United States District Court
District of South Dakota
Office of the Clerk
Room 128, Federal Building & U.S. Courthouse
400 South Phillips Avenue
Sioux Falls, South Dakota 57104

Matthew W. Thelen
Clerk of Court

Telephone
605.330.6600

July 6, 2020

Roger Allen Raymond
16601
State Penitentiary
P.O. Box 5911
Sioux Falls, SD 57117-5911

Dear Mr. Raymond:

I have reviewed your correspondence dated June 19, 2020. I have also reviewed the case files you have filed in this District.

After reviewing the files, I have concluded that your district court cases are closed. Your correspondence seems to be related to your petition for a writ of certiorari filed with the Supreme Court of the United States. When you file documents with the Supreme Court of the United States you do not need to file copies with the District of South Dakota. So, I am returning your correspondence to you.

You should consult the Federal Civil Judicial Procedure and Rules and the Federal Criminal Code and Rules for any future relief you intend to seek from United States District Court.

Sincerely,

Matthew W. Thelen
Clerk of Court

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District of South Dakota
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You should consult the Federal Civil Judicial Procedure and Rules and the Federal Criminal Code and Rules for any future relief you intend to seek from United States District Court.

Sincerely,

Matthew W. Thelen
Clerk of Court

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

VOICE (314) 244-2400
FAX (314) 244-2780
www.ca8.uscourts.gov

February 10, 2020

Mr. Roger Allen Raymond
SOUTH DAKOTA DEPARTMENT OF CORRECTIONS
10601
1600 North Drive
P.O. Box 5911
Sioux Falls, SD 57117-0911

RE: 20-1283 In re: Roger Allen Raymond

Dear Mr. Raymond:

A petition for writ of mandamus has been filed under the above-referenced number. However, the matter cannot be referred to the court for a ruling on the merits because you have not paid the required $500.00 docketing fee. You must either pay the docketing fee with a check made payable to "Clerk of the United States Court of Appeals for the Eighth Circuit," or file a motion seeking permission to proceed in forma pauperis in this court. Enclosed is an application form for your convenience.

Please note, failure to either pay the fee or file a motion to proceed in forma pauperis on or before March 2, 2020 may result in dismissal of your case.

Upon resolution of the fee, the petition will be submitted to a panel of judges for review. You will be advised of any action taken by the court as soon as possible.

Please note that service by pro se parties is governed by the Eighth Circuit Rule 25B. A copy of the rule and additional information is attached to the pro se party's copy of this notice.

Michael E. Gans
Clerk of Court

CYZ

Enclosures

cc: Mr. Matthew W. Thelen

District Court/Agency Case Number(s): 1:99-cv-01041-CBK

Eighth Circuit Court of Appeals

PRO SE Notice of Docket Activity

The following was filed on 04/15/2020

Case Name: In re: Roger Allen Raymond
Case Number: 20-1283

Docket Text:
DOCUMENT FILED - Post judgment motions filed by Mr. Roger Allen Raymond. w/service by USCA8 04/16/2020 [4903504] [20-1283] No action is taken as petition for rehearing is pending.

The following document(s) are associated with this transaction:
Document Description: Document

Notice will be mailed to:

Mr. Roger Allen Raymond
SOUTH DAKOTA DEPARTMENT OF CORRECTIONS
10601
1600 North Drive
P.O. Box 5911
Sioux Falls, SD 57117-0911

Notice will be electronically mailed to:

Honorable Charles B. Kornmann: Barb_Paepke@sdd.uscourts.gov
Mr. Matthew W. Thelen: coadocs@sdd.uscourts.gov

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

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FAX (314) 244-2780
www.ca8.uscourts.gov

January 09, 2019

Ms. Sherri Sundem Wald
ATTORNEY GENERAL'S OFFICE
Suite 1
1302 E. Highway 14
Pierre, SD 57501-8501

RE: 19-1057 Roger Raymond v. Douglas Weber, et al

Dear Counsel:

An application for permission to file a successive habeas has been filed and assigned the caption and case number shown above. A copy of the application is attached.

Your response to the application is due within fourteen days of your receipt of this letter. Please serve a copy of your response on petitioner. Further information about the court's procedures in successive habeas proceedings is contained in Eighth Circuit Rule 22B "Second or Successive Habeas Corpus and Section 2255 Proceedings."

Upon receipt of your response, the matter will be referred to the court for a ruling.

Counsel in the case must supply the clerk with an Appearance Form. Counsel may download or fill out an Appearance Form on the "Forms" page on our web site at www.ca8.uscourts.gov.

On June 1, 2007, the Eighth Circuit implemented the appellate version of CM/ECF. Electronic filing is now mandatory for attorneys and voluntary for pro se litigants proceeding without an attorney. Information about electronic filing can be found at the court's web site www.ca8.uscourts.gov. In order to become an authorized Eighth Circuit filer, you must register with the PACER Service Center at https://www.pacer.gov/psco/cgi-bin/cmecf/ea-regform.pl. Questions about CM/ECF may be addressed to the Clerk's office.

Caption For Case Number: 19-1057

Roger Allen Raymond

Petitioner

v.

Marty Jackley, Attorney General of South Dakota; Douglas Weber, Warden, South Dakota State Penitentiary

Respondents

19-1057 Roger Raymond v. Douglas Weber, et al

Eighth Circuit Court of Appeals

PRO SE Notice of Docket Activity

The following was filed on 01/09/2019

Case Name: Roger Raymond v. Douglas Weber, et al
Case Number: 19-1057

Docket Text:
PETITION for Permission to file a Successive Habeas Petition (Rec'd by MAIL) filed by Petitioner Mr. Roger Allen Raymond w/service 12/18/2018 [4743890] [19-1057]

The following document(s) are associated with this transaction:
Document Description: Motion to Vacate w/filing letter
Document Description: Docs in support (1)
Document Description: Docs in support (2)
Document Description: Docs in support (3)

Notice will be mailed to:

Mr. Roger Allen Raymond #10601
SOUTH DAKOTA DEPARTMENT OF CORRECTIONS
1600 North Drive
P.O. Box 5911
Sioux Falls, SD 57117-0911

Notice will be electronically mailed to:

Ms. Sherri Sundem Wald: sherri.wald@state.sd.us,
janet.waldron@state.sd.us,Rebecca.Ridings@state.sd.us

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

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www.ca8.uscourts.gov

January 17, 2019

Mr. Roger Allen Raymond
SOUTH DAKOTA DEPARTMENT OF CORRECTIONS
10601
1600 North Drive
P.O. Box 5911
Sioux Falls, SD 57117-0911

Ms. Sherri Sundem Wald
ATTORNEY GENERAL'S OFFICE
Suite 1
1302 E. Highway 14
Pierre, SD 57501-8501

RE: 19-1057 Roger Raymond v. Darin Young, et al

Dear Mr. Raymond and Ms. Wald:

Enclosed please find a corrected caption for the above-referenced case. Please use the enclosed caption on any subsequent communications with our court. Thank you.

Michael E. Gans
Clerk of Court

MMH

Enclosure(s)

cc: Mr. Matthew W. Thelen

District Court/Agency Case Number(s): 1:99-cv-01041-CBK

Addresses For Case Participants: 19-1057

Ms. Sherri Sundem Wald
ATTORNEY GENERAL'S OFFICE
Suite 1
1302 E. Highway 14
Pierre, SD 57501-8501

Mr. Roger Allen Raymond #10601
SOUTH DAKOTA DEPARTMENT OF CORRECTIONS
1600 North Drive
P.O. Box 5911
Sioux Falls, SD 57117-0911

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
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Michael E. Gans
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VOICE (314) 244-2400
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January 17, 2019

Mr. Roger Allen Raymond
SOUTH DAKOTA DEPARTMENT OF CORRECTIONS
10601
1600 North Drive
P.O. Box 5911
Sioux Falls, SD 57117-0911

Ms. Sherri Sundem Wald
ATTORNEY GENERAL'S OFFICE
Suite 1
1302 E. Highway 14
Pierre, SD 57501-8501

RE: 19-1057 Roger Raymond v. Darin Young, et al

Dear Mr. Raymond and Ms. Wald:

Enclosed please find a corrected caption for the above-referenced case. Please use the enclosed caption on any subsequent communications with our court. Thank you.

Michael E. Gans
Clerk of Court

MMH

Enclosure(s)

cc: Mr. Matthew W. Thelen

District Court/Agency Case Number(s): 1:99-cv-01041-CBK

Caption For Case Number: 19-1057

January 17, 2019

District Court/Agency Case Number(s): 1:99-cv-01041-CBK

Roger Allen Raymond

Petitioner

v.

Marty Jackley, Attorney General of South Dakota; Darin Young, Warden, South Dakota State Penitentiary

Respondents

Eighth Circuit Court of Appeals

PRO SE Notice of Docket Activity

The following was filed on 02/27/2019

Case Name: Roger Raymond v. Marty Jackley, et al
Case Number: 19-1057

Docket Text:
DOCUMENT FILED - Handwritten document(s) from Petitioner in support of appeal filed by Mr. Roger Allen Raymond. w/service 02/27/2019 [4760721] [19-1057]

The following document(s) are associated with this transaction:
Document Description: Documents in Support

Notice will be mailed to:

Mr. Roger Allen Raymond
SOUTH DAKOTA DEPARTMENT OF CORRECTIONS
10601
1600 North Drive
P.O. Box 5911
Sioux Falls, SD 57117-0911

Notice will be electronically mailed to:

Mr. Matthew W. Thelen: coadocs@sdd.uscourts.gov
Ms. Sherri Sundem Wald: sherri.wald@state.sd.us,
janet.waldron@state.sd.us,Rebecca.Ridings@state.sd.us

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
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St. Louis, Missouri 63102

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May 15, 2019

Mr. Roger Allen Raymond
SOUTH DAKOTA DEPARTMENT OF CORRECTIONS
10601
1600 North Drive
P.O. Box 5911
Sioux Falls, SD 57117-0911

RE: 19-1057 Roger Raymond v. Marty Jackley, et al

Dear Mr. Raymond:

Enclosed is a dispositive order entered today at the direction of the court.

