

No. \_\_\_\_\_

---

---

IN THE  
*Supreme Court of the United States*

WILLIAM KIRKPATRICK, JR.,

*Petitioner,*

v.

KEVIN CHAPPELL,

*Respondent.*

---

On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit

---

**APPENDIX TO PETITION FOR A WRIT OF CERTIORARI**

---

CUAUHTEMOC ORTEGA  
Interim Federal Public Defender  
MARK R. DROZDOWSKI  
PATRICIA A. YOUNG\*  
Deputy Federal Public Defenders  
321 East 2nd Street  
Los Angeles, California 90012  
Telephone: (213) 894-7531  
Facsimile: (213) 894-0310  
Patricia\_Young@fd.org

Attorneys for Petitioner  
William Kirkpatrick, Jr.  
*\*Counsel of Record*

---

---

## INDEX TO APPENDIX

<i>Kirkpatrick v. Chappell</i> , 950 F.3d 1118 (9th Cir. 2020) (amended upon denial of petition for rehearing) .....	Pet. App. 1
Ninth Circuit Order Withdrawing Opinion (June 13, 2019).....	Pet. App. 46
Ninth Circuit Order Granting Rehearing (July 18, 2018).....	Pet. App. 47
<i>Kirkpatrick v. Chappell</i> , 872 F.3d 1047 (9th Cir. 2017) (withdrawn).....	Pet. App. 48
District Court Order Granting Motion to Dismiss Unexhausted Claims (C.D. Cal. Apr. 26, 2011).....	Pet. App. 122
California Supreme Court Order Dismissing Exhaustion Petition as Waived (Sept. 19, 2011).....	Pet. App. 137
State Referee’s Waiver Findings (July 6, 2001) .....	Pet. App. 138
Letter from Judge Graham to Kirkpatrick (June 18, 2001).....	Pet. App. 144
Letter from Judge Graham to Kirkpatrick (Mar. 13, 2001) .....	Pet. App. 145
Competency Report of Dr. McEwen (Dec. 10, 2000) .....	Pet. App. 147
Reporter Transcripts of Status Conferences (Oct. - Dec. 2000).....	Pet. App. 152
California Supreme Court Orders to Conduct Waiver Hearing (Aug. 16 & 17, 2000).....	Pet. App. 268
Pro Se Waiver Form and Letter (July 27, 2000) .....	Pet. App. 271
District Court Order Finding Petitioner Intends to Proceed with Filing of Petition for Writ of Habeas Corpus (Oct. 28, 2007) .....	Pet. App. 274

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

WILLIAM KIRKPATRICK, JR.,  
*Petitioner-Appellant,*

v.

KEVIN CHAPPELL, Warden,  
California State Prison at San  
Quentin,  
*Respondent-Appellee.*

No. 14-99001

D.C. No.  
2:96-cv-00351-WDK

**ORDER AND  
AMENDED  
OPINION**

Appeal from the United States District Court  
for the Central District of California  
William D. Keller, District Judge, Presiding

Argued and Submitted February 17, 2017  
Pasadena, California

Original Opinion Filed October 10, 2017

Panel Rehearing Granted July 18, 2018

Re-argued and Submitted December 10, 2018  
San Francisco, California

Original Opinion Withdrawn June 13, 2019

Filed June 13, 2019  
Amended February 13, 2020

Before: Kim McLane Wardlaw, Carlos T. Bea,  
and Morgan Christen, Circuit Judges.\*

Order;  
Opinion by Judge Bea

---

**SUMMARY\*\***

---

**Habeas Corpus / Death Penalty**

The panel filed an order (1) amending its June 13, 2019, opinion affirming the district court's denial of William Kirkpatrick's habeas corpus petition challenging his capital sentence for two first-degree murders; (2) denying Kirkpatrick's petition for panel rehearing; and (3) denying on behalf of the court Kirkpatrick's petition for rehearing en banc.

The panel amended the opinion to write that, in light of the substantial aggravating evidence presented in

---

\* This case was originally decided by a panel comprised of Judge Stephen Reinhardt, Judge Kim McLane Wardlaw, and Judge Alex Kozinski. Appellee's petition for panel rehearing and rehearing en banc was pending when Judge Kozinski retired. Following Judge Kozinski's retirement, Judge Christen was drawn by lot to replace him. Following the death of Judge Reinhardt, Judge Bea was drawn by lot to replace him. Ninth Circuit General Order 3.2.h. The newly constituted panel granted Appellee's petition for rehearing before a three-judge panel on July 18, 2018. The newly constituted panel re-heard argument on December 10, 2018. The filing of this opinion serves to withdraw the original opinion.

