

24-5067

STEPHEN MARK PICART # GG7811
R.J. DONOVAN CORRECTIONAL FACILITY
480 ALTA ROAD
SAN DIEGO, CALIFORNIA 92179

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
JUN 20 2024
OFFICE OF THE CLERK

STEPHEN MARK PICART,
PETITIONER,

CASE NO.:

V.

MARCUS POLLARD, WARDEN,
RESPONDENT(S).

- PETITION FOR A WRIT OF CERTIORARI
- MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF WRIT OF CERTIORARI

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SUPREME COURT, U.S.



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4 IN THE
5 SUPREME COURT OF THE UNITED STATES
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8 STEPHEN MARK PICART,
9 PETITIONER - APPELLANT
10

11 V.

12 MARCUS POLLARD, WARDEN
13 RESPONDENT - APPELLEE
14 _____
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16 ON PETITION FOR A WRIT OF CERTIORARI TO THE
17 UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
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20 PETITION FOR A WRIT OF CERTIORARI
21 _____
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23 STEPHEN MARK PICART #G67811
24 RICHARD J. DONOVAN CORRECTIONAL FACILITY
25 480 ALTA ROAD
26 SAN DIEGO, CALIFORNIA 92179
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28 IN PRO SE
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QUESTION PRESENTED

1. IN APPLYING HARRINGTON V. RICHTER, 562 U.S. 86 (2011), TO A HABEAS CORPUS CLAIM BASED ON THE STATE'S UNREASONABLE APPLICATION OF THE CONSTITUTIONAL STANDARD FOR EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF 28 USC § 2254 (d) (1), CAN THE FEDERAL COURT "HYPOTHEZIZE" ABOUT POSSIBLE "TACTICAL CHOICES" TRIAL COUNSEL MIGHT HAVE MADE ON THE BASIS OF FACTS WHICH HAVE BEEN UNREASONABLY DETERMINED BY THE STATE COURTS, IN VIOLATION OF SUBSECTION (d) (2)?

2. IN APPLYING HARRINGTON V. RICHTER, 562 U.S. 86 (2011), TO A HABEAS CORPUS CLAIM BASED ON THE STATE'S UNREASONABLE APPLICATION OF THE CONSTITUTIONAL STANDARD FOR EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF 28 USC § 2254 (d) (1), CAN THE FEDERAL COURT "HYPOTHESIS" ABOUT POSSIBLE "TACTICAL CHOICES" TRIAL COUNSEL MIGHT HAVE MADE ON THE BASIS OF FACTS WHICH ARE, PURSUANT TO SUBDIVISION (e) (1), UNDERMINED BY CLEAR AND CONVINCING EVIDENCE IN THE STATE COURT RECORD?

3. IN APPLYING WIGGINS V. SMITH, 539 U.S. 510, (2003), TO A HABEAS CORPUS CLAIM BASED ON THE STATES UNREASONABLE APPLICATION OF THE CONSTITUTIONAL STANDARD FOR EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION, AND

1 IN VIOLATION OF 28 USC §2254(d)(1), QUESTIONS ABOUT
2 A DEFENDANT'S MENTAL CONDITION TO KEEP IN MIND WHILE
3 REVIEWING THE RECORD INCLUDE:

4 • DOES THE RECORD SUGGEST THAT THE DEFENDANT
5 SUFFERED FROM A MAJOR DISEASE OR DEFECT AT THE TIME OF
6 THE OFFENSE? IF SO:

7
8 ⑨ IS THERE ANY REASON TO BELIEVE THAT THE DEFENDANT
9 WAS INCAPABLE OF UNDERSTANDING THE NATURE AND QUALITY
10 OF HIS OR HER ACT OR OF REALIZING THAT THE ACT WAS
11 MORALLY WRONG?

12 (SEE PEN C § 25(b); M'NAGHTEN'S CASE (1843) 10 CLARK
13 & FIN 200, 8 ENG REP 718 AND; PEOPLE V. SKINNER (1985)
14 39 C3D 765, 782).

15
16 ⑩ IF SO, DID HE OR SHE ENTER A PLEA OF NOT GUILTY
17 OF REASON OF INSANITY? SEE PEN C § 1026. IF NOT, WHY NOT?

18
19 ⑪ IF DEFENDANT HAD A COURT TRIAL AT THE SANITY
20 PHASE, DID HE OR SHE SPECIFICALLY WAIVE JURY TRIAL ON THE
21 QUESTION OF SANITY?

22
23 IF THE RECORD SUGGESTS THAT THE DEFENDANT WAS
24 "UNCONSCIOUS" AT THE TIME OF THE OFFENSE (PRELIMINARY
25 TRANSCRIPT, PAGE 11, L-19; PAGE 12, L-8; AND PAGE 12, L-21), DID
26 THE TRIAL COURT INSTRUCT JVA SPONTE ON UNCONSCIOUSNESS AS
27 A DEFENSE? SEE PEN C § 26(4); SEE ALSO CALCRIM: 251.

PARTIES TO THE PROCEEDING

ALL PARTIES APPEAR IN THE CAPTION OF THE CASE
ON THE COVER PAGE.

PETITIONER, STEPHEN MARK PICART IS A CALIFORNIA STATE
PRISONER, WHO WAS SENTENCED TO LIFE WITHOUT
POSSIBILITY OF PAROLE FOLLOWING A JURY TRIAL IN
LOS ANGELES COUNTY, CALIFORNIA.

RESPONDENT MARCUS POLLARD WAS THE WARDEN AT
THE PRISON WHERE PICART IS BEING INCARCERATED AT THE
RELEVANT TIMES.

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21	522	21
22	852	21

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1
2 IN THE
3 SUPREME COURT OF THE UNITED STATES

4 PETITION FOR WRIT OF CERTIORARI
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6 PETITIONER, STEPHEN MARK PICART, PRAYS RESPECTFULLY
7 PETITION FOR WRIT OF CERTIORARI TO REVIEW THE JUDGMENT
8 OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH
9 CIRCUIT, DENYING PETITIONER'S APPEAL FROM THE DENIAL
10 OF HIS PETITION FOR WRIT OF HABEAS CORPUS BY THE
11 DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA.
12

13 OPINIONS BELOW
14 FOR CASES FROM FEDERAL COURTS:
15

16 THE OPINION OF THE UNITED STATES COURT OF APPEALS
17 APPEARS AT APPENDIX "A" TO THE PETITION, AND IS REPORTED
18 AT PICART V. POLLARD, 2024 U.S. APP. LEXIS 6874.
19

20 THE OPINIONS OF THE UNITED STATES DISTRICT COURT
21 APPEARS AT APPENDIX "B" TO THE PETITION, AND IS REPORTED
22 AT PICART V. POLLARD 2022 U.S. DIST. LEXIS 219190.
23

24 FOR CASES FROM STATE COURTS:
25

26 THE OPINION OF THE HIGHEST STATE COURT TO REVIEW
27 THE MERITS APPEARS AT APPENDIX "C" TO THE PETITION,
28 AND IS UNPUBLISHED.

1 THE OPINION OF THE SOUTH CENTRAL DISTRICT - COMPTON
2 COURT APPEARS AT APPENDIX "D" TO THE PETITION, AND IS
3
4

5 JURISDICTION 6

7 FOR CASES FROM FEDERAL COURTS:

8 THE DATE ON WHICH THE UNITED STATES COURT OF APPEALS
9 DECIDED THE INSTANT CASE WAS MARCH 22, 2024. NO PETITION
10 FOR REHEARING WAS FILED ON THIS CASE. THIS PETITION IS
11 FILED WITHIN 90 DAYS OF THE LATTER DATE.

12 PRIOR TO THE DENIAL BY THE COURT OF APPEALS,
13 PETITIONER FILED A TIMELY PETITION FOR WRIT OF FEDERAL
14 HABEAS CORPUS IN THE UNITED STATES DISTRICT COURT FOR
15 THE CENTRAL DISTRICT OF CALIFORNIA, WHICH WAS SUMMARILY
16 DENIED. THE DISTRICT COURT DENIED A CERTIFICATE OF
17 APPEALABILITY (HEREAFTER "COA").

18 THE JURISDICTION OF THIS COURT IS INVOKED UNDER
19 28 U.S.C. § 1254 (1).
20

21 FOR CASES FROM STATE COURTS:

22 THE ~~OPINION~~ DATE ON WHICH THE HIGHEST COURT
23 DECIDED MY CASE WAS MARCH 10, 2021. A COPY OF THAT
24 DECISION APPEARS AT APPENDIX "C."

25 THE JURISDICTION OF THIS COURT IS INVOKED UNDER
26 28 U.S.C. § 1257 (a).
27
28

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTIONAL PROVISIONS

UNITED STATES CONSTITUTION

- AMEND. V 15, 22, 28
- AMEND. VI 15, 22, 28
- AMEND. XIV 15, 22, 23, 28

STATUTORY PROVISION

THE UNITED STATE SUPREME COURT HAD INQUIRE INTO THE PROBABLE VALUE OF THE PSYCHIATRIC ASSISTANCE SOUGHT, AND THE RISK OF ERROR IN THE PROCEEDING IF SUCH ASSISTANCE IS NOT OFFERED. THE COURT BEGIN BY CONSIDERING THE PIVOTAL ROLE THAT PSYCHIATRY HAS COME TO PLAY IN CRIMINAL PROCEEDINGS. MORE THAN 40 STATES, AS WELL AS THE FEDERAL GOVERNMENT, HAVE DECIDED EITHER THROUGH LEGISLATION OR JUDICIAL DECISION THAT INDIGENT DEFENDANTS ARE ENTITLED, UNDER CERTAIN CIRCUMSTANCES, TO THE ASSISTANCE OF A PSYCHIATRIST'S EXPERTISE. FOR EXAMPLE, IN SUBSECTION (e) OF THE CRIMINAL JUSTICE ACT, 18 U.S.C. § 3006A, CONGRESS HAS PROVIDED THAT INDIGENT DEFENDANTS SHALL RECEIVE THE ASSISTANCE OF ALL EXPERTS "NECESSARY FOR AN ADEQUATE DEFENSE." NUMEROUS STATE STATUTES GUARANTEE REIMBURSEMENT FOR EXPERT SERVICES UNDER A LIKE STANDARD. AND IN MANY STATES THAT HAVE NOT ASSURED ACCESS TO PSYCHIATRISTS THROUGH THE LEGISLATION PROCESS, STATE COURTS HAVE INTERPRETED THE STATE OR FEDERAL CONSTITUTION TO REQUIRE THAT PSYCHIATRIC ASSISTANCE BE PROVIDED TO INDIGENT DEFENDANTS WHEN NECESSARY FOR AN ADEQUATE DEFENSE, OR WHEN INSANITY IS AT ISSUE. *Id.*