Pursuant to Section 106 of the Antiterrorism and Effective Death Penalty Act of 1996, the grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

Michael E. Gans
Clerk of Court

MDS

Enclosure(s)

cc: Mr. Matthew W. Thelen
Ms. Sherri Sundem Wald

District Court/Agency Case Number(s): 1:99-cv-01041-CBK

19-1057 Roger Raymond v. Marty Jackley, et al

Eighth Circuit Court of Appeals

PRO SE Notice of Docket Activity

The following was filed on 02/27/2019

Case Name: Roger Raymond v. Marty Jackley, et al
Case Number: 19-1057

Docket Text:
DOCUMENT FILED - Handwritten document(s) from Petitioner in support of appeal filed by Mr. Roger Allen Raymond. w/service 02/27/2019 [4760721] [19-1057]

The following document(s) are associated with this transaction:
Document Description: Documents in Support

Notice will be mailed to:

Mr. Roger Allen Raymond
SOUTH DAKOTA DEPARTMENT OF CORRECTIONS
10601
1600 North Drive
P.O. Box 5911
Sioux Falls, SD 57117-0911

Notice will be electronically mailed to:

Mr. Matthew W. Thelen: coadocs@sdd.uscourts.gov
Ms. Sherri Sundem Wald: sherri.wald@state.sd.us,
janet.waldron@state.sd.us,Rebecca.Ridings@state.sd.us

United States Court of Appeals
For The Eighth Circuit
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St. Louis, Missouri 63102

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May 15, 2019

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10601
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Sioux Falls, SD 57117-0911

RE: 19-1057 Roger Raymond v. Marty Jackley, et al

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Michael E. Gans
Clerk of Court

MDS

Enclosure(s)

cc: Mr. Matthew W. Thelen
Ms. Sherri Sundem Wald

District Court/Agency Case Number(s): 1:99-cv-01041-CBK

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 19-1057

Roger Allen Raymond

Petitioner

v.

Marty Jackley, Attorney General of South Dakota; Darin Young, Warden, South Dakota State Penitentiary

Respondents

Appeal from U.S. District Court for the District of South Dakota - Aberdeen
(1:99-cv-01041-CBK)

JUDGMENT

Before SHEPHERD, WOLLMAN, and STRAS, Circuit Judges.

The petition for authorization to file a successive habeas application in the district court is denied. Mandate shall issue forthwith.

The motion to vacate the judgment is also denied.

May 15, 2019

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 19-1057

Roger Allen Raymond

Petitioner

v.

Marty Jackley, Attorney General of South Dakota

Respondent

Darin Young, Warden, South Dakota State Penitentiary

Appellee

Appeal from U.S. District Court for the District of South Dakota - Aberdeen
(1:99-cv-01041-CBK)

MANDATE

In accordance with the judgment of 05/15/2019, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

May 15, 2019

Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

ROGER RAYMOND, Petitioner, v. DARIN YOUNG, et al, Respondent.	)	No. 19-1057 RESPONSE TO APPLICATION FOR PERMISSION TO FILE SUCCESSIVE HABEAS PETITION

COMES NOW, Respondents, by and through their attorney, Deputy South Dakota Attorney General Sherri Sundem Wald, and file this response to Petitioner's eighth application for permission to file a successive petition.

In conformance with Eighth Circuit Rule 22B, pertinent documents from Petitioner's first federal habeas action include *Roger Allen Raymond v. Douglas Weber*, United States District Court, District of South Dakota (Northern Division), Civ. 99-1041; 2008 WL 649175 (D.S.D.) *Roger Raymond v. Douglas Weber*, 552 F.3d 680 (8th Cir. 2009), *cert. denied*, 130 S.Ct. 114.

Pertinent documents from Petitioner's previous requests to file a successive federal habeas petition include *Roger Raymond v. Douglas Weber, et al.*, Eighth Circuit Court of Appeal, Civ. Doc. 09-3612; *Roger Allen Raymond v. Weber, et al.*, Eighth Circuit Court of Appeals, Civ. Doc. 11-2035; *Roger Allen Raymond v. Weber et al.*, Eighth Circuit Court of Appeals, Civ. Doc. 11-1652; *Roger Allen Raymond v. State of South Dakota,* Civ. Doc. 13-3277; *Roger Allen Raymond v. State of South Dakota,* Eighth Circuit

Court of Appeals, Civ. Doc. 14-1334; *Roger Allen Raymond v. State of South Dakota, et al.,* Civ. Doc. 15-3971; and *Roger Allen Raymond v. Darin Young, et al.,* Eighth Circuit Court of Appeals, Civ. Doc. 17-1115. Reference to the Brown County Criminal File 94-018 is made by SR, followed by the appropriate page number.

ISSUE

WHETHER PETITIONER HAS MADE A PRIMA FACIE SHOWING THAT HE IS ENTITLED TO FILE A SUCCESSIVE PETITION?

BACKGROUND

On June 14, 1996, Petitioner was found guilty by a Brown County jury of one count of sexual contact with a child under sixteen. SR 536.

Petitioner's June 14, 1996, conviction was affirmed on direct appeal by the South Dakota Supreme Court on May 21, 1997. *State v. Raymond,* 1997 S.D. 59, 563 N.W.2d 823. Petitioner raised two issues: (1) whether Petitioner had knowingly and intelligently waived the right to counsel at trial; (2) whether his sentence constituted cruel and unusual punishment.

On June 4, 1997, Petitioner filed a petition for writ of habeas corpus under 28 U.S.C. § 2254, Civ. 97-1020, attacking his 1996 conviction. Petitioner raised two unexhausted claims and his petition was dismissed without prejudice. Doc. 19.

On March 2, 1998, Petitioner filed a second petition for writ of habeas corpus under 28 U.S.C. § 2254, Civ. 98-1010. Petitioner raised four issues alleging pre-indictment delay and prosecutorial misconduct. The petition

was dismissed without prejudice for failure to exhaust state court remedies. Doc. 5. In a memorandum dated March 21, 1998, the court referred the petition to the presiding judge of the Fifth Judicial Circuit of South Dakota.

On August 3, 1999, Petitioner submitted a letter to the Honorable Eugene Dobberpuhl, Presiding Judge, Fifth Judicial Circuit, State of South Dakota, setting forth various complaints. The letter was filed in Brown County Crim. File 94-018. The State record suggests that little activity in the nature of post-conviction proceedings took place on Petitioner's behalf in state court.

On September 30, 1999, Petitioner filed another petition for writ of habeas corpus in federal district court. Petitioner raised the same issues as presented in his 1998 petition. The petition was initially dismissed without prejudice pending exhaustion of state remedies. Doc. 3. Petitioner appealed and his appeal was dismissed. Petitioner continued to seek relief from the federal district court. On November 1, 2001, the district court directed Petitioner to file an amended Petition for Writ of Habeas Corpus in federal district court, finding Petitioner's attempt to file a state habeas petition "futile." Doc. 26. The court appointed counsel for Petitioner and on September 22, 2003, a second amended petition for writ of habeas corpus was filed on Petitioner's behalf. Doc. 38. Respondents filed a motion to dismiss (Doc. 40) which was denied. Doc. 43. Respondents subsequently filed an answer. Doc. 45.

On May 11, 2007, Petitioner filed a Motion for Summary Judgment, along with a Brief in Support thereof (Doc. 47) and a statement of undisputed material facts (Doc. 50). Petitioner raised the following seven issues:

1. Whether Petitioner was denied his Sixth Amendment right to counsel at his competency hearing.

2. Whether Petitioner's sentence violates the Eighth Amendment.

3. Whether Petitioner was denied his Sixth Amendment right to effective assistance of counsel at trial.

4. Whether Petitioner was denied his Sixth Amendment right to counsel at his sentencing hearing.

5. Whether the trial court's denial of Petitioner's motion for a continuance at the sentencing hearing violated Petitioner's due process rights.

6. Whether the State's eliciting of testimony regarding Petitioner's prior conviction violated Petitioner's due process rights under the Fourteenth Amendment.

7. Whether the State introduced impermissible "vouching" testimony in violation of the Petitioner's due process rights under the Fourteenth Amendment.

On March 10, 2008, the district court filed a Memorandum Opinion and Order denying Petitioner habeas relief. *Raymond v. Weber,* Civ. 99-1041. The district court held that the petition failed on its merits. Petitioner requested a certificate of appealability (Doc. 69), and the district court issued a certificate on three issues.

1. Whether a competency hearing is a critical stage in the criminal proceedings entitling a Petitioner to the assistance of counsel under the Sixth Amendment.

2. Whether the Petitioner was constructively denied counsel at the competency hearing in violation of the Sixth Amendment within the rubic of *U.S. v. Crouic,* 466 U.S. 648 (1984).

3. Whether the alleged violation of the Petitioner's Sixth Amendment rights was a "structural defect" within the meaning of *U.S. v. Gonzales-Lopez*, 548 U.S. 140 (2006).

On January 12, 2009, this Court denied relief to Petitioner on each of his claims. *Raymond v. Weber*, 552 F.3d 680 (8th Cir. 2009). Petitioner's request for rehearing and rehearing en banc was denied, as was his Petition for Writ of Certiorari.

