IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN RE STEVE ALLEN CHAMPION PETITIONER, ON HABEAS CORPUS.	)	No. S065575 (Related Appeal: *People* v. *Champion*, Crim. No. 22955.)

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By Appointment of the
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1. Packet of investigative correspondence and reports
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3. Supplemental Declaration of Nell Riley, PH. D

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TRAVERSE

In this verified Traverse, petitioner Steve Allen Champion, responds to respondent's Return to the Order to Show Cause which was filed pursuant to this Court's order of February 20, 2002. Petitioner admits, denies and specifically alleges as follows:

I.

As to Paragraph I of the Return, petitioner denies that petitioner Steve Allen Champion is properly in the custody of the Warden of the California State Prison at San Quentin. He admits that he is presently confined on death row and condemned as a result of a sentence of death imposed in Los Angeles Superior Court case number A365075. (Return at p. 1.) Petitioner denies that the confinement and the sentence are lawful and pursuant to a valid judgment and conviction.

II.

In paragraph II of the Return, respondent denies the allegation in paragraph IX.C.1 of the Petition that trial counsel failed to provide effective assistance of counsel, and further denies "that counsel failed to recognize, investigate, or present evidence of any material that would have been of material benefit in obtaining a verdict of life." (Return at p. 2.) Petitioner disagrees, and realleges that counsel provided ineffective assistance in failing to recognize, investigate, and present an abundance of reasonably available evidence that would have been of material benefit in obtaining a life sentence, including, inter alia, the compelling social history and mental and emotional impairment evidence set forth in petitioner's claims IX.C and VII.H and the exhibits thereto, and evidence to disprove petitioner's involvement in other crime aggravators (the Taylor and Jefferson homicides) proffered by the prosecutor in support of a sentence of death, as set forth in petitioner's claims VI and VIII and the exhibits supporting those claims.

In paragraph II of the Return, in response to allegations in paragraph IX.C.1 of the Petition, respondent denies that Skyers' petitioner suffered, at the time of his trial, from any brain damage and that the Petition itself contains any shred of support for such a conclusion, that petitioner had any mental impairments, and that petitioner suffered from any emotional impairments that could have been offered to a reasonable jury in mitigation or excuse at the penalty phase of his trial." (Return at p. 1-2.) Petitioner disagrees based upon the ample support provided by the declarations of neuropsychologist, Dr. Nell Riley and psychiatrist, Dr. Roderick W. Pettis, and by a social history replete with both

symptoms and likely causes of brain damage and mental and emotional impairments that petitioner suffers from longstanding brain damage and emotional and mental impairments, all of which could have and should have been offered to his jury in mitigation of penalty. (See Petition claims IX.C and VII.H and the exhibits thereto.)

With the exception noted in the preceding paragraph, respondent does not deny and thereby admits the truth of the facts contained in paragraph IX.C.1. a.-e [1] and paragraphs IX.C.3 through IX.C.132.d.[2] of the petition.

Thus, except for the existence of brain damage and mental impairments and a disagreement as to whether petitioner's emotional impairments would be mitigating, respondent has admitted the accuracy of the entire factual history set forth in the petition and supporting exhibits.

III.

In paragraphs III and IV of the Return, respondent denies that trial counsel acted in any unreasonable manner in deciding which evidence to submit in mitigation, that trial counsel had no tactical reason for trying the case in the manner it was tried and further denies that petitioner's death sentence was due to the manner in which the case was tried by trial counsel. (Return at p. 2.) Petitioner realleges that trial counsel failed to recognize, investigate, and present evidence that would have been of material benefit in

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[1] Petition at pp. 155-156.

[2] Petition at pp. 156-217.

obtaining a verdict of life imprisonment, that the petition contains legally sufficient support for such a conclusion that a reasonably competent attorney would have offered all of the information contained in the Petition and Informal Reply to a jury in mitigation, and that it is reasonably probably that but for trial counsel's unreasonable failure to recognize, investigate and present such evidence petitioner would not have been sentenced to death.

IV.

Petitioner realleges that trial counsel Ronald V. Skyers acted in an unreasonable and ineffective manner in deciding which evidence to submit in mitigation of the case and specifically realleges that trial counsel had not then and can not now offer any reasonable tactical basis for failing to adequately investigate, prepare and present a case for life as set forth in Claim IX.C of the Petition as outlined in paragraphs IX.C 1 and IX.C, 132a. through 132d. incorporated in this Traverse.

Further, trial counsel, because of his failure to conduct an adequate investigation, was simply unaware of much of the available evidence set forth in petitioner's claim IX.C, claim VII.H -- petitioner's brain damage and cognitive deficits -- and claims VI and VIII -- other crime penalty phase aggravators -- and in fact made no decision, tactical or otherwise, to not present it.

V.

Petitioner realleges that there is a reasonable possibility that trial counsel's failure to present the jury with sufficient information about petitioner's life and sufficient

explanation of the effects of petitioner's experiences precluded a sentence of life without the possibility of parole and that but for said failure, petitioner would not have been sentenced to death.

VI.

As to Paragraph V of the return, petitioner denies respondent's specific allegation "that at the time trial counsel tried the case, trial counsel performed all duties within the reasonable range of competence of attorneys practicing in the field in that day and age and performed, or his predecessor counsel had performed, all necessary investigation and preparation to try the case." (Return at p. 2.) Petitioner further denies the allegation that no circumstances or events were presented to trial counsel that would have suggested that he perform more investigation than he did or that suggested that he investigate any different area than he did. (Return at p. 2.)

