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SUPREME COURT
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DEPUTY

No. _____
(Related Appeal No. S005502)
(Kern County Superior Ct. No. 33477)

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

IN RE DAVID KEITH ROGERS,
Petitioner.

On Habeas Corpus, Following A Judgment Of Death
Rendered In The State Of California, Kern County
(Hon. Gerald K. Davis, Judge Of The Superior Court)

**PETITION FOR WRIT OF HABEAS CORPUS
(VOLUME TWO OF TWO)**

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DEATH PENALTY

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additional instruction that might have allowed them to reach a verdict less than first degree murder.⁹⁶ Only after the court refused to give further instruction on the degrees of murder did the jury finally opt for the only verdict possible under the instructions read to them—first degree murder in the Clark case and second degree murder in the Benintende case. Under these circumstances, there is a reasonable probability that, if Petitioner’s counsel had presented a coherent and consistent defense, argued Petitioner’s case effectively, and requested complete and accurate jury instructions, the result of the trial would have been different.

PART 2: THE PENALTY PHASE OF TRIAL

389. Petitioner realleges and incorporates by reference each and every allegation, whether factual, legal, or otherwise, of Paragraphs 1-388, *supra*, and Paragraphs 562-589, *infra*, as if fully set forth herein.

390. The judgment rendered against Petitioner is invalid, and his consequent imprisonment and sentence of death was unlawfully obtained in violation of his rights under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article 1, Sections 1, 7, 13, 15, 16 and 17 of the California Constitution, and related provisions of California law in that Petitioner was denied the effective assistance of counsel at his penalty phase trial resulting in substantial prejudice as more fully set forth in this Part 2 of the Fifth Claim for Relief.

391. The acts and omissions constituting ineffective assistance of counsel as severally described in each section below deprived Petitioner of rights guaranteed him under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution and cognate provisions of state law, including (but not limited to): the right to effective assistance of counsel; the rights to due process and a fair trial, to testify or remain silent and to present a defense and to present all relevant evidence; the

⁹⁶The jury twice requested further instruction on the definitions of the crimes (RT 5695-96; CTS 986, 988) it also requested the “conclusion or diagnosis” of the mental health experts (RT 5695-96); a readback of Petitioner’s testimony (RT 5695); and Petitioner’s taped statement to the police (RT 5653).