On February 17, 2010, judgment was entered denying Petitioner's application for successive petition. *Roger Raymond v. Douglas Weber, et al.*, Eighth Circuit Court of Appeals, Civ. 09-3612.

On February 15, 2011, Petitioner Raymond filed a second application for habeas relief in federal district court. *Roger Allen Raymond v. Weber, et al.*, Civ. 11-1006. The district court denied the petition. Petitioner Raymond sought permission from this Court to file a successive petition.

On April 26, 2011, this Court issued Judgment denying Raymond's petition for authorization to file a successive petition in district court. A formal mandate in accordance with the judgment was entered that same date. Eighth Circuit Court of Appeals, Civ. Doc. 11-1652. Petitioner filed a motion to recall mandate and vacate judgment on June 2, 2011.

On May 12, 2011, Raymond filed another petition seeking permission to file a successive petition. *Roger Allen Raymond v. Douglas Weber, et al.*, Eighth Circuit Court of Appeals, Civ. Doc. 11-2035. An order denying Raymond's motion was entered by the Court on June 2, 2011. Judgment

denying Petitioner Raymond's request for authorization to file a successive habeas application in district court was denied on June 3, 2011, with a formal mandate filed that same day.

Petitioner filed an application seeking permission to file another successive petition on October 16, 2013. On October 17, 2013, this Court ordered a response. *Roger Allen Raymond v. State of South Dakota, et al.*, Eighth Circuit Court of Appeals, Civ. Doc. 13-3277. On January 30, 2014, this Court entered Judgment denying Raymond's request to file a successive habeas application in district court. The formal mandate was issued that same day.

Petitioner filed another application seeking permission to file a successive habeas petition on February 14, 2014. *Roger Allen Raymond v. State of South Dakota, et al.,* Eighth Circuit Court of Appeals, Civ. Doc. 14-1334. Respondents filed a response on February 24, 2014. On April 25, 2014, Judgment was filed denying Raymond's request to file a successive habeas petition in district court. The formal mandate was issued that same day.

Petitioner filed another request to file a successive habeas petition on January 20, 2016. *Roger Allen Raymond v. State of South Dakota,* Eighth Cir. Court of Appeals, Civ. Doc. 15-3971. Judgment denying Raymond's request to file a successive habeas petition in district court was denied on June 6, 2016. The formal mandate issued the same date.

Petitioner filed another application seeking permission to file a successive habeas petition in federal court. *Roger Allen Raymond v. Darin Young,* Eighth Circuit Court of Appeals, Civ. Doc. 17-1115. Pursuant to the clerk's letter, Respondent files a response. On July 7, 2017, Judgment was entered denying Raymond's request to file a successive petition. The formal mandate was issued that same day.

Petitioner has now filed another application seeking permission to file a successive habeas petition in federal court. Pursuant to the clerk's January 9, 2019 letter, Respondent files this response.

ARGUMENT

PETITIONER FAILS TO MAKE A PRIMA FACIE SHOWING THAT HE IS ENTITLED TO FILE A SUCCESSIVE PETITION.

It is clear that a court of appeals may authorize a claimant to file a successive federal habeas petition, but only if the petitioner makes a "prima facie showing that the application satisfies the requirements of 28 U.S.C. § 2244(b)." *Roberts v. Bowersox*, 170 F.3d 815, 815 (8th Cir. 1999); *see* 28 U.S.C. § 2244(b)(3)(C). Under § 2244(b)(1), any claim presented in a second habeas petition that was already presented in a prior application shall be dismissed. Under § 2244(b)(2), claims presented in a successive habeas petition that were *not* presented in the earlier application

> "shall be dismissed" unless they rely on a new, retroactive, previously unavailable rule of constitutional law, or unless their factual predicate could not have been discovered previously through the exercise of due diligence and, if proved, they would establish petitioner's innocence. This is a more restrictive

> standard than the cause and prejudice/actual innocence standard for excusing abuse of the writ under prior law.

Vancleave v. Norris, 150 F.3d 926, 929 (8th Cir. 1998); *see* 28 U.S.C. § 2244(b)(2).

Petitioner Raymond's current claims should be dismissed because Petitioner fails to meet one of the statutory exceptions in § 2244(b)(2).

Petitioner does not rely on a new, retroactive, previously unavailable rule of constitutional law. Thus, the only possible exception that could apply to his claims is found in subsection (2)(B), *i.e.* that the factual predicate for these claims could not have been discovered at the time the first federal habeas petition was filed. Petitioner's application fails to show that he satisfied the requirements of this exception. Petitioner was undoubtedly aware of any factual predicate for these claims at the time he filed his second amended federal habeas petition and chose not to pursue them.

As to each of Petitioners claims, he fails to meet one of the exceptions to dismissal under § 2244(b)(2). Because Petitioner's request for permission to file a successive habeas petition does meet any of the statutory exceptions, this Court should deny his application. *Roberts,* 170 F.3d at 816; *Vancleave,* 150 F.3d at 929.

CONCLUSION

Petitioner already had a full and fair opportunity to present his habeas corpus claims in the first federal habeas action. There must be

finality to collateral attacks upon a conviction. Because Petitioner has not demonstrated he meets any of the statutory exceptions justifying authorization to file a successive petition, his request should be denied.

Dated this 16th day of January 2019.

/s/ Sherri Sundem Wald
Sherri Sundem Wald
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Telephone: (605) 773-3215

CERTIFICATE OF COMPLIANCE

1. I certify that this document contains 1,849 words.

2. I certify that the word processing software used to prepare this document is Microsoft Word 2016, and it is herewith submitted in PDF format.

3. I certify that the document submitted herein has been scanned for viruses and that the document is, to the best of my knowledge and belief, virus free.

Dated this 16th day of January 2019.

/s/ Sherri Sundem Wald
Sherri Sundem Wald
Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing documents by first-class mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three calendar days, to the following non-CM/ECF participants:

Roger Allen Raymond #31681
South Dakota State Penitentiary
P.O. Box 5911
Sioux Falls, SD 57117-5911

/s/ Sherri Sundem Wald
Sherri Sundem Wald

usca_SSW_Roger Raymond v. State – Response3 (br)

Eighth Circuit Court of Appeals

PRO SE Notice of Docket Activity

The following was filed on 05/01/2019

Case Name: Roger Raymond v. Marty Jackley, et al
Case Number: 19-1057

Docket Text:
DOCUMENT FILED - Handwritten documents: Letter to clerk's office and "motion for summary judgment" filed by Mr. Roger Allen Raymond, w/service 04/16/2019 [4783263] [19-1057]

The following document(s) are associated with this transaction:
Document Description: handwritten letter to clerk
Document Description: doc entitled "motion for summary judgment"
Document Description: mailing env.

Notice will be mailed to:

Mr. Roger Allen Raymond #10601
SOUTH DAKOTA DEPARTMENT OF CORRECTIONS
1600 North Drive
P.O. Box 5911
Sioux Falls, SD 57117-0911

Notice will be electronically mailed to:

Mr. Matthew W. Thelen: coadocs@sdd.uscourts.gov
Ms. Sherri Sundem Wald: sherri.wald@state.sd.us,
janet.waldron@state.sd.us,Rebecca.Ridings@state.sd.us

19-1057 Roger Raymond v. Marty Jackley, et al

Eighth Circuit Court of Appeals

PRO SE Notice of Docket Activity

The following was filed on 06/03/2019

Case Name: Roger Raymond v. Marty Jackley, et al
Case Number: 19-1057

Docket Text:
MOTION to stay the mandate, filed by Petitioner Mr. Roger Allen Raymond w/service by USCA8 06/07/2019. [4795561] [19-1057]

The following document(s) are associated with this transaction:
Document Description: Motion to Stay the Mandate
Document Description: Attachments

Notice will be mailed to:

Mr. Roger Allen Raymond
SOUTH DAKOTA DEPARTMENT OF CORRECTIONS
10601
1600 North Drive
P.O. Box 5911
Sioux Falls, SD 57117-0911

Notice will be electronically mailed to:

Ms. Sherri Sundem Wald: sherri.wald@state.sd.us,
janet.waldron@state.sd.us,Rebecca.Ridings@state.sd.us

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 19-1057

Roger Allen Raymond

Petitioner

v.

Marty Jackley, Attorney General of South Dakota

Respondent

Darin Young, Warden, South Dakota State Penitentiary

Appellee

Petition for permission to file a Successive Habeas Petition
(1:99-cv-01041-CBK)

ORDER

Petitioner's motion to stay the mandate is denied.

June 27, 2019

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

MEMORANDUM

UNITED STATES DISTRICT COURT

Date: July 21, 2003
To: Roger Raymond
Re: Raymond v. Weber, CIV 99-1041
From: Judge Kornmann

I have again received documents from you concerning your pending federal habeas matter. I have previously advised you on many occasions that you should not send further correspondence to me. SEND NO FURTHER DOCUMENTS TO EITHER THE CLERK OR TO ME AS TO THIS MATTER. Any documents required to be filed in this case on your behalf will be filed by your attorney.

Charles B. Kornmann

CHARLES B. KORNMANN
UNITED STATES DISTRICT JUDGE
United States Courthouse
102 Fourth Avenue SE, Suite 408
Aberdeen, SD 57402

cc: Clerk's file
Ronald A. Parsons, Jr. w/original of pro se amended petitions

UNITED STATES DISTRICT COURT
MEMORANDUM

From: Judge Kornmann
To: Roger Raymond
Re: Raymond v. Young
CIV 99-1041
Date: August 28, 2018

You sent to the Clerk of Courts for filing a motion to vacate the Eighth Circuit's judgment denying your petition to file a successive habeas petition, No. 17-1115, and to reopen the judgment issued by me in your district court habeas action, CIV 99-1041. You also sent a motion to proceed under Fed. R. Civ. P 60(b), seeking to attack your state court conviction. Finally, you sent a motion to proceed *in forma pauperis* and supporting documents.

