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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 CALVIN COLEMAN, JR.,

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Case No. C 90-1588-VRW

v.

DERRAL G. ADAMS,
Warden, California State Prison, Corcoran,

Respondent.

**STIPULATION AND ~~PROPOSED~~
ORDER DISMISSING PETITION IN
LIGHT OF PETITIONER'S RE-
SENTENCING TO LIFE WITHOUT
POSSIBILITY OF PAROLE**

This Stipulation is entered into as of April 24, 2009, by and between Petitioner Calvin Coleman, Jr., through his counsel of record, and Respondent Derral G. Adams, Warden, California State Prison, Corcoran.

WHEREAS, Mr. Coleman was convicted of eight separate Counts alleged in an Information numbered 10143-C (the "Information"), in the Superior Court of the State of California for the County of Sonoma, Case No. 10143C on August 27, 1981;

WHEREAS, on August 27, 1981, Mr. Coleman was sentenced to death on Count I of the Information, for violation of Section 187 of the California Penal Code with special circumstances; and sentenced to an aggregate prison term of 25 years and 4 months on Counts II through VIII of the Information;

1 WHEREAS, following the direct appeal process, Mr. Coleman’s execution was set for June
2 15, 1990;

3 WHEREAS, on or about June 6, 1990, Mr. Coleman filed in this Court a petition for writ of
4 habeas corpus pursuant to 28 U.S.C. § 2254;

5 WHEREAS, on July 15, 1991, Mr. Coleman filed in this Court a Finalized Petition for Writ
6 of Habeas Corpus by a Person in State Custody Under Sentence of Death;

7 WHEREAS, on September 23, 1991, this Court ordered Mr. Coleman to exhaust state
8 remedies;

9 WHEREAS, on November 22, 1991, Mr. Coleman filed his First Petition for Writ of
10 Habeas Corpus in the California Supreme Court, Case No. S023949 (the “California Supreme
11 Court”), which petition was denied on June 10, 1992;

12 WHEREAS, Mr. Coleman filed his Amended Finalized Petition for Writ of Habeas Corpus
13 in this Court on September 4, 1992;

14 WHEREAS, in separate orders dated October 17, 2001 and April 11, 2002, this Court
15 granted Mr. Coleman’s requests for an evidentiary hearing and for further factual development as to
16 certain of his claims for relief, including Mr. Coleman’s claims based on ineffective assistance of
17 counsel and cumulative error;

18 WHEREAS, Mr. Coleman’s claims for relief by reason of his mental health status,
19 including his mental retardation, were originally dismissed by this Court, this Court did so without
20 prejudice to renewing those claims depending on the outcome of the U.S. Supreme Court’s
21 consideration of *Atkins v. Virginia*, a case in which the U.S. Supreme Court was to consider the
22 constitutionality of executing the mentally retarded;

23 WHEREAS, the U.S. Supreme Court decided *Atkins v. Virginia* in opinions reported at 536
24 U.S. 304 (2002), holding that the execution of a mentally retarded person is impermissible under
25 the Eighth Amendment to the U.S. Constitution;

26 WHEREAS, Mr. Coleman thereafter renewed his claim in this action that his sentence of
27 death was unconstitutional because he is mentally retarded within the meaning of *Atkins* and may
28 not be executed;

1 WHEREAS, by order dated February 22, 2005, this Court ordered Mr. Coleman to return to
2 the California state courts to exhaust his claim that he is mentally retarded within the meaning of
3 *Atkins* and may not be executed and ordered that this case, including consideration of unresolved
4 claims raised in Mr. Coleman's petition, be held in abeyance pending the resolution of such state-
5 court proceedings;

6 WHEREAS, Mr. Coleman filed his *Atkins*-based Petition for Writ of Habeas Corpus in the
7 California Supreme Court, Case No. S133438, on April 28, 2005;

8 WHEREAS, the California Supreme Court, on March 29, 2006, issued an order stating that
9 Mr. Coleman had made a *prima facie* showing that he is mentally retarded and directing the
10 Director of the California Department of Corrections and Rehabilitation to show cause why Mr.
11 Coleman's death sentence should not be vacated and Mr. Coleman sentenced to life imprisonment
12 without the possibility of parole on the ground that he is mentally retarded within the meaning of
13 *Atkins*, and returning the Petition to the Sonoma County Superior Court for that purpose;

14 WHEREAS, the Parties investigated and litigated the claims and issues related to Mr.
15 Coleman's *Atkins*-based Petition in further proceedings before the Sonoma County Superior Court,
16 Honorable René A. Chouteau presiding;

17 WHEREAS, the Parties agreed that testing, including mental health testing by experts on
18 behalf of the State, and the broader record reflect that Mr. Coleman is mentally retarded within the
19 meaning of accepted scientific definitions of that condition and within the meaning of *Atkins*, *In re*
20 *Hawthorne*, 35 Cal. 4th 40 (2005), and California Penal Code § 1376;

21 WHEREAS, the Parties reached a stipulated resolution of Mr. Coleman's *Atkins*-based
22 Petition, which was presented to and ordered by Judge Chouteau at a status conference on August
23 27, 2008, and which provides that Mr. Coleman is mentally retarded with the meaning of *Atkins*,
24 vacates his sentence of death in light of that fact, and sets his sentencing to life imprisonment
25 without possibility of parole pursuant to Penal Code § 1376;