THESE STATUTES AND COURT DECISIONS REFLECT A REALITY THAT THE SUPREME COURT RECOGNIZE TODAY, NAMELY THAT WHEN THE STATE HAS MADE THE DEFENDANTS'

1 MENTAL CONDITION RELEVANT TO HIS CRIMINAL CULPABILITY AND TO THE PUNISH-
2 MENT HE MIGHT SUFFER. THE ASSISTANCE OF A PSYCHIATRIST MAY WELL BE CRUCIAL
3 TO THE DEFENDANT'S ABILITY TO MARCH HIS DEFENSE. IN THIS ROLE, PSYCHIATRISTS
4 GATHER FACTS, THROUGH PROFESSIONAL EXAMINATION, INTERVIEWS, AND ELSEWHERE,
5 THAT THEY WILL SHARE WITH THE JUDGE OR JURY; THEY ANALYZE THE INFORMATION
6 GATHERED AND FROM IT DRAW PLAUSIBLE CONCLUSIONS ABOUT THE DEFENDANT'S
7 MENTAL CONDITION, AND ABOUT THE EFFECTS OF ANY DISORDER ON BEHAVIOR; AND
8 THEY OFFER OPINIONS ABOUT HOW THE DEFENDANT'S MENTAL CONDITION MIGHT
9 HAVE AFFECTED HIS BEHAVIOR AT THE TIME IN QUESTION. THEY KNOW THE
10 PROBATIVE QUESTIONS TO ASK OF THE OPPOSING PARTY'S PSYCHIATRISTS AND
11 HOW TO INTERPRET THEIR ANSWERS. UNLIKE LAY WITNESSES, WHO CAN MERELY
12 DESCRIBE SYMPTOMS THEY BELIEVE MIGHT BE RELEVANT TO THE DEFENDANT'S
13 MENTAL STATE, PSYCHIATRISTS CAN IDENTIFY THE "ELUSIVE AND OFTEN DECEPTIVE"
14 SYMPTOMS OF INSANITY, SOLESBEE V. BALKCOM, 339 U.S. 9, 12 (1950), AND TELL
15 THE JURY WHY THEIR OBSERVATIONS ARE RELEVANT. FURTHER, WHERE PERMITTED
16 BY EVIDENTIARY RULES, PSYCHIATRISTS CAN TRANSLATE A MEDICAL DIAGNOSIS INTO
17 LANGUAGE THAT WILL ASSIST THE TRIER OF FACT, AND THEREFORE OFFER EVIDENCE
18 IN A FORM THAT HAS MEANING FOR THE TASK AT HAND. THROUGH THIS PROCESS
19 OF INVESTIGATION, INTERPRETATION, AND TESTIMONY, PSYCHIATRISTS IDEALLY
20 ASSIST LAY JURORS, WHO GENERALLY HAVE NO TRAINING IN PSYCHIATRIC MATTERS,
21 TO MAKE A SENSIBLE AND EDUCATED DETERMINATION ABOUT THE MENTAL
22 CONDITION OF THE DEFENDANT AT THE TIME OF THE OFFENSE.

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STATEMENT OF THE CASE
STATEMENT OF FACT

ON OR ABOUT APRIL 27, 2009, PETITIONER, STEPHEN MARK PICART, WAS UNLAWFULLY CONVICTED AND SENTENCED FOR BEING IN VIOLATION OF CAL. PENAL CODE SECTION § 187, SUBP., (a) AS CHARGED IN COUNT 1 AND SECOND DEGREE MURDER IN VIOLATION OF CAL. PENAL CODE SECTION § 187, SUBP., (a) AS CHARGED IN COUNT 2, OF THE INFORMATION.

PETITIONER WAS ALSO CHARGED WITH SPECIAL CIRCUMSTANCES, AND PERSONAL INTENTIONAL DISCHARGE OF A FIREARM IN THE COMMISSION OF THE OFFENSE IN VIOLATION OF CAL. PENAL CODE SECTION §§ 190.2, SUBP., (A)(3); 12022.53, SUBP., (d).

THE JURY FOUND PETITIONER GUILTY OF ALL SAID CHARGES, AND FOUND THE ALLERGATION OF SPECIAL CIRCUMSTANCES TRUE AS CHARGE.

ON OR ABOUT MAY 22, 2009, THE TRIAL / SENTENCING COURT PRONOUNCED ITS JUDGMENT, AND SENTENCED PETITIONER TO LIFE WITHOUT PAROLE, PLUS A TOTAL OF 65 YEARS IN STATE PRISON (LIFE WITHOUT PAROLE FOR FIRST DEGREE MURDER, IN COUNT 1; 15 YEARS - TO-LIFE FOR SECOND DEGREE MURDER FOR NINE-TO-TEN WEEK NON-VIABLE FETUS, IN COUNT 2, OF THE INFORMATION; AND A CONSECUTIVE SENTENCE OF 25 YEARS TO LIFE FOR VIOLATION OF CAL. PENAL CODE SECTION § 12022.53, SUBP., (d) GUN ENHANCEMENT FOR EACH MURDER, ALL TO RUN CONSECUTIVE TO ONE ANOTHER.

14

ARGUMENT SUMMARY

PETITIONER, STEPHEN MARK PICART, IS SEEKING TO VACATE HIS CONVICTION AND SENTENCE ON THE GROUND PURSUANT TO 28 U.S.C. §2255 (q), WHICH ALLOWS A STATE/FEDERAL INMATE WHO SENTENCE WAS IMPOSE IN VIOLATION OF THE CONSTITUTION OR LAW OF THE UNITED STATES TO "MOVE THE COURT WHICH IMPOSED THE SENTENCE TO VACATE, SET ASIDE, OR CORRECT THE SENTENCE." HEREIN, THE COURT NOTIFIES PETITIONER THAT IT DENY HIS §2255 HABEAS WITHOUT THE BENEFIT OF A HEARING PURSUANT TO 28 U.S.C § 2255 (b), WHICH IS MANDATORY "UNLESS THE HABEAS AND THE FILES AND EVIDENCE OF THE CASE CONCLUSIVELY SHOW THAT THE PRISONER IS ENTITLED TO NO RELIEF." THUS, THE COURT'S INTENDED DENIAL, WITHOUT A HEARING, IS BOTH A VIOLATION OF DUE PROCESS AND A RUSH TO JUDGMENT, IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

IN PETITIONER'S HABEAS, FAP, AND TRAVERSE, PETITIONER DEMONSTRATED HIS CONSTITUTIONAL RIGHT VIOLATIONS WHICH THE COURT REJECT THE PETITION FOR WRIT OF HABEAS CORPUS. PETITIONER REFUTES THE COURT'S CONSTITUTIONAL DENIAL.

THE SUPREME COURT OF THE UNITED STATES HAS STRESSED, "JUDGES MUST BE VIGILANT AND INDEPENDENT IN REVIEWING PETITIONS FOR THE WRIT, A COMMITMENT

1 THAT ENTAILS SUBSTANTIAL JUDICIAL RESOURCES."
2 HARRINGTON V. RICHTER, 562 U.S. 86, 91 (2011), REVIEWING
3 CAPITAL CASES, WHICH ARE A MATTER OF LIFE AND DEATH,
4 THE SUPREME COURT HAS REPEATEDLY DEMONSTRATED WITH A
5 VIGILANT AND INDEPENDENT REVIEW ENTAILS, PARTICULARLY
6 WHEN THE DEFENDANT ALLEGES COUNSEL FAILED TO PROVIDE
7 EFFECTIVE ASSISTANCE. SEE, E.G., BUCK V. DAVIS, 137 S. CT. 759
8 (2017); ROMPILLA V. BEARD, 545 U.S. 374 (2005); WIGGINS
9 V. SMITH, 539 U.S. 510 (2003).

10
11 ADDITIONALLY, PETITIONER HAS EFFECTIVELY SHOWN THAT HE
12 WAS OUTRIGHT DEPRIVED OF COUNSEL AT CRITICAL STAGES
13 (TRIAL) OF HIS CRIMINAL PROCEEDING, WHICH MEANS THAT A
14 DEFENDANT IS ENTITLED TO REPRESENTATION BY COUNSEL
15 WHENEVER COUNSEL'S ASSISTANCE IS NECESSARY TO ASSURE
16 A MEANINGFUL DEFENSE. SEE UNITED STATES V. WADES, 388
17 U.S. 218 (1967). THE COURTS HAS FAILED TO ADDRESS THE
18 ISSUE, THAT IS PLAIN IN THE HABEAS, AND GIVES NOTICE IT
19 DENY WITHOUT THE BENEFIT OF THE HEARING REQUIRED BY
20 28 U.S.C. § 2255 (b). IT IS CLEAR THAT THE DISTRICT COURT
21 FAILS TO PROVIDE A "VIGILANT AND INDEPENDENT" REVIEW OF
22 THE "HABEAS AND THE FILES AND EVIDENCE OF THE CASE..."
23 TO DETERMINE IF THE "... EVIDENCE OF THE CASE CONCLUSIVELY
24 SHOW THAT THE PRISONER IS ENTITLED TO NO RELIEF."
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1 PERTINENT PROCEDURAL AND FACTUAL BACKGROUND
2

3 PETITIONER, STEPHEN MARK PICART, IS A STATE PRISONER
4 APPLYING FOR A WRIT OF HABEAS CORPUS PURSUANT TO
5 28 U.S.C. § 2254.