You may only attack a state court criminal conviction by filing a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. You previously did so and your petition was denied. The Eighth Circuit has denied your request to file a second or successive petition for a writ of habeas corpus.

Your federal habeas case is closed and cannot be reopened. You may not attack your state court criminal conviction in federal court without the permission of the Eighth Circuit. You may not seek to set aside a decision of the Eighth Circuit by filing documents in the district court.

I am discarding your papers.

Charles B. Kornmann

CHARLES B. KORNMANN
UNITED STATES DISTRICT JUDGE
United States Courthouse
102 Fourth Avenue SE, Suite 408
Aberdeen, SD 57402

UNITED STATES DISTRICT COURT
MEMORANDUM

From: Judge Kornmann
To: Roger Raymond
Re: Raymond v. Young
CIV 99-1041
Date: October 24, 2018

You sent to the Clerk of Courts for filing a motion to vacate the judgment and to reopen the above case. I have repeatedly told you that your federal habeas case is closed and cannot be reopened. You may not attack your state court criminal conviction in federal court without the permission of the Eighth Circuit.

As in the past, I am discarding your papers. I will no longer devote judicial resources to reply to any further attempts to reopen this case or to attack your state court conviction unless the United States Court of Appeals for the Eighth Circuit gives you permission to proceed in the District Court. Any future letters and filings concerning your case or your state court conviction will be discarded without notice to you.

Charles B. Kornmann

CHARLES B. KORNMANN
UNITED STATES DISTRICT JUDGE
United States Courthouse
102 Fourth Avenue SE, Suite 408
Aberdeen, SD 57402

ATTORNEYS AT LAW

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January 31, 2003

LEGAL MAIL
Mr. Roger Raymond
South Dakota State Penitentiary
P.O. Box 5911
Sioux Falls, SD 57117-5911

RE: *Roger Raymond*

Dear Roger:

I have reviewed your trial transcript and files from your previous attorneys. As you know, the court will not allow us to file any claims based upon alleged errors that occurred in your first trial. This is because those errors would have been corrected and were made moot by the South Dakota Supreme Court's grant of a second trial to you. As a result, any claims that we file must be based on errors that occurred in your second trial. Any other claims would be frivolous, as the court made clear in its recent letter.

I do know, however, that it is important to you to make use of the concealment of evidence from you that occurred in conjunction with your first trial. When we met we talked about a claim for ineffective assistance of counsel that would be based upon the failure of the attorney associated with your case to inform you of this concealment of evidence and the full ramifications of the Supreme Court's decision. As we also discussed, this issue is greatly complicated by the fact that you waived your right to an attorney and insisted upon representing yourself at your second trial. I have carefully read the transcript and I cannot find anything to indicate that you were not made aware of the Supreme Court's decision and the evidence that was concealed.

I want to make sure that you are happy with all of the arguments that we file with the court in your petition. At the same time, I have a duty to ensure that the factual record is accurately portrayed to the court. This is what I am asking you to do:

Please write for me a factual description of how and when you were first made aware of the evidence that was concealed in your first trial. Were you aware of this evidence during your second trial? When was it first made available to you? Your answers to these questions will help me to decide how we can best frame the arguments in your petition. In your response to me, please do not make legal arguments or cite to any court cases. In this letter, I only want the facts.

I want to thank you for your continuing patience. I look forward to your prompt reply so that we can move forward with the filing of your petition. I look forward to hearing from you.

Very truly yours,

RAPARSONS

RONALD A. PARSONS, JR.
For the firm

RAP:lms

April 25 2005 - filed IN RE: to Parsons -
"unnecessary delay; irreparable injury is imminent.

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF BROWN)

FILED
APR 2. 1994
M. L KUHFELD
BROWN COUNTY CLERK OF COURT

IN CIRCUIT COURT
TH JUDICIAL CIRCUIT

* * * * * * * * * * * * * *

STATE OF SOUTH DAKOTA,

Plaintiff,

-vs-

ROGER RAYMOND,

Defendant.

CRIM. 94-018/34

MOTION FOR CONTINUANCE
AND NOTICE OF MOTION

* * * * * * * * * * * * * *

MOTION

~~COMES NOW, Roger~~ Raymond, by and through ~~his attorney, H. I.~~ King, and hereby requests that the arraignment regarding the indictment of Defendant, Roger Raymond, which has been set for Tuesday, April 26, 1994 at 1:00 o'clock p.m. be continued for the reason that said indictment is for a crime already charged. Further, said indictment may be violative of the Constitution of the United States and the laws of the State of South Dakota.

Dated this 26th day of April, 1994.

~~H. I. King~~
Attorney for Defendant
P. O. Box 1456
Aberdeen, SD 57402-1456

NOTICE OF MOTION

Please be advised that the above Motion will be heard before the Honorable David Gilbertson on the 26th day of April, 1994, beginning at 1:00 o'clock p.m. in the Courtroom of the Brown County Courthouse, Aberdeen, South Dakota.

Dated this 26th day of April, 1994.

~~H. I. King~~
Attorney for Defendant
P. O. Box 1456
Aberdeen, SD 57402-1456

TONNER, TOBIN
& KING
ATTORNEYS AT LAW
116 SOUTH LINCOLN
P O. BOX 1456
ABERDEEN. SOUTH DAKOTA
57402-1456

DEPARTMENT OF CORRECTIONS
STATE PENITENTIARY

P.O. Box 5911
Sioux Falls, South Dakota 57117-5911
(605) 367-5001 Fax (605) 367-5038

MEMORANDUM

DATE: September 23, 1997

TO: Unit Management Staff Members

FROM: Douglas L. Weber, Warden

RE: Closing of Law Libraries

Effective this date the law libraries at both the penitentiary and the Jameson Annex are permanently closed.

The attorney, Mr. Michael McGreevy, who the Department of Corrections contracts with for providing inmates with legal access to the courts will continue in his position, however, he will provide assistance only in two areas:

1. "Conditions of Confinement" lawsuits where inmates allege in their pleadings that an agent, employee, or other officer of the South Dakota Department of Corrections is holding the inmate-plaintiff under circumstances or conditions that violate rights under the U.S. Constitution or the South Dakota Constitution; and

2. "Pleadings" which include petitions for writs of habeas corpus directed to either a federal or South Dakota court, and complaints in civil suits to be brought in either a federal or South Dakota court, and shall encompass all writs regarding decisions of the South Dakota Board of Pardons and Paroles. The term "pleadings" shall also encompass all affidavits, motions, orders, or like documents usually considered necessary to bring legally effective pleadings before a court, e.g., the filing of motions to proceed In Forma Pauperis for indigent inmates.

EXHIBIT A

June 4 1997. I filed civ - same suit, You Know. STATE Law violators - Illegally Restraining by Force -

198
443

ATTACHMENT 1

Westlaw.

563 N.W.2d 823
563 N.W.2d 823, 1997 SD 59
(Cite as: 563 N.W.2d 823, 1997 SD 59)

Supreme Court of South Dakota.

STATE of South Dakota, Plaintiff and Appellee,
v.
Roger Allen RAYMOND, Defendant and Appellant.

No. 19710.

Considered on Briefs March 27, 1997.
Decided May 21, 1997.

Defendant was convicted of sexual contact with minor and sentenced to life imprisonment without possibility of parole, in the Circuit Court, Fifth Judicial Circuit, Brown County, Jack R. Von Wald, J. Defendant appealed. The Supreme Court, Gilbertson, J., held that: (1) defendant had knowingly and intelligently waived right to counsel, and (2) sentence did not shock conscience, so as to constitute cruel and unusual punishment, given defendant's criminal history and absence of remorse.

Affirmed.

West Headnotes

[1] Criminal Law ⇨641.4(4)
110k641.4(4) Most Cited Cases

Defendant charged with sexual contact with minor knowingly and intelligently waived right to counsel; defendant was apprised of five pitfalls to self representation previously identified by Supreme Court, stated he understood them and still desired self-representation, was represented by counsel in first trial based on same facts, giving him familiarity with court proceedings, and defendant had reasonable basis for not wishing to continue with attorney representing him in first case.

[2] Criminal Law ⇨641.4(2)
110k641.4(2) Most Cited Cases

Test for competency to waive counsel is same as that for competency to stand trial, whether defendant has sufficient present ability to consult with his lawyer with reasonable degree of rational understanding and has rational as well as factual understanding of proceedings against him; heightened standard, requiring court to conduct specific inquiry into whether accused seeking to waive counsel can proceed alone and uncounselled is not appropriate.

[3] Criminal Law ⇨641.4(2)
110k641.4(2) Most Cited Cases

Defendant charged with sexual contact with minor voluntarily and knowingly waived right to counsel, even though defendant claimed physician evaluating his competency to waive counsel was inexperienced and had not properly tested defendant; physician conducted mental status examination and reviewed other treatment records before reaching conclusion defendant could defend himself, and review of record showed defendant acted as an attorney would, and pursued coherent albeit ultimately unsuccessful trial strategy that he was scapegoat.

[4] Sentencing and Punishment ⇨1513
350Hk1513 Most Cited Cases
(Formerly 110k1213.8(7))

Sentence of life imprisonment without possibility of parole, imposed on defendant convicted, as habitual offender, of sexual contact with minor, was not cruel and unusual punishment; sentence did not shock conscience, as defendant had been convicted 28 separate times, 13 times for committing crimes of violence, defendant had two prior convictions for same offense as present case, involving victims in relationship of trust with defendant, and he showed no remorse, presenting himself as poor candidate for rehabilitation.

