Case No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JOSEPH MARTIN DANKS,

Petitioner,

vs.

RONALD BROOMFIELD*,
Warden of California State Prison at San Quentin,

Respondent.

On Petition for Writ of Certiorari to
the Court of Appeal of the State of California

APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE

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*Acting Warden Ronald Broomfield is automatically substituted for former Warden Ronald Davis. *See* Fed. R. App. P. 43(c)(2).

TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE UNITED STATES SUPREME COURT AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT:

Petitioner Joseph Martin Danks respectfully requests an extension of time of sixty days – from April 5, 2022, to June 4, 2022 – in which to file his petition for a writ of certiorari in this Court.

The Court has jurisdiction over this matter, pursuant to 28 U.S.C. § 1257(a), in that Mr. Danks has been convicted and sentenced to death in violation of the protections guaranteed by the United States Constitution

On October 22, 2021, the Court of Appeal of the State of California for the Fifth Appellate District ("Court of Appeal") denied Mr. Danks's request for a certificate of appealability from the denial of his petition for writ of habeas corpus by the Superior Court of the County of Kern ("trial court"). On January 5, 2022, the California Supreme Court denied Mr. Danks's timely filed petition for discretionary review. Pursuant to this Court's Rule 13.1, Mr. Danks's time to file a petition for a writ of certiorari expires on April 5, 2022. This application is being mailed for filing more than ten days before that date. *See* Sup. Ct. R. 13.5, 30. Pursuant to this Court's Rule 13.5, copies of the California Supreme Court's order denying Mr. Danks's Petition for Review and the underlying order of the Court of Appeal, both of which are unpublished, are attached in the Appendix to this Application.

In a state habeas corpus petition filed in the California Supreme Court, Mr. Danks challenged the constitutionality of his conviction and sentence for the killing of his cell mate on the grounds that the offense was the direct and foreseeable consequence of the State's unconstitutional failure to treat his psychotic illness, which manifested in the form of interpersonal violent behavior. Following the California Supreme Court's summary denial of his claim, the psychiatric staff at San Quentin State Prison initiated proceedings to

medicate Mr. Danks involuntarily to control his psychotic behaviors, which the State belatedly acknowledged were attributable to a "serious psychotic illness" from which Dr. Danks had suffered "since adolescence and that appropriate medication can control." *Danks v. Martel*, 2011 WL 4905712, at *6 (E.D. Cal. Oct. 14, 2011). At approximately the same time, this Court found that at the time of the capital offense, the state prison system in which Mr. Danks was confined had violated the Eighth Amendment by failing to afford inmates medically indicated mental health care. *Brown v. Plata*, 563 U.S. 493, 532 (2011). Upon Mr. Danks's presentation of these further developments to the state court, pursuant to procedures permitting resubmission of claims in light of new facts and law affecting the substantial rights of the petitioner, the trial court and Court of Appeal concluded that neither the State psychiatrists' diagnosis of grossly impaired mental functioning, nor this Court's holding in *Plata* constituted a new or significant development affecting Mr. Danks's rights.

The federal constitutional issues presented by this case include:

1. Does the Eighth Amendment preclude the execution of a seriously mentally ill inmate whose homicidal behavior was the reasonably known and foreseeable product of his illness and the direct result of the State's failure, in violation of the Eighth Amendment, to provide him with minimally adequate mental health care that was necessary to control his behavior?
2. Consistent with *Johnson v. United States*, 544 U.S. 295, 296 (2005), is this Court's decision in *Brown v. Plata*, 563 U.S. 493, 532 (2011), a "fact" that should be cognizable in fairly and accurately assessing the State's violation of rights secured by the Eighth Amendment?

These questions, among others, are worthy of careful consideration and should be developed for this Court's plenary review.

Mr. Danks seeks a sixty-day extension of time to file his petition for a writ of certiorari because counsel's workload and pre-existing, time-sensitive obligations have not allowed and will not allow counsel sufficient time to distill relevant portions of the 440-page petition for writ of habeas corpus and 18-volumes of exhibits, as well as the 9,850 page record of the state court appeal; and research and write a competent petition commensurate with Mr. Danks's interests at stake in this Court by the current due date of April 5, 2022. Since the California Supreme Court denied Mr. Danks's Petition for Review on January 5, 2022, lead counsel Gary D. Sowards has been preparing for an evidentiary hearing in capital habeas corpus proceedings scheduled to commence in the District Court of the Central District of California in June 2022, and has been engaged as lead counsel representing a capital defendant in military commission proceedings currently underway at the United States Naval Station, Guantanamo Bay, Cuba. Mr. Sowards's co-counsel, Margo Hunter, also has continuing obligations in several capital matters that require her attention in the next sixty days.

Mr. Danks is currently in custody of the California Department of Corrections and Rehabilitation and granting this extension therefore will not prejudice the State of California. On March 10, 2022, I informed California Deputy Attorney General Justain Paul Riley, counsel for Respondent, of the intended filing and substance of this application and the length of the extension requested. Mr. Riley stated that he has no objection to this request.