6 PETITIONER WAS CONVICTED IN THE LOS ANGELES COUNTY
7 SUPERIOR COURT, CASE NUMBER TA093015, A JURY CONVICTED
8 PETITIONER OF ONE COUNT OF FIRST-DEGREE MURDER OF
9 SHARON CARTER AND ONE COUNT OF SECOND-DEGREE MURDER
10 OF THE VICTIM'S NINE-TO-TEN WEEK NONVIABLE FETUS
11 (CAL. PENAL CODE §§ 187 (a), 189) AND FOUND SPECIAL
12 CIRCUMSTANCE AND FIREARM ALLEGATIONS (CAL. PENAL CODE
13 §§ 190.2 (a)(3), 12022.53(d)) TO BE TRUE. THE TRIAL
14 COURT SENTENCED PETITIONER TO STATE PRISON FOR A TERM
15 OF LIFE WITHOUT THE POSSIBILITY OF PAROLE PLUS SIXTY-
16 FIVE YEARS (LIFE WITHOUT PAROLE FOR FIRST DEGREE MURDER,
17 15 YEARS TO LIFE FOR SECOND DEGREE MURDER, AND A CONSECUTIVE
18 25-YEARS-TO-LIFE SECTION 12022.53, SUBDIVISION (d)
19 ENHANCEMENT FOR EACH MURDER).
20

21
22 TRIAL FACTS

23 IN 2007, SHARON AND HER TWO SONS, FIVE-YEAR-OLD AMIR
24 AND FOURTEEN-YEAR-OLD MARQUIESE, LIVED IN AN APARTMENT.
25 PETITIONER, WHO STARTED DATING SHARON IN 2005, FREQUENTLY
26 STAYED THERE.

27 SHARON'S STEPFATHER, WILLIE BROOK, IS A MINISTER. IN
28 AUGUST 2007, PETITIONER SPOKE TO BROOK ABOUT SOME TEXT

1 MESSAGES THAT SHARON SENT TO A "YOUNG MAN THAT SHE HAD
2 BECOME INTERESTED IN." BROOK ADVISED PETITIONER THAT
3 "SHARON HAD FOUND ANOTHER PERSON AND SHE WAS MOVING ON
4 WITH HER LIFE... AND THAT HE (PETITIONER) SHOULD MOVE ON...
5 WITH HIS LIFE." PETITIONER DID NOT WANT THEIR RELATIONSHIP TO
6 END.

7 A TYPED LETTER DATED AUGUST 27, 2007, BEARING PETITIONER'S
8 NAME AND RETURNED ADDRESS, AND DIRECTED TO SHARON'S EMPLOYER,
9 STATES THAT SHE WAS HAVING AN AFFAIR WITH A COWORKER NAMED
10 PATRICK SMITH. THE SAME LETTER STATES THAT SHARON WAS
11 "SEVERAL WEEKS PREGNANT."

12 IN AUGUST, SHARON WAS UPSET THAT PETITIONER WOULD NOT
13 RETURN A KEY AND A REMOTE ENTRY DEVICE TO HER. IN SEPTEMBER,
14 SHE ASKED BROOK TO CHANGE THE LOCKS ON HER POOL. ON SEPTEMBER
15 22, 2007, BROOK REMINDED HER TO GET A LOCK.

16 ON SUNDAY, SEPTEMBER 23, 2007, WHEN AMIR GOT UP, SHARON
17 AND PETITIONER WERE IN BED. LATER THAT DAY, SHARON TOOK HER
18 SONS TO A SERVICE AT BROOK'S CHURCH. PETITIONER AND HIS SON,
19 JORDAN, ALSO ATTENDED AND SAT WITH THEM. SHARON AND PETITIONER
20 WERE NOT FIGHTING THEN. PETITIONER TOOK JORDAN TO HIS MOTHER'S
21 HOME AFTER THE SERVICE.

22 SHARON AND HER SONS WENT TO THEIR APARTMENT AFTER
23 THE SERVICE. LATER THAT AFTERNOON, AMIR FOUND A HANDWRITTEN
24 LETTER DATED SEPTEMBER 23, 2007, FROM PETITIONER TO SHARON.
25 HE GAVE IT TO MARQUIESE, WHO GAVE IT TO SHARON. THE LETTER
26 EXPRESSED PETITIONER'S LOVE FOR SHARON, AND SAID THAT SHE
27 "TORE HIM APART," AND THAT HE WAS TRYING TO FIND THE STRENGTH
28 TO TELL HER GOOD BYE.

1 AT APPROXIMATELY 4:30 P.M., SHARON AND HER SONS GOT
2 READY TO GO TO PATRICK'S HOUSE. SHARON SAT IN THE DRIVER'S
3 SEAT OF THEIR "SUV," WITH MARQUIESE IN THE FRONT
4 PASSENGER SEAT, AND AMIR IN THE BACK SEAT, BEHIND HIM. AS
5 THEY APPROACHED THE APARTMENT COMPLEX'S PARKING GATE,
6 PETITIONER ENTERED THE S.U.V AND SAT IN THE BACK SEAT,
7 BEHIND SHARON. HE AND THE BOYS EXCHANGED GREETINGS.
8 SHARON LOOKED IN THE REAR VIEW MIRROR AND TOLD PETITIONER TO
9 GET OUT OF THE SUV. PETITIONER AND SHARON ARGUED AND
10 "JUST STARTED GOING BACK AND FORTH WITH WORDS" SHARON
11 SOUNDED ANGRY, AND KEPT TELLING PETITIONER TO GET OUT.
12 PETITIONER SPOKE "IN A HAPPY VOICE, ... SMILE [O] AND [SAYD]
13 WHY, OR SOMETHING LIKE THAT," WITHOUT RAISING HIS VOICE.
14 HE DID NOT SEEM ANGRY; HE SEEMED THE WAY HE ALWAYS DID.
15 FINALLY, SHARON SAID THAT SHE "[KNEW] WHERE TO TAKE HIM,"
16 BUT DID NOT SAY WHERE THAT WOULD BE.

17
18 AFTER LEAVING THE APARTMENT COMPLEX, SHARON DROVE
19 A SHORT DISTANCE AND TURNED LEFT ON COMPTON BOULEVARD.
20 MARQUIESE THEN SAW PETITIONER SHOOT SHARON IN THE BACK
21 OF THE HEAD. HE HEARD FIVE GUNSHOTS AND SAW SHARON LEAN
22 AGAINST THE STEERING WHEEL BEFORE SHE FELL ONTO THE PASSENGER
23 SEAT. MARQUIESE DID NOT NOTICE THE GUN BEFORE PETITIONER
24 SHOT SHARON.

25 PETITIONER RAN AWAY. HE RETURNED TO THE S.U.V. BRIEFLY
26 AND LEFT AGAIN. THE S.U.V KEPT MOVING SLOWLY. ANGEL DEL
27 VILLAR RAN FROM HIS HOME WHEN HE HEARD THE S.U.V HITTING
28 PARKED CARS. HE HELPED MARQUIESE STOP THE S.U.V.

1 LATER THAT NIGHT, AFTER 7:00 OR 8:00 P.M., PETITIONER
2 TOOK TWO MCDONALD'S "KID'S MEALS" TO JORDAN, JORDAN'S MOTHER,
3 KIM BATISTE, DID NOT NOTICE ANYTHING UNUSUAL ABOUT
4 PETITIONER THAT EVENING. PETITIONER ALSO VISITED TWO OF HIS
5 OTHER CHILDREN AT THEIR MOTHER'S HOME THAT EVENING. THE
6 NEXT MORNING, PETITIONER TOLD BATISTE THAT HE KILLED
7 SHARON BECAUSE SHE "WAS TRYING TO SET HIM UP," AND "HE
8 FELT LIKE HIS LIFE WAS IN DANGER."

9 PETITIONER TURNED HIMSELF IN AT THE POLICE STATION ON
10 SEPTEMBER 24, 2007. DETECTIVES LATER FOUND A LIVE OR
11 UNFIRED .25 CALIBER CARTRIDGES, CASINGS, AND LIVE ROUNDS
12 IN HIS CAR. THEY FOUND .25 CALIBER CASINGS AND A FRAGMENT
13 OF A BULLET IN SHARON'S S.U.V.

14
15 SHARON DIED AS A RESULT OF MULTIPLE GUNSHOOT WOUNDS
16 TO THE HEAD. A WOUND IN THE CENTER OF HER FOREHEAD WAS
17 CAUSED BY A SHOT FIRED FROM WITHIN AN INCH AWAY. TWO
18 OTHER WOUNDS, ONE IN HER RIGHT TEMPLE AND ANOTHER
19 IMMEDIATELY BEHIND IT, WERE CAUSED BY SHOTS FIRED FROM A
20 DISTANCE OF ONE INCH TO THREE FEET AWAY. A FOURTH WOUND
21 IN THE BACK OF HER HEAD WAS FIRED FROM AN INDETERMINATE
22 RANGE. THE NINE-TO-TEN WEEK NONVIABLE FETUS IN SHARON'S
23 UTERUS DIED "DUE TO MATERNAL DEATH."

24
25 PETITIONER CONTENDS THAT THE TRIAL COURT ERRED BY
26 FAILING TO INSTRUCT THE JURY VIA SPONTE THAT IT COULD FIND
27 HIM GUILTY OR NOT GUILTY OF VOLUNTARY MANSLAUGHTER BASED
28 ON HEAT OF PASSION. A TRIAL COURT MUST INSTRUCT ON LESSER

1 INCLUDED OFFENSES THAT FIND SUBSTANTIAL SUPPORT IN THE
2 EVIDENCE (HOPPER V. EVANS (1982) 456 U.S. 605, 611)
3 "'SUBSTANTIAL EVIDENCE' IN THIS CONTEXT IS 'EVIDENCE FROM
4 WHICH A JURY COMPOSED OF REASONABLE [PERSONS] COULD...
5 CONCLUDE'" THAT THE LESSER OFFENSE, BUT NOT THE GREATER
6 WAS COMMITTED."

