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Court?

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re  
  
**STEVE ALLEN CHAMPION,**  
  
On Habeas Corpus.

S065575

SUPREME COURT  
LOS ANGELES

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INFORMAL RESPONSE

SUPREME COURT  
**FILED**

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**DEATH PENALTY**

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re

STEVE ALLEN CHAMPION,

On Habeas Corpus.

S065575

INTRODUCTION

Sixteen years ago, on October 19, 1982, following a jury trial, petitioner and his codefendant Craig Ross were convicted of the first degree murders of Bobby Hassan and his 14-year-old son Eric.<sup>1/</sup> The jury also convicted petitioner of two counts of robbery and one count of burglary. Allegations that a principle was armed with a firearm were found true. The jury also found true three special circumstances making petitioner death-eligible: (1) that there was a multiple murder; (2) that the murder was committed during the course of a robbery; and (3) that the murder was committed during the commission of a burglary. (CT 780-782.) On October 27, 1982, following a penalty trial, the jury fixed petitioner's sentence at death. (CT 798.)

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1. Ross also was convicted of numerous offenses, which were committed on December 27, 1980, at the apartment of Michael Taylor, and for which he was sentenced to death. Petitioner was neither charged nor convicted of any of the crimes committed at the Taylor apartment. (See *People v. Champion* (1995) 9 Cal.4th 879, 900-901.) Ross does not have any action currently before this Court.

On or about January 27, 1986, petitioner filed his opening brief on automatic appeal. Thereafter, on September 10, 1986, petitioner filed a petition for writ of habeas corpus, wherein he argued only that he was denied effective assistance of counsel for his trial counsel's failure to secure a ruling on a pretrial motion regarding the death qualification of jury voir dire. In connection with his appeal, petitioner subsequently filed a supplemental opening brief, a reply brief, and a supplemental reply brief.<sup>2/</sup>

On April 6, 1995, this Court issued its opinion in the automatic appeal. (*People v. Champion, supra*, 9 Cal.4th at p. 879.) This Court ordered that one of petitioner's two multiple-murder special circumstances be stricken as duplicative. (*Id.*, at pp. 9435-936.) In all other respects, the judgment, including the death sentence, was affirmed. (*Id.*, at p. 952.) One month later, this Court denied petitioner's petition for writ of habeas corpus.

Two years later, on April 21, 1997, petitioner filed a petition for writ of habeas corpus in the United States District Court, Central District of California. The petition consisted of 139 pages raising 27 claims. Respondent filed a motion to dismiss the habeas petition. On September 8, 1997, the district court heard the motion to dismiss and found it could not entertain the petition because it contained unexhausted claims. On that basis, the district court issued an order holding the federal proceedings in abeyance while petitioner returned

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2. Petitioner also joined in the arguments raised by codefendant Ross on appeal. Respondent asks this Court to take judicial notice of its own records, including all documents petitioner, respondent, and Craig Ross filed in the course of the automatic appeal and previous habeas corpus proceeding. (Evid. Code, § 452; see *In re Clark* (1993) 5 Cal.4th 750, 798, fn. 35.)

to state court to exhaust his remedies. Petitioner was ordered to file his state habeas petition within 60 days of the court's order.

On November 5, 1997, petitioner filed the instant petition for writ of habeas corpus. On November 7, 1997, this Court requested respondent to file an informal response to the petition, pursuant to rule 60 of the California Rules of Court.



## ARGUMENT

### I.

#### APPLICABLE PRINCIPLES OF LAW

In response to this Court's request for an informal response under rule 60 of the California Rules of Court, respondent initially sets forth the applicable principles of law so as to avoid unnecessary repetition of these principles when discussing the separate claims raised in the petition. It is respondent's position that nearly all of the petitioner's claims are subject to one or more of the procedural bars discussed below. Respondent further submits petitioner has failed to establish a prima facie case for relief in each and every one of his claims.

##### A. Unjustifiable Delay

Unjustified delay precludes consideration of a habeas petition on its merits. Delay may occur under two circumstances: (1) where there is substantial delay in presenting a claim regardless of the existence of any prior habeas attacks on the judgment (*In re Clark, supra*, 5 Cal.4th at pp. 782-787); and (2) where the petition amounts to a successive petition which raises additional claims that could have been presented in an earlier attack on the judgment (*id.*, at p. 769-770, citing *In re Horowitz* (1949) 33 Cal.2d 534, 546-547). "A successive petition presenting additional claims that could have been raised in an earlier attack on the judgment is, of necessity, a delayed petition." (*Id.*, at p. 770.)<sup>3/</sup>

