706, 724-725 (9th Cir.
20 2004).

21
22 2. The Court’s conclusion fails to address the significance of *Schriro v.*

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24 ² The Warden requests clarification of the order granting the petition, where
25 certain allegations are acknowledged to have questionable support, and other
26 allegations that incorporate the same facts are not specifically mentioned. The
Court’s recitation of Stankewitz’s allegations does not infer acceptance of those
allegations as true, and references to facts with questionable support extend to all
allegations which incorporate those facts.

1 *Landrigan*, 550 U.S. 465 (2007) with respect to Stankewitz’s opposition of a
2 penalty phase defense.

3 The Warden observes that in rejecting Stankewitz ‘s petition in 2000, this
4 Court noted that Stankewitz was opposed to presenting any penalty defense, and
5 particularly to any defense which involved the use of family members as
6 witnesses or the use of expert witnesses. On remand, the Ninth Circuit
7 responded that Stankewitz’s purported objections to mitigating evidence appears
8 not to have been ‘informed and knowing’ since there was no evidence trial
9 counsel conducted an adequate investigation. The Warden contends, as he did in
10 his brief on remand, that it is now known trial counsel did obtain and review all
11 the evidence from the first trial and appeal, and given that Stankewitz received a
12 death sentence after his counsel at the first trial conducted a full investigation, his
13 objection was informed and knowing. The Warden argues that following the
14 Ninth Circuit’s remand, a United States Supreme Court case cast substantial
15 doubt on whether there is an informed and knowing requirement for a
16 defendant’s decision not to present mitigation. *Schriro v. Landrigan*, 550 U.S. 465,
17 478-79 (2007). The Warden contends that absent an informed and knowing
18 requirement, trial counsel’s acceptance of Stankewitz’s desire not to present
19 further mitigation was clearly not prejudicial. The Warden urges this Court to
20 address the issue and the impact of the *Landrigan* decision.

21 Stankewitz responds the Ninth Circuit already has rejected, as “belied by
22 the record,” the argument that trial counsel was justified in not presenting
23 mitigation due to Stankewitz’s alleged opposition. Further, Stankewitz notes this
24 Court found the uncontested facts were sufficient to establish prejudice from trial
25 counsel’s failure to present more than a minimal case in mitigation. Stankewitz
26 asserts the Warden has not disputed most of the basic facts regarding trial

1 counsel's performance,³ and has instead repeated the unsuccessful argument that
2 trial counsel's failure to present available mitigation is excused by Stankewitz's
3 alleged objections. As noted by the Ninth Circuit and shown by the record, trial
4 counsel did introduce penalty phase witnesses, including a member of
5 Stankewitz's family (by marriage), and a probation officer who testified briefly
6 about Stankewitz's abuse and early institutionalizations. Stankewitz argues that
7 where trial counsel has not refrained from presenting mitigation evidence,
8 disregarding any objections by the defendant, the effect of an alleged refusal to
9 cooperate does not need to be analyzed. *Hamilton v. Ayers*, 583 F.3d 1100, 1119
10 (9th Cir. 2009). Stankewitz notes that while this Court found trial counsel's
11 conduct unreasonable, the Warden's continuing arguments on this issue have not
12 been explicitly rejected, and asserts the Court should do so now to clarify the
13 record on appeal.

14 *Landrigan* is distinguishable from Stankewitz's case. Mr. Landrigan stated
15 to the trial court that he did not want mitigation presented, and when the trial
16 judge questioned counsel about available mitigation, Mr. Landrigan interrupted
17 with contradictory and damaging information. 550 U.S. at 469-470. As noted in
18 the 2000 order denying the petition, Stankewitz made appropriate and
19 understandable objections to various events during the trial, indicating he could,
20 and did, make his objections known. *See* Doc. 448 at p. 18-19. But despite his
21 alleged objection to the presentation of mitigation evidence, Stankewitz did not

22 ³ Stankewitz asserts the following facts are not contested: (1) trial counsel did
23 not consult with counsel from the first trial, did not hire an investigator or expert to
24 prepare for trial, and did not interview any of Stankewitz's family or any expert
25 witnesses for possible use at trial; (2) trial counsel was practicing out of his house at
26 the time of Stankewitz's trial and generally did not use paralegals, investigators, or
professional consultants in capital cases; and (3) regarding a capital case tried the
year before Stankewitz's trial, trial counsel admitted he never thought about hiring
experts, paralegals or investigators, failed to even obtain secretarial assistance, and
did everything he felt needed to be done in capital cases by himself.

1 interrupt or try to sabotage trial counsel's presentation.

2
3 The Warden's motion for reconsideration is DENIED. The hearing set for
4 December 14, 2009, at 2:30 p.m. is vacated. The stay of judgment entered October
5 15, 2009, is vacated. The writ of habeas corpus shall issue directing the State of
6 California to vacate and set aside the death sentence in *People v. Douglas Ray*
7 *Stankewitz*, Fresno County Superior Court Case No. 227015-5, unless within 90
8 days of the date of this order, the State of California initiates proceedings to retry
9 Stankewitz's sentence, or alternatively, re-sentences him to life without the
10 possibility of parole.

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15 IT IS SO ORDERED.

16 **Dated: December 10, 2009** /s/ Anthony W. Ishii
17 CHIEF UNITED STATES DISTRICT JUDGE