I further certify that this extension of time is requested in good faith and not for purposes of delay.

For the foregoing reasons, Joseph Martin Danks, through counsel, respectfully requests a sixty-day extension of time, to and including June 4, 2022, to file his petition for a writ of certiorari in this Court.

Dated: March 15, 2022

Respectfully submitted,

HABEAS CORPUS RESOURCE CENTER

By: **/s/ Gary D. Sowards**

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APPENDIX

1. Order of the California Supreme Court denying Petition for Review, dated January 5, 2022, *In re Joseph Martin Danks*, Case No. S271569
2. Underlying Opinion of the California Court of Appeal for the Fifth Appellate District denying certificate of appealability, dated October 22, 2021, *In re Joseph Martin Danks*, Case No. F083411

APPENDIX 1

C Fifth Appellate District - No. F083411

S271569

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re JOSEPH MARTIN DANKS on Habeas Corpus.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

APPENDIX 2

IN THE

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE

FIFTH APPELLATE DISTRICT

In re	F083411
JOSEPH MARTIN DANKS,	(Kern Super. Ct. No. HC016213A)
On Habeas Corpus.	**ORDER**

BY THE COURT:[*]

Appellant Joseph Martin Danks's "Request for a Certificate of Appealability" (Pen. Code,[1] § 1509.1, subd. (c)), filed on October 13, 2021, is DENIED.

Appellant's recent habeas corpus petition considered by the Kern County Superior Court sought to vacate his 1993 conviction and death sentence, entered in that court in case No. 44842, based on appellant's killing of his prison cellmate in September 1990. The petition raised seven issues all relating to appellant's mental state either just prior to the murder, during trial, or currently: On September 10, 2021, the trial court found all seven claims successive to and/or unripe for review in denying the habeas petition in a thorough and well-developed trial court decision, and that court did not issue a Certificate of Appealability.

The California Supreme Court previously affirmed appellant's direct appeal in *People v. Danks* (2004) 32 Cal.4th 269, with certiorari denied by the U.S. Supreme Court in *Danks v. California* (2004) 543 U.S. 961. In September 2010, the California Supreme Court denied appellant's first petition for writ of habeas corpus originally filed in December 2003. (Case No. S121004.) Appellant filed the current, second habeas petition in September 2011 with the California Supreme Court, which it later transferred to the Kern County Superior Court for adjudication in May 2019.

The Appellant's Request for Certificate of Appealability to this court raises the same seven claims presented to the trial court:

1. The alleged capital homicide was the direct and unavoidable result of the state's violation of the Eighth and Fourteenth Amendments in wantonly denying appellant adequate medical and psychiatric diagnosis and treatment.

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[*] Before Poochigian, A.P.J., Peña, J. and Snauffer, J.

[1] Further statutory references are to the Penal Code.

2. The trial court unreasonably denied appellant's assistance of a qualified expert to evaluate his need for medication.

3. The trial court repeatedly and unconstitutionally failed to conduct adequate inquiry, suspend criminal proceedings, and determine appellant's incompetency to stand trial.

4. Appellant was in fact mentally incompetent to stand trial.

5. Trial counsel's prejudicially deficient performance at all stages of the proceedings deprived appellant of his right to effective assistance of counsel and to a fair and reliable determination of competency to stand trial, guilt, and penalty.

6. Appellant did not knowingly, intelligently, and voluntarily make an implicit or explicit waiver of his constitutional rights at any stage of the capital case investigation or criminal proceedings.

7. Appellant's execution is barred by *Ford v. Wainwright* (1986) 477 U.S. 399, which prohibits the state from inflicting the penalty of death on a mentally insane prisoner.

On September 10, 2021, the Kern County Superior Court denied appellant's petition for writ of habeas corpus on the grounds claims 1 through 6 were successive habeas claims and that claim 7 was not ripe; the trial court therefore failed to find by a preponderance of the evidence that appellant was actually innocent of the crime of which he was convicted or that he was ineligible for the death penalty, as required to grant relief under section 1509, subdivision (d).

As the Supreme Court recently summarized in *In re Friend* (2021) 11 Cal.5th 720 (*Friend*), "Proposition 66 enacted a number of statutory reforms in an effort to make the system of capital punishment 'more efficient, less expensive, and more responsive to the rights of victims.' " (*Friend,* at pp. 725–726.) Among the changes, newly enacted section 1509 imposes a new one-year deadline for filing an initial habeas petition, which should now be filed or transferred to the sentencing trial court for adjudication. "And whereas the law generally requires unsuccessful habeas corpus petitioners to seek review by filing a new habeas corpus petition in a higher court [citation], newly added Penal Code section 1509.1 requires capital petitioners to seek review by way of appeal instead. (Pen. Code, § 1509.1, subd. (a).)" (*Friend,* at p. 726.)

