

1 On March 12, 1992, the district court dismissed Phillips' federal petition without prejudice,
2 declining to interfere with the ongoing state criminal proceeding under the abstention doctrine and
3 dismissing the petition for failure to exhaust state remedies. The Ninth Circuit reversed and remanded
4 May 26, 1995, holding the extraordinary delay Phillips had already experienced in seeking review of
5 his federal constitutional claims justified consideration of his guilt phase claims even though his death
6 sentence was not final. *Phillips v. Vasquez*, 56 F.3d 1030, 1037-38 (9th Cir. 1995).

7 Phillips' amended federal habeas corpus petition, filed July 15, 1996, was denied evidentiary
8 hearing, and was denied on the merits July 13, 1998. On appeal, the Ninth Circuit affirmed the denial
9 of claims asserting bad faith destruction of evidence, *Brady* violation for failure to disclose reports,
10 and factual innocence. *Phillips v. Woodford*, 267 F.3d 966, 986-988 (9th Cir., October 15, 2001).

11 Claims alleging perjury by prosecution witness Sharon Colman ("Colman") in denying she was
12 promised or provided any benefit in return for her testimony, ineffective assistance of trial counsel for
13 failing to investigate and/or present evidence supporting a "shoot-out" defense, and cumulative error,
14 were remanded to the district court for an evidentiary hearing. The Ninth Circuit concluded that
15 Phillips had "asserted a colorable claim that the combined prejudicial effect of his counsel's
16 ineffective assistance, and the State's presentation of false testimony regarding the existence of a plea
17 agreement with its chief witness, [which if proved] requires setting aside the findings that rendered
18 him eligible for a sentence of death." *Id.*, at 970-986.

19 While the appeal of Phillips' guilt phase and death eligibility claims was pending before the
20 Ninth Circuit, the California Supreme Court affirmed his second death sentence. *People v. Phillips*,
21 22 Cal. 4th 226 (2000). Phillips' state habeas petition asserting claims from his penalty re-trial was
22 summarily denied September 27, 2000, and the United States Supreme Court denied certiorari April
23 16, 2001. Steven L. Crawford was appointed to represent Phillips regarding his penalty phase claims
24 September 19, 2001. Phillips filed his claims seeking federal habeas relief from his second death
25 sentence on July 7, 2003.

26 Upon remand of the guilt phase and death eligibility claims, Phillips indicated his desire to be
27 represented on remand by Katherine L. Hart, who had represented him at his penalty re-trial, and
28 filed a declaration waiving any ineffective assistance of counsel claims which might arise from her

1 representation at the re-trial. A hearing was held to determine the validity of Phillips' waiver, and
2 since he was found to be fully competent, capable of entering an informed waiver, and aware of the
3 nature and consequences of the waiver, the waiver was accepted. The evidentiary hearing on the
4 remanded claims was held via depositions from January 6 through 23, 2003. Depositions were taken
5 of trial counsel Paul Martin, prosecutor David Minier, surviving victim Ronald Rose, eye witness
6 Colman, pathologist Dr. Thomas C. Nelson, Colman's attorneys Tom Peterson and Cassandra Dunn,
7 and Fresno County Detective Pete Santellano. Respondent ("the Warden") attempted to take Phillips'
8 deposition, but he refused to answer questions at the scheduled time. Phillips' federal habeas petition
9 was denied in part February 20, 2004, finding the remanded guilt phase and death eligibility claims
10 without merit.

11 Phillips' federal habeas petition was still pending resolution of his penalty phase claims.
12 Phillips moved to dismiss his penalty phase claims July 2, 2004. No evidence was presented which
13 undermined the prior finding that Phillips was competent, and the motion to dismiss the penalty phase
14 claims was granted August 26, 2004.

15 On appeal, the Ninth Circuit affirmed in part, reversed in part, and remanded with instructions
16 to grant the writ as to the jury's special circumstance finding, and accordingly, Phillips' death
17 sentence. *Phillips v. Ornoski*, 673 F.3d 1168 (9th Cir. 2012). The Ninth Circuit affirmed (1) the
18 district court's procedural rulings governing the evidentiary hearing (denying Phillips' transfer to the
19 Madera County jail, vacating the live evidentiary hearing, and refusing filing of supplemental
20 exhibits), and (2) the denial of the claim of ineffective assistance of trial counsel for allowing Phillips
21 to proceed with an alibi defense, based on the intervening United States Supreme Court case of *Cullen*
22 *v. Pinholster*, __ U.S. __, 131 S. Ct. 1388 (2011). The Ninth Circuit reversed the district court
23 regarding the due process violation under *Brady v. Maryland*, 373 U.S. 83 (1963), from the
24 prosecutor's failure to reveal significant benefits given to key witness Colman in exchange for her
25 testimony and under *Napue v. Illinois*, 360 U.S. 264 (1959), for failing to correct Colman's false
26 testimony. The Ninth Circuit found the undisclosed benefit to Colman was material to the issue of
27 whether the murder was committed in the course of a robbery, as opposed to whether the robbery was
28 committed in the course of (that is, to cover up) a murder, as her testimony was essential to the jury's

1 finding that robbery was the motive for the murder. Without Colman’s testimony, the Ninth Circuit
2 concluded the jury likely would have determined the taking of the victims’ wallets was secondary to
3 the murder, and not a basis for finding the special circumstance true under California law, thus
4 vacating the special circumstance finding and the death sentence. The convictions for attempted
5 murder, first-degree murder and robbery were upheld since the non-revealed benefits to Colman were
6 not material to those convictions. The United States Supreme Court denied both Phillips’ and the
7 Warden’s petitions for certiorari April 29, 2013. The Ninth Circuit issued the mandate June 6, 2013.

8
9 The Court hereby

- 10 1. grants in part Phillips’ application for writ of habeas corpus,
- 11 2. vacates the special circumstance finding and death sentence imposed on Phillips, and
- 12 3. orders that the State of California re-sentence Phillips to a penalty other than death and life
13 without parole, unless proceedings to grant him a new trial on the special circumstances are
14 initiated within 90 days from the date of this order.

15
16 IT IS SO ORDERED.

17
18 DATED: June 11, 2013

19 /s/ Anthony W. Ishii
20 ANTHONY W. ISHII
21 **United States District Judge**
22
23
24
25
26
27
28