7 PETITIONER FURTHER CONTENDS THAT THE COURT ERRED BY
8 FAILING TO INSTRUCT THE JURY WITH INSTRUCTIONS CONCERNING
9 PROVOCATION, AND ITS EFFECT UPON PREMEDITATION AND DELIBERATION
10 INCLUDING ONE SUCH AS CALCRIM NO. 522. TRIAL COUNSEL
11 WAS INEFFECTIVE IN FAILING TO REQUEST INSTRUCTIONS REGARDING
12 PROVOCATION AND HEAT OF PASSION AND ITS EFFECT UPON
13 PREMEDITATION AND DELIBERATION.

14 15 16 HABEAS PETITION FACTS

17 PETITIONER HAS RAISED FIVE CLAIMS: (1) TRIAL COUNSEL WAS
18 CONSTITUTIONALLY INEFFECTIVE WHEN HE FAILED TO INVESTIGATE
19 AND PRESENT EVIDENCE OF PETITIONER'S MENTAL CONDITION AND
20 MEDICAL CONDITION AT THE TIME OF THE OFFENSE TO NEGATE
21 FIRST DEGREE MURDER; (2) INEFFECTIVE ASSISTANCE OF TRIAL
22 COUNSEL WHEN HE FAILED TO PRESENT TO THE COURT WITH ALL OF
23 PETITIONER'S NEWLY UNCOVERED EVIDENCE/RECORDS; (3) PETITIONER'S
24 RIGHT TO A CONVICTION BASED ON PROOF LESS THAN A REASONABLE
25 DOUBT WERE VIOLATED BY SECTION 1109 OF THE CALIFORNIA EVIDENCE
26 CODE AND THE USE OF CALCRIM NO. 852. SEE IN RE WINSHIP,
27 (1970) 397 U.S. 357; (4) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
28 FOR FAILING TO PRESENT AN UNCONSCIOUSNESS DEFENSE BASED ON

1 PETITIONER'S MENTAL ILLNESS AND MEDICAL CONDITION (SYNCOPE)
2 AND LOW-BLOOD PRESSURE (HYPOTENSION); (5) FACTUAL INNOCENCE BASED
3 ON A MENTAL ILLNESS OR DEFECT AND/OR MEDICAL CONDITION; AND
4 (6) THE EVIDENCE WAS INSUFFICIENT TO SUPPORT A VERDICT OF FIRST
5 DEGREE MURDER AND SECOND DEGREE MURDER, WHICH DENIED PETITIONER
6 HIS SIXTH AMENDMENT RIGHT TO COUNSEL AND VIOLATED HIS DUE
7 PROCESS AND EQUAL PROTECTIONS RIGHT. SEE PICART V. BOLLARD,
8 2:21-cv-03367-DJF (AGR), DOCKET ENTRY NO. 50 AT 18, AND DOCKET
9 ENTRY NO. 55.

10 PETITIONER, STEPHEN MARK PICART, SEEKS POSTCONVICTION
11 RELIEF ARGUING THAT HIS TRIAL COUNSEL HAD RENDERED INEFFECTIVE
12 ASSISTANCE BY FAILING TO INVESTIGATE AND PRESENT MITIGATING
13 EVIDENCE OF HIS MEDICAL CONDITION (SYNCOPE AND LOW-BLOOD
14 PRESSURE) AND MENTAL BACKGROUND.

15 A LITIGANT CANNOT BE HELD CONSTRUCTIVELY RESPONSIBLE
16 FOR THE CONDUCT OF AN ATTORNEY WHO IS NOT OPERATING AS HIS
17 AGENT IN ANY MEANINGFUL SENSE OF THE WORD. SEE COLEMAN,
18 SUPRA, AT 752-754, 111 S. CT. 2546.

19
20 PETITIONER PROVIDED THE COURT WITH A FULL EVIDENCE CONCERN
21 ING THE OUTHRIGHT DENIAL OF COUNSEL AT CRITICAL STAGES IN HIS
22 HABEAS PETITION, FAP, AND TRAVERSE.

23 PETITIONER'S CONSTITUTIONAL CHALLENGES ARE PREMISED UPON
24 VIOLATIONS OF THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS
25 TO THE UNITED STATES CONSTITUTION. THE FIFTH AMENDMENT
26 PROVIDES THAT NO CRIMINAL DEFENDANT MAY BE "DEPRIVED OF LIFE,
27 LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW," WHICH
28 PETITIONER WAS UNLAWFULLY CONVICTED. THE SIXTH AMENDMENT

1 PROVIDES THAT "IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED
2 SHALL ENJOY THE RIGHT ... TO HAVE THE ASSISTANCE OF COUNSEL
3 FOR HIS DEFENSE," WHICH TRIAL COUNSEL FAILED TO OBTAIN,
4 CONSULT, AND USE NECESSARY EXPERTS FOR A DEFENSE MECHANISM
5 DEPRIVED HIS CLIENT OF THE EFFECTIVE ASSISTANCE OF COUNSEL.
6 THE FOURTEENTH AMENDMENT PROVIDES THAT NO PERSON MAY
7 BE "DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE
8 PROCESS OF LAW, NOR DENY ANY PERSON THE EQUAL PROTECTION
9 OF THE LAWS," WHICH WERE VIOLATED WHEN PETITIONER DID NOT
10 RECEIVED A FAIR TRIAL.

11 12 1. INEFFECTIVE ASSISTANCE OF COUNSEL

14 PETITIONER ARGUE THAT TRIAL COUNSEL WAS INEFFECTIVE
15 BECAUSE HE FAILED TO INVESTIGATE PETITIONER'S MENTAL CONDITION
16 AND FUNCTIONING OF THE TIME OF THE MURDER IN QUESTION, OF
17 THE INFORMATION. PETITIONER ARGUES THAT A REVIEW OF PETITIONER'S
18 PSYCHOLOGICAL EVALUATIONS AND RECORDS WOULD HAVE ALERTED
19 "REASONABLY COMPETENT COUNSEL" THAT, DESPITE PETITIONER'S
20 INSISTENCE THAT HE BLACKED OUT, PETITIONER'S HISTORY OF
21 MENTAL DEFECT, DISEASE, AND SYNCOPES/LOW-BLOOD PRESSURE MAY
22 HAVE SUPPORTED OTHER POTENTIALLY MERITORIOUS DEFENSE TO
23 CHARGE OF MURDER, OR TO NEGATE THE INTENT ELEMENT OF
24 FIRST-DEGREE MURDER. PETITIONER FURTHER ARGUES THAT TRIAL
25 COUNSEL SHOULD HAVE INVESTIGATED THESE ALTERNATIVE THEORIES
26 OF THE CASE BY PRESENTING PETITIONER'S PSYCHOLOGICAL
27 EVALUATIONS AND RECORDS TO A MENTAL HEALTH PROFESSIONAL
28 TO DETERMINE HOW PETITIONER'S MENTAL HEALTH AND MEDICAL

1 CONDITION WOULD HAVE AFFECTED PETITIONER'S PERCEPTIONS AND/OR
2 BEHAVIORS OF THE TIME OF THE MURDER. PETITIONER CONCLUDES
3 THAT, WITHOUT CONDUCTING THIS TYPE OF "REASONABLY
4 DILIGENT PRELIMINARY INVESTIGATION," COUNSEL LACKED THE
5 FRAMEWORK WITHIN WHICH TO MAKE A COMPETENT, INFORMED
6 TACTICAL DECISION REGARDING THE MOST EFFECTIVE PRESENTATION
7 OF A DEFENSE, AND THAT THE STRICKLAND PRESUMPTION THEREFORE
8 DOES NOT APPLY. PETITIONER RAISED THIS CLAIM IN HIS PETITION
9 FOR WRIT OF HABEAS CORPUS, WHICH WAS SUMMARILY DENIED BY
10 THE CALIFORNIA SUPREME COURT. SEE APPENDIX "C."

11 12 Q. LEGAL STANDARD

13
14 THE STANDARDS OF BOTH 28 U.S.C. § 2254(d) AND STRICKLAND
15 ARE "HIGHLY DEFERENTIAL AND WHEN THE TWO APPLY IN TANDEM,
16 REVIEW IS DOUBLY SO." HARRINGTON, 1562 U.S. AT 105. "[T]HE
17 QUESTION [UNDER § 2254(d)] IS NOT WHETHER COUNSEL'S ACTIONS
18 WERE REASONABLE. THE QUESTION IS WHETHER THERE IS ANY
19 REASONABLE ARGUMENT THAT COUNSEL SATISFIED STRICKLAND'S
20 DEFERENTIAL STANDARD." ID. THE STRICKLAND PREJUDICE ANALYSIS
21 IS COMPLETE IN ITSELF AND THERE IS NO NEED FOR AN ADDITIONAL
22 HARMLESS ERROR REVIEW UNDER BRECHT. AVILA V. GALAZA, 297
23 F.3D 911, 918 N.7 (9TH CIR. 2002).

24 "[S]TRATEGIC CHOICES MADE AFTER THOROUGH INVESTIGATION
25 OF LAW AND FACTS RELEVANT TO PLAUSIBLE OPTIONS ARE VIRTUALLY
26 UNCHALLENGEABLE; AND STRATEGIC CHOICES MADE AFTER LESS THAN
27 THE COMPLETE INVESTIGATION ARE REASONABLE PRECISELY TO THE
28 EXTENT THAT REASONABLE PROFESSIONAL JUDGMENTS SUPPORT THE

1 LIMITATIONS OF INVESTIGATION," STRICKLAND, 466 U.S. AT 690-91
2 "IN ANY EFFECTIVENESS CASE, A PARTICULAR DECISION NOT TO
3 INVESTIGATE MUST BE DIRECTLY ASSESSED FOR REASONABLENESS IN
4 ALL THE CIRCUMSTANCES, APPLYING A HEAVY MEASURE OF
5 DEFERENCE TO COUNSEL'S JUDGMENTS." ID. AT 691.