*824 Mark Barnett, Attorney General, Grant Gormley, Assistant Attorney General, Pierre, for plaintiff and appellee.

James A. Eirinberg, Sioux Falls, for defendant and

563 N.W.2d 823
563 N.W.2d 823, 1997 SD 59
(Cite as: 563 N.W.2d 823, 1997 SD 59)

appellant.

GILBERTSON, Justice.

**1 Roger Raymond was convicted of sexual contact with a minor under the age of 16 (SDCL 22-22-7) and of being a habitual offender; he was sentenced to life in prison without possibility of parole. He appeals the whole of the judgment of conviction and sentence. We affirm.

FACTS AND PROCEDURE

**2 This is the second time Raymond has been before this Court on the same charge of sexual contact with a child under the age of 16. We reversed his June 29, 1994 felony conviction and remanded for a new trial, holding that the State denied Raymond a fair trial by introducing inadmissible expert testimony to bolster the credibility of the victim. *State v. Raymond (Raymond I)*, 540 N.W.2d 407 (S.D.1995).

**3 At the time of the retrial, Raymond continued to be represented by court-appointed counsel Richard Russman. Russman successfully defended Raymond on his appeal to this Court, and had represented Raymond at the habitual offender phase of his first trial. [FN1]

FN1. Raymond's original court-appointed attorney, H.I. King, petitioned the court to withdraw after the sexual contact verdict, and was replaced by Russman.

**4 On April 10, 1996, Raymond requested that Russman be removed as his counsel and that Raymond be allowed to represent himself at the retrial. Raymond informed the trial court of his confidence he could proceed pro se in a competent manner:

Your Honor, I can handle this case just fine. Under the circumstances I know everything about it. I've had a year with it. I know exactly what's going on with it.

The trial court then recommended to Raymond that he at least retain a lawyer to assist him in his pro se defense if he felt the need. Raymond adamantly refused.

DEFENDANT: Your Honor, I don't want that.
COURT: Are you absolutely sure you don't want that?
*825 DEFENDANT: I'm absolutely positive, Your Honor, beyond a shadow of a doubt.
COURT: And there is nothing that I can say that would
make you change your mind?
DEFENDANT: No, sir.

The trial court heard the motion and recessed for 24 hours to take the request under advisement. After reconvening, the trial court advised Raymond in detail of the consequences of serving as his own attorney. When Raymond indicated he still wanted to proceed pro se, the trial court granted the motion, concluding that Raymond had knowingly and intelligently waived his right to counsel.

**5 The trial court also took a second step of ordering Raymond to undergo a psychological evaluation to determine if he was competent to go to trial. A third attorney, Tony Portra, was appointed to represent Raymond solely on the competency issue. At the competency hearing, the examining psychiatrist, Dr. William Pettit, told the court that in his opinion, Raymond was not mentally ill, had a rational and factual understanding of the charges against him, was able to understand the nature and consequences of the proceedings against him and was able to conduct his own defense. Portra advised the court that Raymond had ordered him not to contest his competency.

**6 At trial, Raymond conducted his own defense, but elected not to testify. A jury again convicted him on the sexual contact charge, which involved sexual touching of a seven-year-old girl. The trial court found that it was not necessary to retry Raymond on the habitual offender charge, since it was not overturned on appeal. The trial court took judicial notice of the first habitual offender trial and the presentence investigation prepared for that hearing. Raymond was sentenced to life without parole.

ANALYSIS AND DECISION

> before us, the trial court painstakingly reviewed each *Van Sickle* factor with Raymond, thus avoiding any question as to whether Raymond somehow gained this knowledge through other sources.

**13 In the case at bar, the trial court went through each of the five factors with Raymond. Each time the trial court explained one of the pitfalls of self-representation, Raymond was asked if he understood. Each time Raymond was unequivocal in stating that he did. [FN3] At the conclusion of the warnings, the trial court asked Raymond:

> FN3. Raymond's answers were framed in the following absolutes: "Correct." "Very much so." "Yes, I do." "I sure do." "Absolutely, beyond a shadow of a doubt." "Everything, Your Honor."

> Trial Court: With all of those explanations, do you still want to proceed, Mr. Raymond, and act as your own counsel?
> Raymond: Yes, I do, your Honor.
> Trial Court: And you've thought about this for a considerable length of time, have you?
> Raymond: Yes, I have, your Honor.

**14 This Court has held that a waiver is constitutionally acceptable even if the trial court does not issue the *Van Sickle* warnings when other circumstances indicate the accused was fully aware of the dangers of self-representation. *Van Sickle*, 411 N.W.2d at 667. Those indicia include the defendant's involvement in previous criminal trials, his representation by counsel before trial, and his explanation of his reasons for proceeding pro se. *Id.* In the case at bar, Raymond was not inexperienced with the legal system. He had been arrested 32 times, convicted 28 times. He had a prior trial on the very same case and was represented by counsel at that time. Pretrial motions had been filed by counsel at his retrial. He indicated that he did not want Russman to represent him because Russman did not want to make Raymond's prior sexual contact conviction part of his defense and because Russman did not bring up on appeal all the issues Raymond thought he should. The reasons for wishing to proceed pro se were legitimate, even if Raymond's trial strategy may not have been the wisest course of action.

**15 These additional circumstances, plus the *Van Sickle* warnings, convince us that *827 Raymond's waiver of counsel was knowing, intelligent, and voluntary. "[W]e must place some faith in the trial court's decision to allow defendant to proceed without counsel; inherent in such decision is the implication that the trial court was satisfied that defendant ... understood the hazards of self-representation." *State v. Miller*, 248 N.W.2d 61, 63 (S.D.1976).

**16 On appeal, Raymond for the first time now contends that he was incompetent to waive counsel. We disagree. The trial court on its own motion ordered an evaluation of Raymond to determine if he were suffering from any mental disease or defect which would make him unable to understand the nature and the consequences of the proceedings against him or assist properly in his own defense.

[2] **17 The test for competency to waive counsel is the same as that for competency to stand trial as set forth in *Godinez v. Moran*, 509 U.S. 389, 396, 113 S.Ct. 2680, 2685, 125 L.Ed.2d 321, 330 (1993), that is: whether the defendant has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and has a "rational as well as factual understanding of the proceedings against him" (adopting the standard in *Dusky v. United States*, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960)). "[T]he competence that is required of a defendant seeking to waive his right to counsel is the competence to *waive the right*, not the competence to represent himself." *Godinez*, 509 U.S. at 399, 113 S.Ct. at 2687, 125 L.Ed.2d at 332 (emphasis original).

**18 In the instant case, the psychiatrist who examined Raymond, Dr. Pettit, was appointed by the court to determine Raymond's competency. Dr. Pettit conducted a mental status examination and reviewed previous treatment records, concluding that in his opinion, Raymond was competent to understand the nature and consequences of the proceedings against him and was able to conduct his own defense in a rational manner.

**19 Raymond suggests that we apply a new standard for competency to waive counsel, one which would require the court to conduct a specific inquiry into whether an accused who seeks to waive counsel can proceed alone and uncounselled. This we will not do. We believe the *Godinez* rationale is sound:

> [We do not] think that a defendant who waives his right to the assistance of counsel must be more competent than a defendant who does not, since there is no reason to believe that the decision to waive counsel requires an appreciably higher level of mental functioning than the decision to waive other constitutional rights.

Id. at 399, 113 S.Ct. at 2686, 125 L.Ed.2d at 332.

[3] **20 Raymond next contends Dr. Pettit's conclusions were erroneous because Dr. Pettit had only been asked three or four prior times to determine an individual's competency to stand trial; had not administered any updated standardized tests; and failed to realize the import of the prior testing on Raymond. The record does not suggest Dr. Pettit's conclusions were in error.

**21 Dr. Pettit testified that Raymond was not exhibiting any signs of depression or hallucinations; was able to relate the nature of the offense, the types of pleas available, and the consequences of acquittal and conviction; was coherent and rational, if a bit irritated, during the examination; was oriented; was not exhibiting any looseness of association; and, was generally of low average intelligence. There was nothing in the testimony to suggest that Raymond was not competent. In fact, Raymond had been examined by a different psychiatrist, Dr. Kirk Zimbelman, in 1992, prior to his first sexual contact offense and was determined at that time by Dr. Zimbelman to be competent to stand trial.

**22 Further, the record shows that Raymond was able during his trial to understand the elements of the offense with which he was charged; indicated he would file an intermediate appeal with the Supreme Court when his request for a continuance was denied; correctly responded to an objection of compound question by breaking down his question for the witness; remembered prior answers of witnesses during cross and confronted them with those prior answers; *828 properly modified a jury instruction; requested that the court not instruct the jury on inferences from his decision not to testify; correctly used documents to refresh witnesses' memories; asked appropriate follow-up questions; and referred the jury to instructions during closing.

**23 Raymond states that he rambled during motions hearings and opening and closing statements. The record shows this is true. It does not reflect on his competency to decide whether to defend himself; rather, it is representative of his competency as an attorney, which as we earlier stated, is not the test. *Id.* Raymond raises the legal concepts which might apply, but does not have the training to properly target them to his circumstances. He was much more adept at attempting to establish the factual issues in his case, which he did in the direct and cross-examination of witnesses. He became difficult to understand when he was examining his own expert witness on the stand--again throwing out complex psychiatric terms he did not understand, hoping the "shotgun" approach would hit the target somewhere. This is one of the potential landmines all pro se litigants may step into, and it was explained to Raymond by the trial court during the *Van Sickle* warnings. [FN4]

FN4. Trial Court: Now, I want to inform you that criminal trials are governed by technical rules, and those rules apply whether an attorney participates or not. So in other words, the rules of evidence are the rules of evidence, and they apply to you if you're going to act as your own lawyer, as well as to any lawyer that would represent you. Do you understand?
Raymond: Very much so, Your Honor. Thank you.
Trial Court: So because you're not a lawyer, you can't come into that trial ... and say, well, Judge, I don't know what to do here now, and I don't know how to interrogate or cross-examine this witness, so I want you to do it for me, or I want somebody else to do it for me or give me some latitude. The Court can't permit that. Do you understand that?
Raymond: Yes, very much so.