\*\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

---

comparison to the minimal mitigation evidence, absent improperly-considered facts, the jury still would have found the bad evidence is so substantial in comparison with the good that it warrants death instead of life without parole.

---

**COUNSEL**

Patricia Ann Young (argued) and Mark R. Drozdowski, Deputy Federal Public Defenders; Amy M. Karlin, Interim Federal Public Defender; Office of the Federal Public Defender, Los Angeles, California; for Petitioner-Appellant.

A. Scott Hayward (argued), Deputy Attorney General; James William Bilderback II, Supervising Deputy Attorney General; Lance E. Winters, Senior Assistant Attorney General; Gerald A. Engler, Chief Assistant Attorney General; Xavier Becerra, Attorney General; Office of the Attorney General, Los Angeles, California; for Respondent-Appellee.

---

**ORDER**

The opinion, filed on June 13, 2019, reported at 926 F.3d 1157, is amended as follows:

On page 21 of the slip opinion, delete <This means that after excluding the aggravating facts that were considered in error, if the other aggravating circumstances outweigh the mitigating circumstances, the jury would still be required to sentence Kirkpatrick to death.>

On page 22 of the slip opinion, replace <In light of the substantial aggravating evidence presented in comparison to the minimal mitigation evidence, absent the improperly-considered facts, the jury still would have found that the aggravating circumstances outweighed the mitigating circumstances and therefore would have been *required* to impose the death penalty.> with <In light of the substantial aggravating evidence presented in comparison to the minimal mitigation evidence, absent the improperly-considered facts, the jury still would have found “the ‘bad’ evidence is so substantial in comparison with the ‘good’ that it warrants death *instead of life without parole.*” *People v. Brown*, 40 Cal. 3d 512, 542 n.13 (1985), *rev’d on other grounds*, 479 U.S. 538 (1987).>

With these amendments, Appellant’s petition for panel rehearing is **DENIED**. Judge Wardlaw and Judge Christen vote to deny Appellant’s petition for rehearing en banc, and Judge Bea so recommends. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for rehearing en banc is **DENIED**. No further petitions for panel rehearing or rehearing en banc will be entertained.

---

**OPINION**

BEA, Circuit Judge:

**I. BACKGROUND**

In September 1983, William Kirkpatrick was arrested and subsequently tried and convicted for robbing a Taco Bell restaurant in Burbank, California and for murdering two

Taco Bell employees in the course of his robbery. He was 23 years old. The two victims, one of whom was 16 years old, were later found stuffed in a closet; both had been shot in the head, “execution style.” Because the California Supreme Court’s opinion in *People v. Kirkpatrick*, 874 P.2d 248 (Cal. 1994) (in bank), *disapproved of on other grounds by People v. Doolin*, 198 P.3d 11, 36 n.22 (Cal. 2009), explains the details of Kirkpatrick’s brutal double murder, we do not restate them here.

**A. *Kirkpatrick’s Trial***

More relevant to Kirkpatrick’s appeal is the procedural history of his case. After the guilt phase of Kirkpatrick’s trial, the jury deliberated for five days. The jury found Kirkpatrick guilty on two counts of first-degree murder, burglary, and robbery. The jury also found that because Kirkpatrick was convicted of two murders and the murders were committed during the commission of a robbery and burglary, special circumstances existed under California Penal Code § 190.2 that rendered Kirkpatrick eligible for the death penalty.

During the penalty phase of Kirkpatrick’s trial, the jury was tasked with deciding whether Kirkpatrick should receive the death penalty or a sentence of life imprisonment without parole. Cal. Penal Code § 190.3. The prosecution and defense had the opportunity to present aggravating and mitigating evidence to the jury to support their arguments regarding which sentence Kirkpatrick should receive. The prosecution presented aggravating evidence of Kirkpatrick’s character and his other troubling actions. First, Stephen Thomas told the jury that when he was 16, Kirkpatrick became angry with him while they were drinking at a park after he refused to assist Kirkpatrick in a violent robbery.

Thomas stated that Kirkpatrick dragged him to the park restroom, choked him, and tried to stick his head in a toilet.

Another witness, Jacob De Binion, testified that when he was 17, he met Kirkpatrick in a Der Wienerschnitzel restaurant parking lot and accepted Kirkpatrick's invitation to drink beer in the back of a van. After having a few drinks together, De Binion testified that Kirkpatrick physically forced him to perform oral sex and kiss him and threatened to kill him if he refused.