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3. Recently, this Court has stated that it would not apply the

This Court has historically required a petitioner to justify substantial delay in presenting claims via habeas corpus petitions. (*In re Wells* (1967) 67 Cal.2d 873, 875; *In re Shipp* (1965) 62 Cal.2d 547, 553; *In re Swain* (1949) 34 Cal.2d 300, 304.) Indeed, in *In re Clark, supra*, this Court recognized the significance of its prior decisions in *In re Stankewitz* (1985) 40 Cal.3d 391, and *People v. Jackson* (1973) 10 Cal.3d 265, by noting:

"Even before June 1989 [the date this Court issued policies governing timeliness of capital petitions], a habeas corpus petitioner who had knowledge that grounds for a habeas corpus petition existed was on notice that any substantial delay in filing a petition after the grounds became known had to be justified." (*In re Clark, supra*, 5 Cal.4th at p. 782, citing *In re Stankewitz, supra*, 40 Cal.3d at p. 396, fn. 1 and *People v. Jackson, supra*, 10 Cal.3d at p. 268.)

In June, 1989, this Court published timeliness standards for habeas corpus petitions filed in capital cases. (See Supreme Court Policies Regarding Cases Arising From Judgments of Death, Policy 3 [hereinafter "Policies"], stds. 1-1.1 to 1-3.) A petitioner's failure to comply with the timeliness policies permits this Court to deny the petition as untimely. (Policies, std. 1-3.)

The Policies impose an express obligation on counsel representing appellants in capital cases to investigate possible bases for habeas corpus. (Policies, std. 1-1.)

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successive petition bar to cases where the prior habeas corpus petitions were filed prior to the decision in *In re Clark*. (*In re Robbins* (1998) 18 Cal.4th 770, 788, fn. 9.) Petitioner's prior habeas petition predates *Clark*, and respondent therefore will not assert a successive petition bar.

"This duty requires that counsel (i) conduct a follow-up investigation concerning specific triggering facts that come to counsel's attention in the course of, among other things, reviewing the reporter's and clerk's transcripts, reviewing trial counsel's existing files, preparing or reviewing the appellate briefs, and interviewing the client or trial counsel, and (ii) timely present to this court any resulting potentially meritorious habeas corpus claims. Counsel is not expected to conduct an unfocused investigation grounded on mere speculation or hunch, without any basis in triggering fact." (*In re Robbins, supra*, 18 Cal.4th at p. 781.)

The Policies also provide that a habeas petition filed in a capital case is presumptively timely if it is filed within 90 days of the final due date for the reply brief on the direct appeal. (Policies, std. 1-1.1.) A habeas petition filed more than 90 days after the reply brief is due, however, is not entitled to such a presumption. (*In re Robbins, supra*, 18 Cal.4th at p. 780.)

"In such a case, to avoid the bar of untimeliness with respect to each claim, the petitioner has the burden of establishing (i) absence of substantial delay, (ii) good cause for the delay, or (iii) that the claim falls within an exception to the bar of untimeliness.

"Substantial delay is measured from the time the petitioner or his or her counsel knew, or reasonably should have known, of the information offered in support of the claim and the legal basis for the claim. A petitioner must allege, with specificity, facts showing when information offered in support of the claim was obtained, and that the information neither

was known, nor reasonably should have been known at any earlier time.<sup>[4/]</sup> It is not sufficient simply to allege in general terms that the claim recently was discovered, to assert that second or successive postconviction counsel could not reasonably have discovered the information earlier, or to produce a declaration from present or former counsel to that general effect. A petitioner bears the burden of establishing, through his or her specific allegations, which may be supported by any relevant exhibits, the absence of substantial delay." (*People v. Robbins, supra*, 18 Cal.4th at p. 780.)

**B. Justification For Delayed Petitions**

If there exists substantial delay in presentation of a claim, or of part of a claim, it will nevertheless be considered on the merits if petitioner can demonstrate good cause for the delay. (*Id.*, at p. 780.)

"Good cause for substantial delay may be established if, for example, the petitioner can demonstrate that because he or she was conducting an ongoing investigation into at least one potentially meritorious claim, the petitioner delayed presentation of one or more other known claims in order to avoid the piecemeal presentation of claims, but good cause is not established by prior counsel's asserted uncertainty about

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4. Such information should be "clearly present *in the petition*." (*In re Robbins, supra*, 18 Cal.4th at p. 799, fn. 21, emphasis in original.) Moreover, petitioner should attach declarations to support the absence of substantial delay. (*Id.*, at p. 795, fn. 16.) The instant petition contains no declarations in support of the absence of substantial delay.