Attorney James Ehrlich raised it not me

**24 Raymond would have us make much of the fact that he admitted his prior conviction for sexual contact at least 23 times, stating this demonstrates he is incompetent. It actually shows the reverse. When he asked for permission to proceed pro se, Raymond stated that his attorney would not go along with admitting the prior conviction. Raymond wanted to argue his theory of the case: that he was innocent, but because of his prior conviction, he was singled out as a scapegoat by a paranoid and depressed relative, a previously abused child suffering from post-traumatic stress syndrome, and a system that had it in for him because of his prior conviction. The jury did not buy into this theory, but that does not mean it was not a valid approach.

**25 Finally, Raymond argues that he did not unequivocally waive his right to counsel because at one point he told the trial court that there were no competent attorneys in Aberdeen and rather than be represented by one, he would proceed pro se. We have carefully studied the entire record and are convinced that Raymond unequivocally intended to waive his right to counsel and intended to represent himself during the balance of the proceedings.

**26 We hold that Raymond was competent to waive counsel, and that his waiver was knowing, intelligent and voluntary.

27 **2. Whether the sentence of life imprisonment without parole is so grossly disproportionate to Raymond's crime that it constitutes cruel and unusual punishment.

[4] **28 Raymond was sentenced to life in prison without possibility of parole. Since this was Raymond's second conviction on a sexual contact charge involving a child under age 10, the statutory minimum sentence is 10 years pursuant to SDCL 22-22-1.2. [FN5] The statutory maximum for a violation of SDCL 22-22-7, a Class 3 felony, is 15 years in prison. The trial court enhanced the conviction to a Class 1 felony under the habitual offender provisions of SDCL 22-7-8, since *829 Raymond had prior felony convictions of third-degree burglary, first-degree burglary, [FN6] and sexual contact with a minor. Raymond contends that the sentence constitutes cruel and unusual punishment.

FN5. SDCL 22-22-1.2 provides, in relevant part: If any adult is convicted of any of the following violations, the court shall impose the following minimum sentences:
...
(2) For a violation of § 22-22-7 if the victim is less than ten years of age, five years for a first offense and ten years for a subsequent offense.

FN6. First degree burglary is included in the definition of crimes of violence under SDCL 22-1-2(9). A crime of violence is required for enhancement under SDCL 22-7-8.

**29 This Court has clearly established the standard we apply when reviewing whether a sentence is cruel and unusual. Our first inquiry is a two-part "shock-the-conscience" analysis.

> First, is the punishment so excessive or so cruel, 'as to meet the disapproval and condemnation of the conscience and reason of men generally.' And second, whether the punishment is so excessive or so cruel as to shock the collective conscience of this court.

State v. Lemley, 1996 SD 91, ¶ 10, 552 N.W.2d 409, 412 (citing *State v. Pulfrey*, 1996 SD 54, ¶ 7, 548 N.W.2d 34, 36). Whether we ever get to a proportionality analysis in a noncapital case is an open question which this Court need not answer for the disposition of this case. *State v. Peterson*, 1996 SD 140, ¶ 21 n. 5, 557 N.W.2d 389, 394 n. 5.

**30 When we analyze whether a punishment "meets the disapproval and condemnation of the conscience and reason of men generally," we look to the Legislature for guidance. The Legislature, by setting the maximum sentence for specific crimes, reflects public intent. *Lemley*, 1996 SD 91, ¶ 11, 552 N.W.2d at 412.

**31 The sentence in this case was within the prescribed statutory guidelines for a Class 1 felony. When reviewing a punishment within statutory limits, our inquiry is limited to whether the trial court abused its discretion. *Id.* ¶ 9, 552 N.W.2d at

411-12. It is settled law in this state that a sentence within the statutory limits is not reviewable on appeal unless it is so excessive in duration that it shocks the conscience of the court. *State v. Kaiser*, 526 N.W.2d 722, 726 (S.D.1995).

**32 Before sentencing a defendant, the trial court should examine the defendant's " 'general moral character, mentality, habits, social environment, tendencies, age, aversion or inclination to commit crime, life, family, occupation, and previous criminal record.' " *State v. Chase in Winter*, 534 N.W.2d 350, 354-55 (S.D.1995) (quoting *State v. Pack*, 516 N.W.2d 665, 667-68 (S.D.1994) (citations omitted)). The trial court did so in this case. In considering the presentence investigation, the prior testimony at the first sentencing hearing, and testimony of Raymond and his mother at the second sentencing hearing, the trial court found that Raymond was arrested and convicted 28 separate times since 1975. Raymond had his first run-in with the law at age 15, and was 40 at the time of sentencing. Of his 28 convictions, 13 involved crimes of violence and seven involved death threats. Six involved theft by threat. Raymond was twice convicted for sexual contact with children under the age of 10. The girls were seven and eight years old at the time they were victimized, and both girls considered him part of their family. There was a violation not only of their bodies, but of their trust and the trust of their parents, who are related to Raymond. [FN7]

FN7. At the sentencing hearing, an 18-year-old relative of Raymond's testified that Raymond had forcibly raped her in December, 1993, three months after the incident which is the subject of this appeal. Another witness testified that Raymond had fondled her when she was 14 years old.

**33 In recent years, the Legislature of this State has increased the penalty for sexual contact with a child under age 16. In 1992, it imposed a minimum penalty, increased the penalty if the victims were under age 10, and increased the minimum again for a subsequent offense. SDCL 22-22-1.2. In 1990, sexual contact with a child under age 16 was increased from a Class 4 felony to a Class 3 felony. SDCL 22-22-7. These legislative changes are a barometer of the public's increasing intolerance for sexual exploitation of children. Raymond has failed to prove that the sentence imposed by the trial court in this case, involving the repeated exploitation of young children by a trusted family member, would shock the public conscience.

*830 **34 The trial court also considered Raymond's record of blatant disregard for authority. Police officers testified that Raymond became hostile and violent especially when drinking, and threatened them with death or bodily harm. The trial court pointed out Raymond was dishonorably discharged from the Marines after several unauthorized absences, including being absent without leave for 574 days. He also violated parole in 1989 and was returned to the penitentiary. Upon his release he again violated parole in 1990 and was returned to the penitentiary. On the very day of his next release, he perpetrated sexual abuse on one of the children. His most recent conviction was shortly after his release on the first sexual contact conviction. At both sentencing hearings in the instant case, he showed no remorse, and his statements to the court exhibited a tendency to blame others for his troubles with the law.

**35 When the trial court imposes a sentence, it must keep in mind the commonly accepted goals of punishment, namely: 1) retribution; 2) deterrence, both individual and general; and 3) rehabilitation. *Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976).

> We have recognized that while a life sentence without parole extracts [sic] retribution, deters the convict from committing crime, removes him from the street, and puts would-be felons on notice of the high penalty of recidivism, it completely eschews the goal of rehabilitation.

Bult v. Leapley, 507 N.W.2d 325, 327 (S.D.1993); *State v. Weiker*, 342 N.W.2d 7, 10 (S.D.1983), *cert. denied*, 465 U.S. 1069, 104 S.Ct. 1422, 79 L.Ed.2d 747 (1984). We therefore have determined a trial court should only impose a life sentence when the facts of the principal offense and the previous convictions make rehabilitation so unlikely that it is removed from consideration in sentencing. *Peterson*, 1996 SD 140, ¶ 29, 557 N.W.2d at 395. In Raymond's case, the sentencing court found

Raymond incapable of rehabilitation. In light of the record, we cannot say the trial court abused its discretion in that regard or in the sentence imposed.

**36 When we consider Raymond's lengthy and violent criminal record, his history of disregard for authority, for the law and for the consequences to his victims, and when we note what appears to be an escalation in criminal sexual behavior, a life sentence without parole does not shock the collective conscience of this Court. We agree with the trial court that "[t]he interests of society demand that the defendant be kept off the streets for the rest of his life."

**37 Because we do not find Raymond's life sentence without parole meets either prong of the threshold "shock the conscience test," it is not necessary for this Court to consider the issue of whether a proportionality review is required, *id.* at ¶ 21 n. 5, 557 N.W.2d at 394 n. 5, or address the evidentiary issue raised by the State in its notice of review.

**38 We affirm the judgment of conviction and sentence of the trial court.

**39 MILLER, C.J., and SABERS, AMUNDSON and KONENKAMP, JJ., concur.

563 N.W.2d 823, 1997 SD 59

END OF DOCUMENT

notice [24] justices know the record - Gullbertson - was not present for inter appeal May 1994, by STATE.

[I] never received evidence if I did it from Russman King. Look at why dent quest evid- 6/20/94 is why

This is on the Inter appeal and STATES notice of review. Its of my prior - they'd isolated it by raising incompetency issue instead of 609(a) issue April 19 1994. only if defendant takes the stand. They wouldn't let me look I'd never got or been given evid Russman asked for By isolating it evidence - Miranda and Dismissal. I know. I'm not present when made decisions on my order. Threats went undertaken

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January 31, 2003

LEGAL MAIL
Mr. Roger Raymond
South Dakota State Penitentiary
P.O. Box 5911
Sioux Falls, SD 57117-5911

RE: *Roger Raymond*

Dear Roger:

I have reviewed your trial transcript and files from your previous attorneys. As you know, the court will not allow us to file any claims based upon alleged errors that occurred in your first trial. This is because those errors would have been corrected and were made moot by the South Dakota Supreme Court's grant of a second trial to you. As a result, any claims that we file must be based on errors that occurred in your second trial. Any other claims would be frivolous, as the court made clear in its recent letter.