6 THAT AN ATTORNEY MIGHT HAVE CONDUCTED A MORE
7 THOROUGH INVESTIGATION DOES NOT ESTABLISH DEFICIENT
8 PERFORMANCE. BURGER V. KEMP, 403 U.S. 776, 794, 107 S. CT. 3114,
9 97 L. ED. 2D 638 (1987). "[T]HE DUTY TO INVESTIGATE
10 DOES NOT FORCE DEFENSE LAWYER TO SCOUR THE GLOBE ON THE
11 OFF CHANCE SOMETHING WILL TURN UP; REASONABLY DILIGENT
12 COUNSEL MAY DRAW A LINE WHEN THEY HAVE GOOD REASON TO
13 THINK FURTHER INVESTIGATION WOULD BE A WASTE." ROMPILA
14 V. BEARD, 545 U.S. 374, 383, 125 S. CT. 2456, 162 L. ED. 2D 360
15 (2005). THE QUESTION IS NOT WHAT THE BEST LAWYER OR
16 EVEN WHAT MOST GOOD LAWYER COULD HAVE DONE, BUT WHETHER
17 A REASONABLE LAWYER COULD HAVE ACTED AS DEFENSE COUNSEL
18 DID. COLEMAN V. CALDERON, 150 F.3D 1105, 1113 (9TH CIR. 1998),
19 REV'D ON OTHER GROUNDS, 525 U.S. 141, 119 S. CT. 500, 142 L.
20 ED. 2D 521 (1998). THUS, THE RELEVANT INQUIRY IS NOT
21 WHAT TRIAL COUNSEL COULD HAVE DONE, BUT WHETHER COUNSEL'S
22 ACTIONS WERE REASONABLE. DABBIT V. CALDERON, 151 F.3D 1170,
23 1173-74 (9TH CIR. 1998).

24 25 B. MENTAL CONDITION AT TIME OF OFFENSE

26
27 PETITIONER ARGUES THAT TRIAL COUNSEL WAS CONSTITUTION-
28 ALLY INEFFECTIVE BECAUSE HE FAILED TO INVESTIGATE AND

1 PRESENT EVIDENCE OF PETITIONER'S MENTAL CONDITION AND/OR
2 MEDICAL CONDITION AT THE TIME OF THE OFFENSE - SCHIZOPHRENIA,
3 DEPRESSION, ANXIETY, AND SYNCOPE - TO EXPLAIN PETITIONER'S
4 BLACKOUTS AT THE TIME OF THE MURDER TO NEGATE FIRST-DEGREE
5 MURDER.

6 PETITIONER SANITY WAS NEVER INVESTIGATED INTO. PETITIONER
7 WAS NOT AFFORDED A FAIR TRIAL, EVEN THOUGH, HE WAS IN THE
8 PSYCH UNIT BEFORE, DURING, AND AFTER TRIAL. PETITIONER'S TRIAL
9 COUNSEL KNEW THAT MY SANITY WAS IN QUESTION. PETITIONER
10 WAS DENIED A FAIR TRIAL BY BEING DENIED A COMPREHENSIVE
11 PSYCHOLOGICAL EVALUATION. IT WAS IMPOSSIBLE FOR COUNSEL
12 OF RECORD AND THE COURT TO DETERMINE PETITIONER'S INNOCENCE
13 OR GUILT BASED ON INCOMPLETE EVALUATION OF HIS INSANITY
14 BECAUSE PETITIONER DID NOT REMEMBER WHAT HAD HAPPENED
15 DURING THE COMMISSION OF SAID MURDER. PATE V. ROBINSON,
16 383 U.S. 375 (1966).

17 PETITIONER HAD "A DUE PROCESS RIGHT NOT TO BE TRIED
18 WHILE INCOMPETENT." STANLEY V. CULEN, 633 F.3D 852, 860
19 (9TH CIR. 2011) (QUOTING DOPE V. MISSOURI, 420 U.S. 162, 172,
20 95 S. CT. 896, 43 L. ED. 2D. 103 (1975)). TRIAL ATTORNEY HAD A
21 DUTY TO ORDER A PSYCHOLOGICAL EVALUATION. WEEDEN V.
22 JOHNSON, 854 F.3D 1063 (2017).

23
24 PETITIONER, HOWEVER, PRESENTED NEWLY DISCOVERED
25 EVIDENCE REGARDING HIS VARIOUS PHYSICAL AND MENTAL
26 CONDITIONS, INCLUDING HIS UNEXPLAINED BLACKOUTS, THE
27 MEDICATIONS HE WAS PRESCRIBED, THE POTENTIAL EFFECTS OF
28 THE MEDICATION HE HAD TAKEN, AND THE POSSIBILITY THAT

1 SYNCOPY COULD CAUSE A "BLACKOUT STATE." SEE PICART V.
2 POUARD, 2:21-CV-03367-DJF (AGR), DOCKET ENTRY NO. 50 AT
3 10-14. ADDITIONAL EXPERT TESTIMONY REGARDING SYNCOPY IN
4 GENERAL IN ORDER TO SUPPORT THE POSSIBILITY THAT PETITIONER
5 WAS UNCONSCIOUS AT THE TIME OF THE OFFENSE AND SUFFERING
6 FROM SYNCOPY, LOW-BLOOD PRESSURE, SCHIZOPHRENIA, DEPRESSION
7 AND ANXIETY WOULD HAVE IF ANY ADD, ADDITIONAL EXCULPATORY
8 VALUE. THE ISSUE THE JURY HAD TO DECIDE WAS PETITIONER'S
9 MENTAL STATE AT THE TIME OF THE OFFENSES.

10 " [A] LAWYER WHO FAILS ADEQUATELY TO INVESTIGATE
11 AND INTRODUCE INTO EVIDENCE, [INFORMATION] THAT
12 DEMONSTRATE[S] HIS CLIENT'S FACTUAL INNOCENCE, OR
13 THAT RAISE[S] SUFFICIENT DOUBT AS TO THAT QUESTION
14 TO UNDERMINE CONFIDENCE IN THE VERDICT, RENDERS
15 DEFICIENT PERFORMANCE." PETITIONER'S TRIAL ATTORNEY
16 WAS CONSTITUTIONALLY INEFFECTIVE BY FAILING TO HAVE A
17 PSYCHOLOGICAL EXAMINATION PERFORMED ON PETITIONER
18 BECAUSE "PETITIONER'S MENTAL CONDITION WAS AN ESSENTIAL
19 FACTOR IN DECIDING WHETHER HE ACTUALLY HAD THE REQUIRED
20 MENTAL STATES FOR THE [CHARGED] CRIME. WEEDEN V.
21 JOHNSON, 854 F.3D 1063 (2017).

22 LAWYERS WHO FAIL TO OBTAIN, CONSULT, AND USE NECESSARY
23 EXPERTS DEPRIVE THEIR CLIENTS OF THE EFFECTIVE ASSISTANCE OF
24 COUNSEL. IN RE CORDERO, 45 CAL.3D 88 (1988). GIVEN THE EXCULPATORY
25 POTENTIAL OF PSYCHOLOGICAL EVIDENCE, COUNSEL'S FAILURE TO INVESTIGATE
26 "IGNORED PERTINENT AVENUES FOR INVESTIGATION OF WHICH HE SHOULD
27 HAVE BEEN AWARE." PORTER V. MCCOLLUM, 558 U.S. 30, 40, 130 S.
28 CT. 447, 175 L.ED.2D 398 (2009).

1 2. PETITIONER'S LEGAL DEFENSE

2
3 ON OR ABOUT SEPTEMBER 23, 2007, DURING THE TIME OF THE OFFENSE
4 IN QUESTION, PETITIONER WAS INCOMPETENT BECAUSE THE DAY OF THE
5 DEATH OF MURDER VICTIM ON COUNT 1, PETITIONER AND THE VICTIM
6 (SHARON) WAS IN THE S.U.V. HAVING A FRIENDLY CONVERSATION AND
7 SUDDENLY AN ARGUMENT ENSUED GOING BACK AND FORTH WITH WORDS
8 EXCHANGED (SEE TRIAL TRANSCRIPTS, VOLUME TWO AT PP. 671-672 AND
9 1295). THE VICTIM STATED: SHE DID HAVE AN AFFAIR WITH THIS GUY
10 NAMED, "PATRICK." DUE TO PETITIONER'S JEALOUS RAGE AND MENTAL STATE
11 OF MIND AT THE TIME OF THE OFFENSE CAUSED PETITIONER TO BLACKOUT.
12 PETITIONER WAS NOT AWARE THAT THE VICTIM HAD BEEN MURDERED. PETITIONER
13 FLED THE SCENE AFTER HE CAME OUT OF THE BLACKOUT. BEFORE FLEEING THE
14 SCENE, PETITIONER NOTICED THE VICTIM WAS IN THE FRONT SEAT SLUMPED
15 OVER THE CENTER CONSOLE AND THE VICTIM HAD BEEN SHOT, SO PETITIONER
16 PANIC AND FLED THE SCENE NOT KNOWING WHAT HAPPENED.

17
18 3. HABEAS FEDERAL BACKGROUND

19
20 ON MARCH 17, 2021 (Dkt. NO. 2), PETITIONER FILED HIS PETITION FOR A
21 WRIT OF HABEAS CORPUS IN THE DISTRICT COURT FOR THE CENTRAL DISTRICT OF
22 CALIFORNIA CLAIMING VIOLATIONS OF HIS RIGHT TO DUE PROCESS AND INEFFECTIVE
23 ASSISTANCE OF COUNSEL IN VIOLATION OF THE FIFTH, SIXTH, AND FOURTEENTH
24 AMENDMENT TO THE UNITED STATES CONSTITUTION. IN SUPPORT OF HIS PETITION,
25 PETITIONER PROVIDED WHAT HE CLAIMED IS NEWLY DISCOVERED EVIDENCE
26 COLLECTED OVER THE YEARS, INCLUDING:

27 1) LOW-BLOOD PRESSURE AND SYNCOPE, WHICH PETITIONER CLAIMS WERE NOT
28 AVAILABLE AT TRIAL, WHICH SHOW THAT PETITIONER'S BLACKOUTS WERE

1 CAUSED BY THIS MEDICAL CONDITION.

2 THE STATE OF CALIFORNIA MOVED FOR SUMMARY JUDGMENT ON THE GROUND
3 THAT PETITIONER'S PETITION WAS BARRED BY THE ONE-YEAR LIMITATIONS PERIOD
4 APPLICABLE TO HABEAS ACTIONS. THE DISTRICT COURT REFERRED THE CASE TO A
5 MAGISTRATE JUDGE, WHO FOUND THAT PETITIONER HAD FAILED TO FILE HIS HABEAS
6 PETITION TIMELY. THE MAGISTRATE JUDGE RECOMMENDED THAT THE DISTRICT COURT
7 DENY THE PETITIONER'S HABEAS, BECAUSE PETITIONER DID NOT "DEMONSTRATE
8 CREDIBLE NEW EVIDENCE OF FACTUAL INNOCENCE WHICH IS SUFFICIENT FOR THE
9 LIMITED PURPOSE OF EQUITABLY TOLLING THE STATUTE OF LIMITATIONS AND
10 PERMITTING THE COURT TO REACH THE MERITS OF THE CLAIM." (MAGIS. JUDGE
11 REPORT & REC) (APPENDIX " "). THE MAGISTRATE JUDGE FOUND THAT PETITIONER'S
12 NEW EVIDENCE "CHIP AWAY AT THE RATHER SLIM CIRCUMSTANTIAL EVIDENCE
13 UPON WHICH PETITIONER WAS CONVICTED. PETITIONER TIMELY FILED OBJECTIONS
14 TO THE MAGISTRATE JUDGE'S RECOMMENDATION.