Finally, Shirley Johnson testified that Kirkpatrick left his calculator, bicycle, and projector at her house in late May 1983. Kirkpatrick attempted to retrieve his belongings from her house, but his calculator was nowhere to be found. Kirkpatrick subsequently made numerous phone calls to Johnson and threatened to "do damage" to her dogs, daughter, house, and herself if his calculator was not returned.

In late June 1983, Johnson came home and found that her two dogs had been poisoned and temporarily paralyzed. Later, Kirkpatrick called Johnson to tell her that he had "taken care" of the dogs. Kirkpatrick's defense counsel objected to Johnson's testimony about Kirkpatrick's dog poisoning and property threats, and argued that making threats to property and poisoning dogs were not facts that may be considered as aggravating evidence under California Penal Code § 190.3, which permits the jury to consider only violent acts and threats of violence to people. The court overruled defense counsel's objection without explanation.

The defense's mitigation presentation consisted solely of Kirkpatrick's testimony, in which he reasserted his innocence and said he aspired to be a writer. Kirkpatrick's lawyers spoke to his mother in preparation for the mitigation



presentation and told the court that she would be “very, very helpful to the defense,” but Kirkpatrick ordered his lawyers not to contact or present any family members as witnesses.

After both sides rested, the court instructed the jury. Relevant here, the court told the jury:

Evidence has been introduced for the purpose of showing that Defendant Kirkpatrick has committed the following acts:

1. Oral copulation by means of force upon Jacob De Binion, age 17;
2. An assault upon Stephen Eugene Thomas;
3. Making threatening telephone calls to Ms. Shirley Johnson;
4. Administering poison to animals;

Which involved the express or implied use of force or violence or the threat of force or violence. Before you may consider any such criminal acts as an aggravating circumstance in this case, you must first be satisfied beyond a reasonable doubt that the Defendant Kirkpatrick did commit such criminal acts. You may not consider any evidence of any other criminal acts as an aggravating circumstance.

In closing argument, the prosecutor noted the absence of mitigating factors from Kirkpatrick’s presentation. He urged

the jury to impose the death penalty because the aggravating evidence outweighed the mitigating evidence. He also relied heavily on the dog poisoning incident to highlight Kirkpatrick's character:

We brought in Shirley Johnson. Shirley Johnson committed the crime of having the defendant's calculator and he wanted the calculator back.

So what did the defendant do? The defendant made a series of threatening phone calls. "I will get you; I'll get your dogs and I'll get your children. Your daughter."

The next day or a few days later, Mrs. Johnson came home and her dogs were paralyzed. A few days later she gets a phone call from Mr. Kirkpatrick.

"I have taken care of your dogs. You and your daughter are next. Give me back my calculator."

...

What does it show you about Mr. Kirkpatrick? It shows you he is a man who has callousness, a callous disregard for the feelings of other people. This person who is absolutely amoral and will stop at nothing to get what he wants. He will go so far as to poison Mrs. Johnson's dogs to get his calculator.

The prosecutor continued: “With the Johnsons, he had a choice. He had a choice to leave [them] alone and get his calculator back some other way: but he chose to poison the dogs and to make threats. . . . Mr. Kirkpatrick is here right now because of choices he made. . . . I would ask you to think about that when you think about pity, when you think about sympathy.”

At closing argument, Kirkpatrick told the jury that he had not received a fair trial.<sup>1</sup> He argued that his attorneys failed to call certain witnesses and ask specific questions. He said he was “frightened” and “mad” that prosecutors were sending an innocent person to jail. He also told jurors that he did not blame them for finding him guilty and that he would have done the same thing if he had been in their position.

Prosecutors rebutted Kirkpatrick’s closing argument by suggesting that Kirkpatrick was “an anarchist” and that his only contribution to society was “to inflict havoc, pain and suffering on innocent people.” The prosecution reminded the jury that Kirkpatrick made deliberate choices to kill two Taco Bell employees; to force Jacob De Binion to perform oral sex and kiss him; to assault Stephen Thomas after he refused to help him with a violent burglary; and to threaten Shirley Johnson, her daughter, and her dogs to retrieve his calculator. The prosecution concluded by stating that

---

<sup>1</sup> Throughout his criminal trial, appeals, and habeas proceedings, Kirkpatrick has repeatedly tried to represent himself or to interfere with his defense counsel. After the trial court denied his request to serve as co-counsel during the guilt phase of his trial, Kirkpatrick threatened not to attend the penalty phase unless he could proceed *pro se*. The trial court denied his request to proceed *pro se*, but the court granted him co-counsel status for the penalty phase of his trial. Accordingly, Kirkpatrick and his counsel each addressed the jury directly during the penalty phase.

because the aggravating factors “so far outweigh anything in mitigation,” the jury “shall impose the penalty of death.”