Section 1509, subdivision (d), provides, in relevant part:

> "An initial petition which is untimely under subdivision (c) or a successive petition whenever filed shall be dismissed unless the court finds, by the preponderance of all available evidence, whether or not admissible at trial, that the defendant is actually innocent of the crime of which he or she was convicted or is ineligible for the sentence."

The term "successive petition" refers to what Supreme Court case law "would typically call a ' "new ... petition" seeking review of a lower court's ruling.' " (*Friend, supra*, 11 Cal.5th at p. 733.) An appellant seeking review of the denial of a successive habeas corpus petition " 'may appeal the decision of the superior court denying relief on a successive petition only if the superior court or the court of appeal grants a certificate of appealability.' " (*Friend,* at p. 727, quoting § 1509.1, subd. (c).) A court may issue such a certificate "only if the petitioner has shown both a substantial claim for relief, which shall be indicated in the certificate, and a substantial claim that the requirements of subdivision (d) of Section 1509 have been met." (§ 1509.1, subd. (c).) "The overall effect of these restrictions is to forbid courts from considering successive petitions, or appeals from the denial of such petitions, that are unaccompanied by a showing of innocence or ineligibility for the death penalty." (*Friend,* at p. 727.)

Appellant here admits in his certificate request that "Claims One through Six were initially presented to the California Supreme Court as part of the 440-page petition for writ of habeas corpus, supported by 18 volumes of exhibits, which were filed in case No. S121004 in December 2003," and which the Supreme Court later denied on September 15, 2010. Appellant contends that although successive, he is nevertheless entitled to relief and appellate review because new factual and legal predicates support his initial six claims and his seventh claim was not previously available prior to the Supreme Court's 2010 denial of his first habeas corpus petition.

While we agree, as noted in *Friend*, that newly available facts and changes in the law may potentially provide grounds to construe previously considered habeas claims reviewable in a successive habeas petition, appellant fails to make such a showing here. Indeed, appellant admits in the certificate request that "a subsequent petition that presents the court with previously raised claims" should be addressed "if there has been a 'change in the facts or law *substantially affecting the rights of the petitioner*.' " (Quoting *In re Martin* (1987) 44 Cal.3d 1, 27, fn. 3; italics added.) Appellant fails to set forth in the certificate request newly available facts or a change in the law that substantially affect his rights regarding his 1993 conviction.

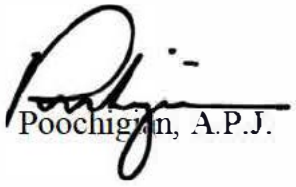
In supporting appellant's attempt to revive his first six habeas claims, appellant contends his capital offense was caused by the state's unconstitutional failure to provide him medically necessary psychotropic medication to control his violently psychotic behavior, which is now further supported by the newly available fact that in 2011, the state initiated proceedings to involuntary medicate petitioner, and new law in the form of the United States Supreme Court's decision in *Brown v. Plata* (2011) 563 U.S. 493, 532 (*Plata*) finding that the failure of California's entire prison system to afford adequate medical and mental health care violated the Eighth Amendment.

Appellant's involuntary psychotropic medications and the Supreme Court's *Plata* decision both occurred in 2011, and thus were unavailable prior to the Supreme Court's review of appellant's original habeas petition decided in 2010, but appellant fails to establish how those considerations affect appellant's substantial rights in terms of

establishing he is either actually innocent of the crime of which he was convicted or that he is ineligible for the death sentence. (§ 1509, subd. (d).) As the trial court noted in its habeas decision finding the issues successive, the subject of appellant's mental health was investigated and litigated in both of appellant's underlying trials, and it was well-known during prior litigation that appellant had a long history of mental illness dating to his childhood years. Further, the primary issue litigated at the guilt phase of the trial leading to appellant's capital sentence was whether appellant was sane at the time of the offense. The new evidence and legal finding proffered by appellant of his forced medications and systemwide prison mental health treatment some 21 years after the commitment offense does not tend to establish appellant was actually innocent or ineligible for the death sentence. (See, e.g., § 1473, subd. (b)(3)(A) [new evidence must be "of such decisive force and value that it would have more likely than not changed the outcome at trial"].) We therefore conclude the factual and legal changes in circumstances offered by appellant do not render claims 1 through 6 non-successive for purposes of appealability under Proposition 66.

As to appellant's remaining seventh claim asserting execution would be barred by *Ford v. Wainwright, supra*, 477 U.S. 399, the trial court found that issue premature and unripe absent a death warrant issued by the Governor for the reasons noted by the Nineth Circuit in *Pizzuto v. Tewalt* (2021) 997 F.3d 893, 900–901. The trial court therefore has not addressed the merits of the claim and effectively dismissed that issue without prejudice to later presenting it to that court when or if it becomes ripe in the future. There is therefore no final appealable order on that claim for which this court could issue a Certificate of Appealability.

For the foregoing reasons, appellant's Request for Certificate of Appealability is denied.



Poochigian, A.P.J.