15
16 THE DISTRICT COURT DID NOT REACH THE ISSUE OF WHETHER A FACTUAL
17 INNOCENCE EXCEPTION TO THE STATUTE OF LIMITATIONS EXISTS, BUT INSTEAD
18 FOUND THAT PETITIONER HAD FAILED TO DEMONSTRATE HIS FACTUAL INNOCENCE.
19 THE COURT NOTED THAT WHILE THE NEW EVIDENCE WAS "UNDOUBTEDLY UNFAVORABLE"
20 TO PETITIONER, "IT FAILS TO ESTABLISH FACTUAL INNOCENCE BECAUSE NONE OF
21 [HIS] EVIDENCE CONCLUSIVELY ESTABLISHES THE BLACKOUTS. (DIST. CT. OR)
22 (SEE APPENDIX " "). HOWEVER, THE COURT FOUND THAT THE EVIDENCE ITSELF
23 WAS NOT "NEW" BUT "MERELY THAT IT WAS AVAILABLE AT TRIAL (DIST. CT. OR
24 OKT. NO. 50 AT P. 8). PETITIONER REFUTE THIS ARGUMENT! THEREFORE, THE DISTRICT
25 COURT ACCEPTED THE MAGISTRATE JUDGE'S RECOMMENDATION AND GRANTED THE
26 STATE'S MOTION FOR SUMMARY JUDGMENT ON THE GROUND THAT PETITIONER'S
27 PETITION DID NOT SHOW A CONSTITUTIONAL VIOLATION. A NOTICE OF APPEAL
28 FOLLOWED.

1 STEPHEN MARK PICART #G07811
2 R.J. DONOVAN CORRECTIONAL FACILITY
3 480 ALTA ROAD
4 SANDIEGO, CALIFORNIA 92179

5 IN THE
6 SUPREME COURT OF THE UNITED STATES
7

8
9 STEPHEN MARK PICART,
10 PETITIONER,
11

12 V.S.

13 MARCUS POLLARD, WARDEN,
14 RESPONDENT(S).
15

16 CASE NO.: _____

17 MEMORANDUM OF POINTS AND
18 AUTHORITIES IN SUPPORT OF
19 PETITION FOR A WRIT OF
20 CERTIORARI
21

22 THE SIXTH AMENDMENT TO THE CONSTITUTION PROVIDES,
23 IN PERTINENT PART:

24 " IN ALL CRIMINAL PROSECUTION, THE ACCUSED
25 SHALL ENJOY THE RIGHT . . . TO BE INFORMED
26 OF NATURE AND CAUSE OF THE ACCUSATIONS TO HAVE
27 COMPULSORY PROCESS FOR OBTAINING WITNESSES
28 IN HIS FAVOR, AND TO HAVE THE ASSISTANCE
OF COUNSEL FOR HIS DEFENSE. "

THE GUARANTEES INCLUDED IN THE BILL OF RIGHTS - TO HAVE
ACCESS TO EVIDENCE FAVORABLE TO OUR DEFENSE.

RIGHT GUARANTEED TO THE CRIMINALLY ACCESS

- RIGHT TO COUNSEL

- IT IS COUNSEL'S RESPONSIBILITY TO ENSURE THE
INTERESTS OF THE DEFENDANT ARE NOT JEOPARDIZED.

- THE DEFENSE ATTORNEY, THERE, IS THE PRIMARY GUARANTEE

1 THAT ALL OF THE OTHER RIGHTS OF CRIMINAL DUE PROCESS
2 ARE OBSERVED.

3 INEFFECTIVE REPRESENTATION BY PUBLIC DEFENDERS

4 - IF DEFENDANTS FEEL ATTORNEYS HAVE NOT EFFECTIVELY
5 REPRESENTED THEM, THEY CAN APPROACH THE COURT.

6 - COURT HAS RECOGNIZED "THE RIGHT TO COUNSEL IS THE RIGHT
7 TO THE EFFECTIVE ASSISTANCE OF COUNSEL." STICKLAND V.
8 WASHINGTON, 446 U.S. 668 (1989).

9
10 SUPPORTING CASE LAW
11 (FAILURE TO INVESTIGATE AND PREPARE FOR TRIAL)

12 THE DUTY TO INVESTIGATE IS PART OF A DEFENDANT'S RIGHT TO
13 REASONABLE COMPETENT COUNSEL. INDEED, THE PRINCIPLE IS SO FUNDAMENTAL
14 THAT FAILURE TO CONDUCT A REASONABLE PRE-TRIAL INVESTIGATION MAY IN
15 OF ITSELF AMOUNT TO INEFFECTIVE ASSISTANCE OF COUNSEL, (U.S. V. TUCKER)
16 9TH CIR. 1983, 716 F.2D 576, 583, N. 16:

17 THE AMERICAN BAR ASSOCIATION STATES, THE DUTY AS FOLLOWS:

18 " IT IS THE DUTY OF THE LAWYER TO CONDUCT A PROMPT
19 INVESTIGATION OF THE CIRCUMSTANCES OF THE CASE
20 AND THE PENALTY, IN THE EVENT OF CONVICTION.
21 THE INVESTIGATION SHOULD ALWAYS INCLUDE EFFORTS
22 TO SECURE INFORMATION IN THE POSSESSION OF THE
PROSECUTION AND LAW ENFORCEMENT, (A.B.A.
STANDARD 4-4-1)."

23 MOREOVER, THE INVESTIGATORY PROCESS SHOULD BEGIN IMMEDIATELY
24 ON APPEARANCE AS COUNSEL FOR THE DEFENDANT (ID STANDARD 4-4-1),
25 AND AS SUMMARIZED ON THE COMMENTARY TO STANDARD 4.3, ("AN
26 ADEQUATE DEFENSE CANNOT BE FORMED IF THE LAWYER DOES NOT KNOW
27 WHAT IS LIKELY TO DEVELOP AT TRIAL, IN CRIMINAL LITIGATION AS IN
28 OTHER MATTERS, THE INFORMATION IS THE KEY GUIDE TO DECISIONS AND

1 ACTION. THE LAWYER WHO IS IGNORANT OF THE FACTS OF THE CASE
2 CANNOT SERVE THE CLIENT EFFECTIVELY!!!! "EMPHASIS."

3 FURTHERMORE, THE DUTY TO INVESTIGATE DOES NOT DEPEND UPON
4 LAWYERS ABILITY OR EXPERIENCE. THE MOST ABLE AND COMPETENT
5 LAWYER IN THE WORLD CAN'T RENDER EFFECTIVE ASSISTANCE IN THE
6 DEFENSE OF HIS CLIENT, IF HIS LACK OF PREPARATION FOR TRIAL,
7 RESULTS IN HIS FAILURE TO LEARN OF READILY AVAILABLE FACTS,
8 WHICH MIGHT HAVE AFFORDED HIS CLIENT A LEGITIMATE, JUSTIFIABLE
9 DEFENSES (HARRIS V. BLODGETT) (W.D. WASH. 1994) 853 F. SUPP. 1239,
10 1255, CITING TUCKER, SUPRA AND (MCQUEEN V. SWENSEN) 8TH CIR. 1994,
11 498 F.2D 207, 217; AND (JENNINGS V. WOODFORD) 9TH CIR. 2002,
12 290 F.3D 1006, AND (WIGGINS V. SMITH) 2003, 539 U.S. 510 529.

13 BEFORE COUNSEL UNDERTAKES TO ACT OR NOT TO ACT, COUNSEL MUST
14 MAKE A RATIONAL AND INFORMED DECISION ON STRATEGY AND TACTICS,
15 FOUNDED UPON ADEQUATE INVESTIGATION AND PREPARATION (IN RE: MARQUEZ)
16 1992, 1 CAL. 4TH 384, 602. ALTHOUGH A COURT MIGHT PRESUME THAT
17 COUNSEL'S CONDUCT FALLS WITHIN THE "WIDE RANGE" OF REASONABLE
18 PROFESSIONAL ASSISTANCE. SEE (BELL V. CONE) 2002, 535 U.S. 685, 702:
19 COUNSEL'S ALLEGED TACTICAL DECISIONS MUST BE SUBJECTED TO
20 MEANINGFUL SCRUTINY SEE (IN RE: AVENA) 1996, 12 CAL. 4TH 694, AND
21 MUST BE INFORMED, SO THAT BEFORE COUNSEL ACTS HE WILL MAKE A
22 RATIONAL AND INFORMED DECISION ON STRATEGY AND TACTICS, FOUNDED ON
23 ADEQUATE INVESTIGATION AND PREPARATION MARQUEZ SUPRA AND (IN RE:
24 JONES) 1996, 13 CAL. 4TH 552, 565.

25 IN STRICKLAND THE SUPREME COURT EMPHASIZED THAT TACTICAL DECISIONS
26 ALTHOUGH ENTITLED TO A HEAVY MEASURE OF DEFERENCE, IF UNDERTAKEN
27 FOLLOWING A REASONABLE INVESTIGATION, ARE ONLY AS REASONABLE AS THE
28 INVESTIGATION ON WHICH THEY ARE BASED (STRICKLAND V. WASHINGTON)

1 466 U.S. AT 690-691.