As counsel in a capital case, Mr. Skyers clearly had an "obligation to conduct a thorough investigation of the defendant's background" (*Williams v. Taylor* (2000) 529 U.S. 362, 396, 120 S.Ct. 1495, 1515, citing 1 ABA Standards for Criminal Justice 4-4.1, commentary, p.4-55 (2d ed. 1980)), and yet he limited his efforts to an approach that he knew, or reasonably should have known, would likely leave potentially important information undiscovered. Further, he was certainly on notice that the prosecution intended to proffer the Taylor and Jefferson homicides as penalty phase factors in aggravation, and yet conducted no investigation at all concerning available evidence to show that his client was not involved in these offenses.

Insofar as respondent, by asserting that trial counsel performed all duties within the reasonable range of competence of attorneys practicing in the field *in that day and age,* implies that a lesser standard of care governed the performance of counsel in capital cases at the time of petitioner's trial, petitioner denies that such a lesser standard existed, and further denies that counsel's deficient penalty phase investigation could be deemed adequate under any applicable standard.

VII.

Petitioner incorporates by reference all of the allegations in his Petition and his Informal Reply, the exhibits filed in support of those pleadings, the exhibits filed in support of this Traverse and all factual allegations and argument in the attached Memorandum of Points and Authorities.

VIII.

Respondent relies upon, and attaches as Appendix A to its Return, another declaration by petitioner's trial counsel, Ronald V. Skyers.[3] (Appendix A at pp. 1-43.)[4] The Return declaration contains a number of factual allegations that petitioner denies and/or counters as follows. Some will also be further addressed in the attached memorandum of points and authorities.

As to paragraph 4 of Mr. Skyers' Return declaration, petitioner denies that "Homer

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[3] Mr. Skyers previously signed a declaration submitted as Exhibit 42 to the petition.

[4] Appendix A at pp. 1-43 is referred to as "AA."

Mason had taken the case through preliminary examination." (AA at p. 2.)

As to paragraph 5 of Mr. Skyers' Return declaration, petitioner denies the assertions that suggest that Homer Mason sent petitioner to Dr. Pollack with "the mandate that Dr. Pollock conduct a full evaluation of [petitioner] for the purposes of trial." (AA at p. 3.) The referral questions (which initially appeared in Mr. Mason's request for appointment of an expert and reappear in Dr. Pollack's letter to Mr. Skyers CT: 397-399, 578-580; Informal Reply Exhibit 5), all focused on the availability of a mental defense to the charges i.e., insanity, diminished capacity, unconsciousness, and made no mention of possible penalty phase mitigation. Further, neither Mr. Mason nor Mr. Skyers provided Dr. Pollack with any of the available social history facts or documents that would have alerted Dr. Pollack to the possible need for further inquiry and testing had the issue of mitigation been proffered. Mr. Skyers advised Dr. Pollock, that he (Skyers) believed that the matter "was 'very likely' a case of mistaken identification" and that "he had requested the psychiatric evaluation 'to cover all bases.'" (Informal Reply Exhibit 5 p. 3.) In short, no one ever requested, or provided the basis for a full mental health evaluation for purposes of trial.

As to paragraphs 6-9, 19-20, 23 and 65-66 of the Return declaration, petitioner denies that Mr. Skyers had "extensive" conversations with petitioner's family, especially Mr. Champion's mom, and that he spoke on several occasions with "his two brothers and two sisters." Petitioner denies that Mr. Skyers met on "more than 15 occasions" discussed the case with relatives and/or that Mr. Skyers had "10 to 15 meetings with Mr.

Champion or his family." (AA at p. 3-5, 9-11, 39-40.)

Lewis B. Champion II, Steve's father and Azell Gathright, Steve's mother had five children together, Lewis III, Reginald, Linda, Rita and Steve. (Penalty Phase Exhibit 5.) Azell had three other children, Terri, Traci, and Gerald. (Penalty Phase Exhibit 13.) Thus, Steve had 2 parents, 3 brothers and 4 sisters. None of Steve's siblings speak to "extensive" conversations with Mr. Skyers. As discussed below, in all but a few instances, the meetings were chance meetings which took place in a parking lot, or elevator, or while court was in session. Moreover, as admitted by Mr. Skyers, the focus of any conversation was for the establishment of an alibi for Steve. Only Steve's mother and Reggie were interviewed by an investigator. (Traverse Exhibit 1.) Steve's father, aunts, uncles, cousins, neighbors and teachers were available, willing to talk and never contacted. Without exception, no family member was asked for information regarding family history, Steve's childhood, family, school, or community in which he lived.

Mr. Skyers admits that he never probed for negative facets of Steve's life and development, he never explained to the family members he spoke to why this type of information might be important or helpful, and never sought out sources of information such as other witness [5] and documentary evidence – despite his admitted awareness that family members might be hesitant to reveal negative and/or embarrassing history and

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[5] Various additional relatives, teachers, and neighbors were easily locatable and willing to talk to Mr. Skyers about Steve's parents, siblings, community and childhood. (See for example Petition Penalty Phase Exhibits 2, 3, 4, 12, 14, 17, 19, 22, 23, and 24.)