26 WHEREAS, Mr. Coleman was re-sentenced by Judge Chouteau on October 8, 2008 to life
27 without possibility of parole;

28 WHEREAS, Mr. Coleman's re-sentencing based on his *Atkins*-related claim resulted in the

1 principal relief sought by Mr. Coleman’s Petition;

2 WHEREAS, the other claims raised in Mr. Coleman’s Petition have not been finally
3 adjudicated and so could potentially be a basis for some relief for Mr. Coleman as requested by his
4 Petition or otherwise; and

5 WHEREAS, in light of the fact that Mr. Coleman is no longer subject to a sentence of death,
6 the Parties to this Stipulation believe that it is in the interests of justice and judicial economy to
7 avoid further litigation in this Court or in the appellate courts;

8 ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED by the parties, as
9 follows:

10 1. Pursuant to Federal Rule of Civil Procedure 41(a), Mr. Coleman by this Stipulation
11 hereby voluntarily dismisses his Petition without prejudice, except as to his *Atkins*-related claim,
12 which has been fully adjudicated on the merits. Respondent does not object to the dismissal of the
13 Petition but reserves the right to raise any and all statutory, equitable, or procedural bars/defenses to
14 any new future lawsuit by Mr. Coleman raising any claims that were part of the Petition.

15 2. Having achieved the principal relief sought by Mr. Coleman’s Petition, Michael L.
16 Charlson and Hogan & Hartson LLP by this Stipulation seek to withdraw as counsel for Mr.
17 Coleman in post-conviction proceedings before this Court. Respondent has no objection.

18 3. Michael L. Charlson and Hogan & Hartson LLP will seek approval to withdraw as
19 Mr. Coleman’s counsel for post-conviction proceedings in the California state courts.

20 4. Notwithstanding the dismissal of the Petition, counsel for Mr. Coleman may seek
21 reimbursement of attorney’s fees and costs for representation of Mr. Coleman as may be permitted
22 by both state and federal law.

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1 5. The signatories to this Stipulation represent and warrant that they have full authority
2 to enter into this Stipulation on behalf of Mr. Coleman and Derral G. Adams, Warden, California
3 State Prison, Corcoran, respectively.

4 DATED: April 24, 2009

HOGAN & HARTSON LLP

6 By _____ /s/
Michael L. Charlson

8 Attorneys for Petitioner
CALVIN COLEMAN, JR.

9 DATED: April 24, 2009

OFFICE OF THE ATTORNEY GENERAL
STATE OF CALIFORNIA

12 By _____ /s/
Mark S. Howell

14 Attorneys for Respondent
DERRAL G. ADAMS, WARDEN CALIFORNIA
STATE PRISON, CORCORAN

16 **ORDER**

17 On stipulation of the parties and the record of this action, and good cause appearing:

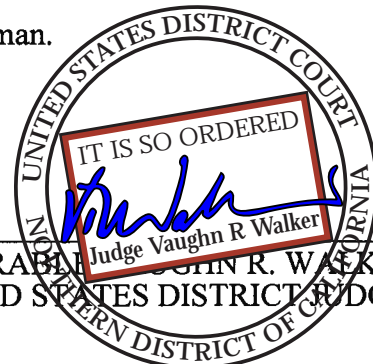
18 1. Mr. Coleman's Amended Finalized Petition for Writ of Habeas Corpus is dismissed
19 without prejudice pursuant to Federal Rule of Civil Procedure 41(a), with each party bearing its
20 own costs.

21 2. Having achieved the principal relief sought by Mr. Coleman's Petition, Michael L.
22 Charlson and Hogan & Hartson LLP are hereby permitted to withdraw as counsel for Mr. Coleman
23 and are relieved of further obligation to represent Mr. Coleman.

24 IT IS SO ORDERED.

26 DATED: May 4, 2009

HONORABLE JUDGE VAUGHN R. WALKER
UNITED STATES DISTRICT JUDGE



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GENERAL ORDER 45 ATTESTATION

I, Michael L. Charlson, am the ECF User whose ID and password are being used to file this JOINT STATUS REPORT. In compliance with General Order 45, X.B., I hereby attest that Mark S. Howell, attorney for Respondent, has concurred in this filing.

Dated: April 24, 2009

/s/ Michael L. Charlson

Attorney for Petitioner
CALVIN COLEMAN, JR.

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PROOF OF SERVICE BY MAIL

I, Kristine May, declare as follows:

I am employed with the law firm of Hogan and Hartson LLP, whose address is 525 University Avenue, Palo Alto, California 94301. I am readily familiar with the business practices of this office for collection and processing of correspondence for mailing with the United States Postal Service; I am over the age of eighteen years and not a party to this action.

On April 24, 2009, I served the following:

STIPULATION AND [PROPOSED] ORDER DISMISSING PETITION IN LIGHT OF PETITIONER'S RE-SENTENCING TO LIFE WITHOUT POSSIBILITY OF PAROLE

on the below parties in this action by placing a true copy thereof in a sealed envelope, addressed as shown, for collection and mailing pursuant to the ordinary business practice of this office which is that correspondence for mailing is collected and deposited with the United States Postal Service on the same day in the ordinary course of business:

Michael G. Millman
California Appellate Project
101 Second St., Suite 600
San Francisco, CA 94105

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Palo Alto, California on April 24, 2009.

By _____ /s/ _____
KRISTINE MAY