I do know, however, that it is important to you to make use of the concealment of evidence from you that occurred in conjunction with your first trial. When we met we talked about a claim for ineffective assistance of counsel that would be based upon the failure of the attorney associated with Bob Gerdes to inform you of this concealment of evidence and the full ramifications of the Supreme Court's decision. As we also discussed, this issue is greatly complicated by the fact that you waived your right to an attorney and insisted upon representing yourself at your second trial. I have carefully read the transcript and I cannot find anything to indicate that you were not made aware of the Supreme Court's decision and the evidence that was concealed.

I want to make sure that you are happy with all of the arguments that we file with the court in your petition. At the same time, I have a duty to ensure that the factual record is accurately portrayed to the court. This is what I am asking you to do:

Please write for me a factual description of how and when you were first made aware of the evidence that was concealed in your first trial. Were you aware of this evidence during your second trial? When was it first made available to you? Your answers to these questions will help me to decide how we can best frame the arguments in your petition. In your response to me, please do not make legal arguments or cite to any court cases. In this letter, I only want the facts.

I want to thank you for your continuing patience. I look forward to your prompt reply so that we can move forward with the filing of your petition. I look forward to hearing from you.

Very truly yours,

RAParsons

RONALD A. PARSONS, JR.
For the firm

RAP:lms

April 25th 2005 - filed In Re: Ro Parsons -
"unnecessary delay; irreparable injury is imminent.

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September 15, 2003

LEGAL MAIL
Mr. Roger Raymond
South Dakota State Penitentiary
P.O. Box 5911
Sioux Falls, SD 57117-5911

RE: *Roger Raymond*

Dear Roger:

I have received your latest letter, and am pleased to report that I will be in to visit with you about a revised draft of your second amended habeas petition. As we discussed at our last meeting, these are the grounds that we have presently identified as being potentially included in your petition:

1. Whether the petitioner knowingly and intelligently waived his right to trial counsel;

2. Whether the petitioner knowingly and intelligently waived his right to counsel at sentencing?

3. Whether the petitioner received ineffective assistance of counsel prior to counsel's termination for failing to disclose to the client the state's production of progress notes related to the social worker's interview of the complaining witness?

4. Whether the petitioner's sentence is grossly disproportionate to the crime and constitutes cruel and unusual punishment in violation of the Eighth Amendment?

5. Whether the petitioner's rights were violated by failing to timely grant petitioner's motion for an expert witness?

I believe that these issues address the concerns you have expressed to me about signing an amended petition, without violating the Court's order that you are not permitted to raise any issues related to your 1994 trial and conviction that were overturned. I should be in to see you on Thursday or Friday of this week. Please have with you the progress notes that you contend were not timely

provided to you by your counsel. In addition, please be prepared to discuss any other issues that you believe should be included in your petition. I look forward to seeing you, Roger.

Very truly yours,

RAP Parsons

RONALD A. PARSONS, JR.
For the firm

RAP:lms

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
: SS
COUNTY OF BROWN) APR 2. 1994 TH JUDICIAL CIRCUIT

M. L. KUHFELD
BROWN COUNTY CLERK OF COURT

* * * * * * * * * * * * * *

STATE OF SOUTH DAKOTA,

Plaintiff,

-vs-

ROGER RAYMOND,

Defendant.

CRIM. 94-018/34

MOTION FOR CONTINUANCE AND NOTICE OF MOTION

* * * * * * * * * * * * * *

MOTION

~~COMES NOW, Roger~~ Raymond, by and through his ~~attorney, H. I.~~ King, and hereby requests that the arraignment regarding the indictment of Defendant, Roger Raymond, which has been set for Tuesday, April 26, 1994 at 1:00 o'clock p.m. be continued for the reason that said indictment is for a crime already charged. Further, said indictment may be violative of the Constitution of the United States and the laws of the State of South Dakota.

Dated this 26th day of April, 1994.

H. I. King
Attorney for Defendant
P. O. Box 1456
Aberdeen, SD 57402-1456

NOTICE OF MOTION

Please be advised that the above Motion will be heard before the Honorable David Gienapp on the 26th day of April, 1994, beginning at 1:00 o'clock p.m. in the Courtroom of the Brown County Courthouse, Aberdeen, South Dakota.

Dated this 26th day of April, 1994.

H. I. King
Attorney for Defendant
P. O. Box 1456
Aberdeen, SD 57402-1456

TONNER, TOBIN
& KING
ATTORNEYS AT LAW
116 SOUTH LINCOLN
P. O. BOX 1456
ABERDEEN, SOUTH DAKOTA
57402-1456

Page 533

1 Q It could be a flashback in your mind?
2 A I never thought she was having any flashbacks.
3 Q Okay. Thank you. Patty. Now, on 9-8 of 1993 -- and I asked
4 you earlier if you recall the phone conversation between you
5 and Rebecca?
6 A. Yes.
7 Q Do you recall that?
8 THE DEFENDANT: Your Honor, if I may ask her to read Rebecca's
9 testimony?
10 MR. VARNS: I would object to that, Your Honor.
11 THE DEFENDANT: It has to do with --
12 MR. VARNS: She would have no knowledge of Rebecca's
13 testimony.
14 THE DEFENDANT: Excuse me.
15 THE COURT: Yes, that's correct. That would be hearsay.
16 THE DEFENDANT: It would be hearsay. It has to do with her
17 conversation between her and Rebecca.
18 THE COURT: You can ask her what she said --
19 THE DEFENDANT: Okay.
20 THE COURT: -- only.
21 Q And again, do you recall what you said?
22 MR. VARNS: Just a minute. What date are you talking about,
23 what part of the transcript?
24 THE DEFENDANT: This would be June 28th of 1994.
25 MR. VARNS: At the trial?

Page 534

1 THE DEFENDANT: This would be the trial.
2 MR. VARNS: What page?
3 THE DEFENDANT: It would be 182.
4 MR. VARNS: I would renew my objection, Your Honor. This is
5 testimony of Rebecca Glasford.
6 THE DEFENDANT: It has to do with leading to the arrest, Your
7 Honor.
8 THE COURT: Is it testimony of Patty Schwan?
9 THE DEFENDANT: It has to do with her, yes.
10 THE COURT: No. But the question is: Did she make a
11 statement that's recited and found on that page?
12 THE DEFENDANT: No, it is not. She stated this to Rebecca on
13 this next day in question.
14 MR. VARNS: No. This is testimony that Rebecca was asked
15 about, not Patty.
16 THE DEFENDANT: That's correct.
17 THE COURT: The objection will be sustained.
18 Q So could you please tell me again, Patty, and one last
19 question, what kind of therapy were you using on A. Z.
20 again?
21 A We used primarily play therapy and primarily more of a
22 cognitive-based therapy.
23 Q And A. Z. was referred to you through Carleen Cross Morgan?
24 A Carleen Morgan Cross.
25 Q Carleen Morgan Cross. Excuse me. And she was referred to

Page 535

1 you through her in March of 1993?
2 A Yes.
3 Q And her initial diagnosis of A. Z. was post traumatic stress
4 disorder; is that correct?
5 A That's what Carleen told me, yes.
6 Q And you are telling us that you did not pick up that
7 therapy, correct?
8 A There is not a therapy, post traumatic stress disorder
9 therapy.
10 Q There is not?
11 A No.
12 Q But has A. Z. shown signs of this, is what I'm asking?
13 A Has she shown signs of it or does she meet the diagnosis
14 criteria of it? She does not, in my opinion, as I have seen
15 her over here, I would not give her that diagnosis at that
16 time. Carleen may have given her that diagnosis, and you'll
17 have to ask Carleen why she did.
18 Q But after she came to you and recently thereafter of my
19 release, A. Z. has shown fears and anxiety consistently, has
20 she not?
21 A She has had fears and anxiety, yes.
22 THE DEFENDANT: No more questions, Your Honor.
23 THE COURT: Further redirect?
24 MR. VARNS: No further redirect, Your Honor.
25 THE COURT: You may be excused.

Page 536

1 (WITNESS EXCUSED.)
2 MR. VARNS: Stacey Nelson will be the next witness, Your
3 Honor.
4 (STATE'S EXHIBIT 6 WAS
5 MARKED FOR IDENTIFICATION
6 BY THE COURT REPORTER.)
7 STACEY NELSON,
8 called as a witness on behalf of the State, being first duly
9 sworn upon her oath, testified as follows:
10 DIRECT EXAMINATION
11 BY MR. VARNS.
12 Q Stacey, would you start by telling us your name, please?
13 A Stacey Nelson.
14 Q And how are you employed?
15 A I'm a child protection supervisor here in Aberdeen.
16 Q How long have you been doing that?
17 A Since January of '95.
18 Q When did you first begin working with the Department of
19 Social Services in January of -- go ahead.
20 A I believe it was November of '90.
21 Q Okay. Would you describe briefly the employment that you've
22 received for that occupation?
23 A I worked as a law enforcement officer here in Aberdeen for
24 the city.
25 Q Okay. Did you receive any other training when you joined

Q And did you investigate that referral?
A Yes.
Q All right. Now, Diane Sanders, the mother, did not call you, did she?
A No.
Q Okay. And she apparently had not notified the police, had she?
A No.
Q In fact, was it Department of Social Services that notified the police department?
A Yes.
Q Okay. Now, did you, as a part of your investigation, receive a progress note from Patty Schwan?
A Yes.
Q Is that progress note dated September 7, 1993?
A Yes, it is.
Q I'm going to show you what's marked as State's Exhibit 2 and ask you if that's the progress note you received from Patty Schwan?
A Yes, it is.
Q Okay. And you had that with you when you conducted your investigation?
A Yes.
Q And what does that progress note contain?
A A. Z.'s disclosure of sexual abuse by the defendant.