2 IN "WIGGINS" THE COURT APPLIED THE BASIC PRINCIPAL ENUNCIATED
3 IN "STRICKLAND" AT 466 U.S. PG. 690-691, IN EXPRESSLY DETERMINING WHETHER
4 A LAWYER PRETRIAL INVESTIGATION WAS CONSTITUTIONALLY DEFICIENT.
5 IN WIGGINS THE HIGH COURT EXPLAINED, THAT ITS FOCUS WAS NOT ON
6 WHETHER COUNSEL SHOULD HAVE PRESENTED A CASE IN LITIGATION, BUT ON
7 WHETHER THE INVESTIGATION SUPPORTING COUNSEL'S DECISION NOT TO
8 INTRODUCE MITIGATING EVIDENCE OF DEFENDANT'S BACKGROUND WAS
9 ITSELF REASONABLE (WIGGINS) SUPRA, 329 U.S. AT 523.

10 IN REVIEWING THE ADEQUACY OF DEFENSE COUNSEL'S LEGAL
11 REPRESENTATION, THE HIGH COURT FOUND THAT THAT COUNSEL HAD
12 ABANDONED THEIR ONLY INVESTIGATION OF THE DEFENDANT'S BACKGROUND
13 AFTER HAVING ACQUIRED ONLY A RUDIMENTARY KNOWLEDGE OF HIS HISTORY
14 FROM A NARROW SET OF SOURCES. (ID AT PG. 524), THE COURT FOUND THAT
15 THIS LIMITED, INVESTIGATION NOT ONLY WAS UNREASONABLE UNDER THE
16 THEN APPLICABLE STANDARDS, BUT WAS ALSO UNREASONABLE IN LIGHT
17 OF THE LEADS THAT COUNSEL ACTUALLY DISCOVERED, LEADS WHICH WOULD
18 HAVE CAUSED ANY REASONABLY COMPETENT ATTORNEY TO REALIZE THAT
19 PURSUING THESE LEADS WAS NECESSARY TO MAKING AN INFORMED
20 CHOICE AMONG POSSIBLE DEFENSES (ID), THE COURT ALSO FOUND THAT
21 BECAUSE COUNSEL SPENT INSUFFICIENT TIME CONSIDERING AND
22 DEVELOPING A TRIAL STRATEGY, COUNSEL'S FAILURE TO INVESTIGATE
23 THOROUGHLY RESULTED FROM IN ATTENTION, AND NOT REASONED STRATEGIC
24 JUDGMENT.

25 THE WIGGINS COURT ALSO REJECTED THE IDEA THAT BECAUSE COUNSEL
26 HAD SOME INFORMATION TO WORK WITH, THEY WERE IN A POSITION TO MAKE A
27 TACTICAL CHOICE, NOT TO PRESENT A MITIGATION DEFENSE, INSTEAD THE
28 COURT STATED THAT, IN ASSESSING THE REASONABleness OF AN ATTORNEY'S

1 INVESTIGATION, A COURT MUST CONSIDER, NOT ONLY THE QUANTUM OF EVIDENCE
2 ALREADY KNOWN TO COUNSEL, BUT ALSO WHETHER THE KNOWN EVIDENCE WOULD
3 LEAD A REASONABLE ATTORNEY, TO INVESTIGATE FURTHER.

4 HENCE, "STRICKLAND" COULD NOT BE READ TO RENDER TRIAL COUNSEL
5 CONDUCT BULLETT PROFF UNDER THE SIXTH AMENDMENT, MERELY BY SAYING
6 ITS DONE FOR STRATEGIC REASONS!!!! EVEN ASSUMING THAT COUNSEL'S LIMITED
7 SCOPE OF THE INVESTIGATION WAS FOR STRATEGIC REASONS, "STRICKLAND" DOES
8 NOT ESTABLISH, THAT A CURSORY INVESTIGATION AUTOMATICALLY JUSTIFIED A
9 TACTICAL DECISION WITH RESPECT TO STRATEGY, BUT RATHER, A REVIEWING COURT
10 MUST CONSIDER THE REASONABLENESS OF THE INVESTIGATION SAID TO SUPPORT
11 THE STRATEGY (WIGGINS V. SMITH) SUPRA, 539 U.S. AT 527, APPLYING THE ABOVE
12 PRINCIPLES AS A GUIDE TO DETERMINING WHETHER COUNSEL'S PERFORMANCE WAS
13 DEFICIENT. THE "WIGGINS" COURT FOUND THAT COUNSEL CHOSE TO ABANDON THEIR
14 INVESTIGATION AT AN UNREASONABLE JUNCTURE, MAKING A FULLY INFORMED,
15 DECISION WITH RESPECT TO STRATEGY IMPOSSIBLE (ID AT PG. 527-528).

16 THE COURT THEREFORE CONCLUDED, COUNSEL'S INVESTIGATION, DID NOT
17 REFLECT, REASONABLE PROFESSIONAL JUDGMENT, !!! THEIR DECISION TO END
18 THEIR INVESTIGATION WHEN THEY DID WAS NEITHER CONSISTENT WITH THE
19 PROFESSIONAL STANDARDS THAT PREVAILED AT THE TIME, NOR REASONABLE, IN LIGHT OF
20 THE EVIDENCE COUNSEL UNCOVERED, EVIDENCE THAT WOULD HAVE LED TO A REASONABLY
21 COMPETENT ATTORNEY TO INVESTIGATE FURTHER, APPLYING "WIGGINS" ("WHAT
22 MATTERS IS THE SUBSTANCE OF THE INVESTIGATION, WHETHER COUNSEL IN FACT
23 EXPLORED THOSE AVENUES. REASONABLE COUNSEL WOULD HAVE PURSUED, IN LIGHT
24 WHAT WAS KNOWN, AND IN LIGHT OF THE DEFENSE STRATEGY").

25 IN SUM, THE "STRICKLAND" TEST DOES NOT AFFORD ANY SLAVISH DEFERENCE
26 TO DECISIONS BY TRIAL COUNSEL THAT ARE BASED, NOT ON INFORMED
27 TACTICAL CHOICES BUT RATHER ON FAILURE TO CONDUCT REASONABLE
28 PRE-TRIAL INVESTIGATION IN THE FIRST PLACE.

REASON FOR GRANTING REVIEW

1) UNDER 28 U.S.C. SECTION 2254 (d), A STATE COURT MUST APPLY THE ESTABLISHED FEDERAL LAW IN THEIR ADJUDICATION OF A PRISONER'S CLAIM FOR HABEAS CORPUS RELIEF. FOR RICHTER'S INEFFECTIVE COUNSEL CLAIM, THE APPLICABLE FEDERAL LAW WAS ESTABLISHED UNDER STRICKLAND V. WASHINGTON. UNDER THE STANDARD ESTABLISHED IN STRICKLAND ("STRICKLAND TEST"), A CRIMINAL DEFENDANT CAN SEEK RELIEF FOR AN INEFFECTIVE COUNSEL IF HE PROVES THAT (1) HIS COUNSEL'S PERFORMANCE WAS OBJECTIVELY UNREASONABLE, AND (2) HIS COUNSEL'S ERROR PREJUDICED THE OUTCOME OF THE CASE.

WALDEN KELLY HARRINGTON ("HARRINGTON") ARGUES THAT THE DECISION REACHED BY THE CALIFORNIA SUPREME COURT WAS AN ADJUDICATION ON THE MERITS, AND THAT IT WAS OBJECTIVELY REASONABLE, AND THEREFORE SHOULD HAVE BEEN TREATED WITH DEFERENCE UNDER SECTION 2254 (d) OF THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1966 ("AEDPA"). ALTERNATIVELY, JOSHUA RICHTER ("RICHTER") ARGUES THAT THE SUMMARY DISPOSITION OF THE CASE WAS NOT AN ADJUDICATION ON THE MERITS, AND THAT THE DEFENSE COUNSEL PROVIDED UNCONSTITUTIONALLY INEFFECTIVE ASSISTANCE TO RICHTER.

TEXAS AND 32 OTHER STATES ("STATES") AGREE WITH HARRINGTON THAT THE CONVICTION SHOULD BE UPHOLD AS A REASONABLE ADJUDICATION ON THE MERITS AND THAT IT DESERVES AEDPA DEFERENTIAL REVIEW. THE STATES ARGUE THAT EVEN IF A STATE COURT MISINTERPRETS FEDERAL LAW, ONCE AN ADJUDICATION ON THE MERITS HAS BEEN GRANTED, A FEDERAL COURT CAN STILL BE REQUIRED TO GIVE DEFERENCE TO THE DECISION. THE STATES ALSO EXPLAIN THAT SUMMARY DISPOSITIONS ARE COMMON IN HABEAS CORPUS CASES, NOTING THAT THOUSANDS OF CALIFORNIA HABEAS CORPUS PETITIONS ARE DECIDED IN SUCH A MANNER. ADDITIONALLY, THE STATES ARGUE THAT THE

1 SUPREME COURT SHOULD LOOK TO FEDERAL CIRCUIT COURT TREATMENT OF
2 SUMMARY DISPOSITIONS, NOTING THAT MOST CIRCUITS GRANT DEFERENTIAL
3 REVIEW UNDER THE AEDPA TO SUMMARY DISPOSITIONS.

4
5 THE CRIMINAL JUSTICE LEGAL FOUNDATION ("CJLF") ARGUES THAT DENYING
6 DEFERENTIAL REVIEW WOULD DEFEAT CONGRESS'S INTENT IN ENACTING THE
7 AEDPA, AND THAT IT WOULD OVERTURN COURT JUDGMENTS THAT HAVE BEEN
8 PROPERLY REACHED. CJLF ALSO DISTINGUISHES SUMMARY DISPOSITIONS WHICH
9 ARE ADJUDICATED ON THE MERITS FROM AMBIGUOUS DECISIONS WHICH MAY
10 NOT BE DECIDED ON THE MERITS, SUGGESTING THAT THE CURRENT CASE
11 FALLS UNDER THE FORMER CATEGORY. FINALLY, CJLF ARGUES THAT THE
12 CALIFORNIA SUPREME COURT'S DECISION WAS BASED ON AN UNAMBIGUOUS
13 REASON—THAT THE DEFENDANT DID NOT RECEIVE INADEQUATE ASSISTANCE
14 FROM COUNSEL—AND SHOULD THEREFORE BE VIEWED AS AN ADJUDICATION
15 ON THE MERITS.