Q And it talks about all the details that A. Z. told Patty Schwan?
A Yes.
Q Okay. Now, did you ever yourself go and interview A. Z.?
A Yes. Along with Detective Kenny.
Q Okay. When did you -- when did you meet with A. Z.?
A 9-29 of '93.
Q And that was the date on the referral -- or excuse me -- the date on the progress note is what? What is the date on that progress note exhibit?
A 9-7 of '93.
Q So you interviewed A. Z. 22 days after she reported this to Patty?
A Yes.
Q All right. Who was the -- who was present when you met with A.Z.
A Detective Kenny and myself.
Q Okay. Was Diane Sanders present?
A No.
Q Diane, of course, is the mother?
A Yes.
Q Is there any reason she was not present?
A An interview would be conducted best if it was just with the child and the investigators.
Q Okay. And is that to prevent the parents or any other party from talking to the child before you do?
A Yes.
Q Okay. In fact, Diane wasn't even notified about the interview ahead of time, was she?
A No, she was not.
Q What was A. Z.'s attitude about talking what happened -- about what happened to her?
A She was reluctant. She told me this would be the fifth time she had to tell her story.
Q Okay. How old was A. Z. at that time?
A Seven years old.
Q And how was her demeanor during this interview?
A She was pleasant. She was cooperative.
Q Did she appear to you to be of at least average intelligence?
A Yes.
Q Was she able to relate to you what happened to her?
A Yes, she was.
Q Okay. Did what she tell you sound logical?
A Yes.
Q Did A. Z. indicate that she had told her mother about this incident right away when it happened?
A Yes.
Q Now, did you compare what A. Z. told you during this interview and Doug Kenny with what she had told Patty Schwan three weeks earlier?
A Yes, I did.
Q How did her report to you compare with what she had told Patty Schwan three weeks earlier?
A It was consistent in all of the major details such as who, what, when, where.
Q Okay. So she was able to tell you who had done something to her?
A Yes.
Q She was able to tell you what had happened to her?
A Yes.
Q She was able to discuss approximately when it happened?
A Yes.
Q Did she --
A She couldn't remember the dates.
Q Okay.
A I believe -- yeah. She had said 10, 11 at night.
Q So she told you about the time of the night it happened?
A Yes.
Q Okay. And was she able to tell you where it happened?
A Yes.
Q And did she discuss how it happened?
A Yes.
Q Okay. Stacey, how many cases a year do you investigate for child abuse?

INVESTIGATIVE NARRATIVE

DATE OF REFERRAL: 3-29-94 (2) DATE ASSIGNED: 3-29-94

FAMILY COMPOSITION:

Mother, Diane Sanders MMN: Raymond, dob 7-5-58
Son, Brent Zerr, dob 5-4-86
Daughter, Amanda Zerr, dob 11-5-89
Son, Travis Zerr, dob 3-25-83
Tom Sutton, Amanda's father
Ella Sutton, Tom's wife

DATE OF CONTACT AND WHO CONTACTED:

3-28-94 - officer Kurvers interviews neighbors, Diane and Travis
3-29-94 - worker interviews Tom and Ella Sutton
3-30-94 - worker and Jan Neuhardt interview Diane
3-30-94 - worker interviews Brent and Amanda at school
3-31-94 - Craig Anderson, Br.Co. Deputy Sheriff interviews Travis

ALLEGATION:

Diane neglects her children by lack of supervision. Travis was sexually abused by Tom Sutton or someone else.

Alleged Perpetrator: Diane Sanders, Tom Sutton or an unknown

You people are unreal-

CHILD FACTORS:

Age/Physical/Mental Abilities:

Brent, age 11, has temper tantrums, slams and kicks doors, swears at Diane, refuses to stay home or follow rules set. He has no mental or physical delays.

Rebecca don't know session's P.T.S.D.

Amanda, age 7, has no mental or physical limitations. She is smoking in her room by stealing Diane's cigarettes. Amanda is also playing with matches. Amanda ignores Diane's rules and directions and has temper tantrums in which she kicks the wall.

Travis smokes cigarettes and plays with matches. Travis kicks and scratches diane. Travis kicks holes in the walls, swears at Diane, won't go to bed and has major temper tantrums. Travis has no mental or physical limitations. He chased other children with a knife this week.

Physical Abuse:

No evidence of physical abuse but Diane told workers that she ignores the children's behaviors because she feels she may lose control and really hurt them. Thus, she wants them placed in foster care.

Neglect: (see why, medications in D.S.S. records pressures are consistant. Travis is leaving the children - oppressive pre-trial incarceration)

ee police report on 3-28-94 involving Travis). Travis admitted to icer that he took a kitchen knife after neighbor kids making stabbing ctions, telling them he was going to kill them. Diane did not know

515

Travis had a knife. Diane reports that she cannot control her children anymore. Travis and Amanda are stealing cigarettes from her, smoking them and playing with matches. Children will not follow her directions so she has been ignoring them and their behaviors so she doesn't hurt them. Thus, Diane has not been supervising them for excessive amounts of time. Diane is unwilling and unable to meet the children's basic needs. She has neglected to get Travis' dental care for over a month. Travis' gums were bleeding and he required a cap on his tooth.

Due to Diane's mental status she is not able to meet the emotional needs of the children.

Sexual Abuse:

Travis would not talk about what happened when Tom took his pants off. Travis would not answer questions about sexual abuse; lack of evidence at this time.

Emotional Abuse:

Diane cannot care for the children's needs as she herself, has mental illness.

Previous History of Abuse/Neglect:

Multiple substantiated and unsubstantiated CA/N reports involving the family.

Child's Account of Incident:

Travis said he took the knife after the kids because they were calling his brother a lesbian. Travis says his tooth hurts and it is bleeding. Travis denied urinating in the yard. Travis stated to worker and Craig Anderson that Tom Sutton pulled his pants down but clammed up and would not say anything else. Travis then grabbed his private parts and said he had to go potty. Travis told worker he did not wet the bed at Tom's. travis said bill Schultz was at Tom's lots of times. Brent stated he was sleeping in the bed with Travis when he heard Travis start to cry out at Tom's house. Brent said he did not know what happened except Tom was taking off Travis' pants. Brent did not know why.

Brent stated that Jennifer settled Travis down. Brent stated that he hasn't seen Bill Schultz since he babysat them years ago.

Amanda stated she was in her bedroom down the hall when she heard Travis crying. Amanda said that her dad came and told her that everything would be okay. Amanda stated she never saw Bill at her father's home. Amanda stated the last time she saw Bill was a couple of years ago.

FAMILY FACTORS: Take notice medications in D.S.S. records - consistant up to Trial. P117 - 12/26 1994.

Caretaker's Intellectual/Emotional Abilities:

Diane has borderline intellectual functioning. Diane has no physical limitations. Diane's behavior has created problems relating to parenting her children. She is depressed, anxious and even reports major mood swings. Diane feels she is not able to control her children. Her mental illness is uncontrollable right now due to her lack of consistency in taking medication and going to counseling. Diane has unrealistic

Expressing Pre-Trial incarceration -

expectations of the children's behavior because she expects them to meet their own needs and supervise themselves.

Caretaker's Level of Cooperation:

Diane asked CPS to put her children into foster care in order to protect and care for them properly. Diane was cooperative.

Caretaker's Parenting Knowledge:

Diane does not display appropriate parenting and is unable or unwilling to provide minimal supervision to her children. Diane ignores the children because she feels she would hurt them if she tried to make them mind.

Perpetrators Access to Child:

Parent is perpetrator.

Presence of Non-Related Caretaker:

NA.

Environmental Condition of Home:

Home is basically clean and safe. Holes are in the walls in the home.

Strength of Family/Support System:

Diane is sad because her family disowned her because she reported what Roger did to Amanda. There is mutual hostility between family members and relatives are not supportive now. Diane is afraid Roger will get out of jail and hurt her. Diane is willing to utilize resources.

Stresses/Crisis:

Diane does not have a vehicle and she feels a loss of freedom. It is stressful for her to call Med Tran and make it to appointments. Diane has continual financial problems. there is less food in the house due to income problems. Diane recently separated from her husband who is an alcoholic. Diane needs budgeting help.

Caretaker's Substance/Alcohol Consumption:

Worker is suspicious that Diane may have an alcohol problem.

Collateral Information:

Parents Account of Incident

Diane states that Tom told her he took Travis' pants off because he wet the bed but Diane says Travis rarely wets the bed. Diane said she knows that Bill Schultz and Tom Sutton used to know each other. Diane reports that her family has disowned her and she is having major mood swings. Diane states she is depressed and anxious. Diane states that the children's behaviors are out of control and she has been ignoring them because she feels she might hurt them while disciplining them. Diane asked CPS to put her children in foster care because she feels she cannot care for them right now.

SUMMARY OF RISK:

All the Zerr children are at high risk to physical abuse and neglect living with Diane.

OUTCOME/TRANSFER/CLOSING SUMMARY:

Substantiated neglect to all Zerr children by Diane.

Unsubstantiated sexual abuse to Travis by Tom Sutton or another person due to lack of evidence. Travis would not tell what has happened.

3-30-94 - ~~all~~ Zerr children placed in foster care by States Attorney, Harvey Oliver. Prep time - as TRIAL is June 1994-

Case management will continue.

Rebecca Glasford/nt