16
17 ON THE OTHER HAND, ADVOCATES FOR RICHTER ARGUE THE LOWER
18 COURT'S DECISION WAS NOT AN ADJUDICATION ON THE MERITS. CALIFORNIA
19 ATTORNEYS FOR CRIMINAL JUSTICE AND THE CALIFORNIA ACADEMY OF
20 APPELLATE LAWYERS (COLLECTIVELY "CALIFORNIA ATTORNEYS") ARE
21 CONCERNED THAT GRANTING AEDPA DEFERENCE COULD CAUSE A
22 DEFENDANT TO RECEIVE ONLY A LIMITED REVIEW OF A HABEAS CORPUS
23 PETITION, EVEN IF THE COURT'S DECISION WAS NOT ON THE MERITS. THE
24 CALIFORNIA ATTORNEYS ALSO ARGUE THAT THE AEDPA SHOULD NOT
25 APPLY TO UNEXPLAINED STATE-COURT DECISIONS SINCE CALIFORNIA
26 SUPREME COURT HAS A HEAVY WORKLOAD AND THEREFORE DELIVERS
27 NUMEROUS COURT ORDERS WHICH LACK AN AGREED-UPON REASON BEHIND THEM.

1 THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS ("NACDL")
2 ARGUES THAT IF THE DECISION IS CONSIDERED AN ADJUDICATION ON THE MERITS,
3 ANY TIME A STATE COURT MAKES A SUMMARY DISPOSITION, IT WOULD BE GIVEN
4 EVERY BENEFIT OF THE DOUBT, AND WOULD IRONICALLY MAKE THE DECISION
5 EVEN LESS LIKELY TO BE OVERTURNED THAN IF THE COURT WERE TO PROVIDE
6 A DETAILED ACCOUNT OF ITS LEGAL REASONING. NACDL ALSO ARGUES THAT
7 STATES EXAGGERATE THE INCONVENIENCE OF REVIEWING SUMMARY
8 DISPOSITIONS UNDER THE AEDPA, SINCE COURT DECISIONS NORMALLY CONTAIN
9 DETAILED REASONING. ADDITIONALLY, NACDL ASSERTS THAT DENYING AEDPA
10 DEFERENCE WOULD NOT PROHIBIT STATE COURTS FROM ISSUING SUMMARY
11 DISPOSITIONS. RATHER, IN NACDL'S OPINION, IT WOULD MAKE COURTS
12 DECIDE WHETHER A COST-BENEFIT ANALYSIS SUPPORTS WRITING A
13 DETAILED COURT OPINION AS OPPOSED TO A SUMMARY DISPOSITION. FINALLY,
14 THE NACDL ARGUES THAT SINCE RICHTER OFFERED NEW EXPERT
15 TESTIMONY EVIDENCE FOR THE FIRST TIME AT FEDERAL TRIAL, DE NOVO
16 REVIEW IS APPROPRIATE.

17
18 THE SUPREME COURT'S DECISION WILL PROVIDE GUIDANCE ON THE LEVEL
19 OF DEFERENCE AWARDED TO SUMMARY DISPOSITIONS. IF THE SUMMARY
20 DISPOSITIONS IS NOT VIEWED WITH DEFERENCE, IT COULD FORCE COURTS
21 TO PROVIDE MORE DETAILED OPINIONS TO ENSURE THAT A DECISION IS
22 CONSIDERED TO BE "ON THE MERITS." CONVERSELY, IF DEFERENCE IS
23 INDEED GRANTED TO THE SUMMARY DISPOSITION, IT COULD ENCOURAGE
24 COURTS TO USE THAT TIME-SAVING METHOD MORE FREQUENTLY.

25
26 2) SURMOUNTING STRICKLAND'S HIGH BAR IS NEVER AN EASY TASK."
27 PAOLIA V. KENTUCKY, 559 U.S. ___, ___, (2010) (SLIP. OP., AT 14). AN
28 INEFFECTIVE ASSISTANCE CLAIM CAN FUNCTION AS A WAY TO ESCAPE RULES

1 SATISFIED STRICKLAND'S DEFERENTIAL STANDARD.

2
3 WITH RESPECT TO DEFENSE COUNSEL'S PERFORMANCE, THE COURT OF APPEALS
4 HELD THAT BECAUSE RICHTER'S ATTORNEY HAD NOT CONSULTED FORENSIC
5 BLOOD EXPERTS OR INTRODUCED EXPERT EVIDENCE, THE CALIFORNIA SUPREME
6 COURT COULD NOT REASONABLY HAVE CONCLUDED COUNSEL PROVIDED
7 ADEQUATE REPRESENTATION. THIS CONCLUSION WAS ERRONEOUS. IN (PICKET)
8 PETITIONER'S CASE COUNSEL DID NOT INTRODUCED EXPERTS EVIDENCE EITHER.

9
10 THE COURT OF APPEALS FIRST HELD THAT RICHTER'S ATTORNEY RENDERED
11 CONSTITUTIONALLY DEFICIENT SERVICE BECAUSE HE DID NOT CONSULT
12 BLOOD EVIDENCE EXPERTS IN DEVELOPING THE BASIC STRATEGY FOR
13 RICHTER'S DEFENSE OR OFFER THEIR TESTIMONY AS PART OF THE PRINCIPAL
14 CASE FOR THE DEFENSE. STRICKLAND, HOWEVER, PERMITS COUNSEL TO "MAKE
15 A REASONABLE DECISION THAT MAKES PARTICULAR INVESTIGATIONS UNNECESSARY."
16 466 U.S., AT 691. IT WAS AT LEAST ARGUABLE THAT A REASONABLE
17 ATTORNEY COULD DECIDE TO FORGO INQUIRY INTO THE BLOOD EVIDENCE
18 IN THE CIRCUMSTANCES HERE.

19
20 CRIMINAL CASES WILL ARISE WHERE THE ONLY REASONABLE AND
21 AVAILABLE DEFENSE STRATEGY REQUIRES CONSULTATION WITH EXPERTS
22 OR INTRODUCTION OF EXPERT EVIDENCE, WHETHER PRETRIAL, AT TRIAL,
23 OR BOTH. THERE ARE, HOWEVER, "COUNTLESS WAYS TO PROVIDE EFFECTIVE
24 ASSISTANCE IN ANY GIVEN CASE. EVEN THE BEST CRIMINAL DEFENSE
25 ATTORNEYS WOULD NOT DEFEND A PARTICULAR CLIENT IN THE SAME
26 WAY." ID., AT 689. RARE ARE THE SITUATIONS IN WHICH THE "WIDE
27 LATITUDE COUNSEL MUST HAVE IN MAKING TACTICAL DECISIONS"
28 WILL BE LIMITED TO ANY ONE TECHNIQUE OR APPROACH. ID. IT

1 CAN BE ASSUMED THAT IN SOME CASES COUNSEL WOULD BE DEEMED
2 INEFFECTIVE FOR FAILING TO CONSULT OR RELY ON EXPERTS, BUT
3 EVEN THAT FORMULATION IS SUFFICIENTLY GENERAL THAT STATE
4 COURTS WOULD HAVE WIDE LATITUDE IN APPLYING IT. HERE IT WOULD
5 BE WELL WITHIN THE BOUNDS OF A REASONABLE JUDICIAL DETERMI-
6 NATION FOR THE STATE COURT TO CONCLUDE THAT DEFENSE COUNSEL
7 COULD FOLLOW A STRATEGY THAT DID NOT REQUIRE THE USE OF
8 EXPERTS REGARDING THE POOL IN THE DOORWAY TO JOHNSON'S BEDROOM.

9
10 FROM THE PERSPECTIVE OF RICHTER'S DEFENSE COUNSEL WHEN HE
11 WAS PREPARING RICHTER'S DEFENSE, THERE WERE ANY NUMBER OF
12 HYPOTHETICAL EXPERTS—SPECIALISTS IN PSYCHIATRY, PSYCHOLOGY,
13 BALLISTICS, FINGERPRINTS, TIRE TREADS, PHYSIOLOGY, OR NUMEROUS
14 OTHER DISCIPLINES AND SUBDISCIPLINES—WHOSE INSIGHT MIGHT
15 POSSIBLY HAVE BEEN USEFUL. AN ATTORNEY CAN AVOID ACTIVITIES THAT
16 APPEAR "DISTRACTIVE FROM MORE IMPORTANT DUTIES." DOBBY V. VAN
17 HOOK, 558 U.S. —, — (2009) (PER CURIAM) (SLIP OP., AT 8). COUNSEL
18 WAS ENTITLED TO FORMULATE A STRATEGY THAT WAS REASONABLE AT THE
19 TIME AND TO BALANCE LIMITED RESOURCES IN ACCORD WITH EFFECTIVE TRIAL
20 TACTICS AND STRATEGIES. SEE KNOWLES, SUPRA, AT — (SLIP OP., AT 14-
21 15); ROMPILLA V. BEARD, 545 U.S. 374, 383 (2005); WIGGINS V. SMITH,
22 539 U.S. 510, 525 (2003); STRICKLAND, 466 U.S. AT 699.

23
24 IN CONCLUDING OTHERWISE THE COURT OF APPEALS FAILED TO
25 "RECONSTRUCT THE CIRCUMSTANCES OF COUNSEL'S CHALLENGED
26 CONDUCT" AND "EVALUATE THE CONDUCT FROM COUNSEL'S PERSPECTIVE AT
27 THE TIME." Id., AT 689. STRICKLAND, HOWEVER, CALLS FOR AN INQUIRY INTO THE
28 OBJECTIVE REASONABLENESS OF COUNSEL'S PERFORMANCE, NOT HIS STATE OF MIND.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "M. J. H.", is written over a horizontal line.

Date: 2024 JUNE