The jury began its penalty deliberations on June 19, 1984. Several hours into deliberating on June 20, 1984, the jury sent a note to the court asking: “[W]hat [are] the legal definitions for aggravating and mitigating circumstances as they apply to the instructions in making the determination of this sentence?” The court responded that the jury members “have been given all the legal definitions [they] need [and that] [a]ll other words have their common definitions.” On June 21, 1984, the jury returned a death verdict for both murders.

At Kirkpatrick’s sentencing hearing on August 14, 1984, Kirkpatrick moved to modify the verdict imposing the death penalty. The court reviewed the aggravating circumstances and stated that the only mitigating factors were Kirkpatrick’s lack of prior felony convictions and his young age of 23. Because the court found that the aggravating circumstances outweighed those in mitigation, it denied Kirkpatrick’s motion to modify the verdict and imposed a sentence of death.

***B. Kirkpatrick’s Direct Appeal and State Habeas Petition***

In 1988, Kirkpatrick filed an automatic direct appeal with the California Supreme Court as provided by the California Constitution. Cal. Const. art. VI, § 11, subsec. a. Kirkpatrick argued, in relevant part, that the trial court violated state law and his Eighth Amendment rights when it instructed the jury that it may consider evidence of Kirkpatrick’s dog poisoning and property threats as aggravating circumstances in deciding whether to impose the death penalty. Specifically as to his Eighth Amendment argument, Kirkpatrick argued that allowing the jury to

consider those facts violated the Supreme Court’s “narrowing” requirement that a capital sentencing scheme must provide a “meaningful basis for distinguishing the few cases in which [the death penalty] is imposed from the many cases in which it is not.” He further argued that these statements “were highly prejudicial” and had “minimal, if any, legal relevance to the important issue of whether the death penalty should be imposed.”

The California Supreme Court affirmed Kirkpatrick’s conviction and sentence in a lengthy published opinion. *Kirkpatrick*, 874 P.2d at 269. The court held that evidence of Kirkpatrick’s dog poisoning and property threats was admissible as a matter of state law because it showed the surrounding circumstances of Kirkpatrick’s threats to harm Johnson’s daughter. *Id.* at 263. The court did, however, hold that the trial court erred in instructing the jury that it could consider evidence that Kirkpatrick threatened Johnson’s property and poisoned her dogs as aggravating circumstances in determining whether to impose the death penalty because California Penal Code § 190.3 allows the jury to consider “only those threats of violent injury that are directed against a person or persons.” *Id.* at 264. It nevertheless found that the error was harmless. *Id.* at 264–65.

As to Kirkpatrick’s Eighth Amendment argument, the court explained that California law performs its required narrowing at the eligibility phase, not the penalty selection phase of the trial. *Id.* at 264. As a result, it held that the aggravating factors considered at the penalty selection phase are not relevant to whether the State’s scheme adequately narrows the class of persons who receive the death penalty. *Id.* Because the court found that Kirkpatrick’s Eighth Amendment argument was “founded upon a mistaken

understanding of the purpose of aggravating and mitigating circumstances in [California's] death penalty scheme," it denied him relief on his Eighth Amendment claim. *Id.*

***C. Kirkpatrick's Federal Habeas and State Habeas Exhaustion Proceedings***

On January 18, 1996, nine days before his scheduled execution, Kirkpatrick initiated habeas proceedings in the United States District Court for the Central District of California. On June 24, 1998, Kirkpatrick filed his federal habeas petition. The district court dismissed more than 20 of Kirkpatrick's claims as unexhausted but found good cause to stay his petition pending exhaustion of his claims in state court. Kirkpatrick subsequently filed a habeas petition to exhaust his claims in the California Supreme Court on December 30, 1998.

While his state habeas exhaustion petition was pending, on July 23, 2000, Kirkpatrick sent a handwritten letter to the California Supreme Court, with an attached handwritten form titled, "Waiver Form." His handwritten "Waiver Form" stated: "I *do not* wish to proceed with my petition for writ of habeas corpus review in this matter. I wish the sentence and the judgement [sic] of execution in *People v. William Kirkpatrick Jr.*, 14-590144 to be carried out at this time."

In response, the California Supreme Court appointed Marin County Superior Court Judge Stephen Graham as a referee to determine whether Kirkpatrick was competent to waive his petition and whether his waiver was voluntary, knowing, and intelligent. At first, Kirkpatrick cooperated. He appeared before the referee with his lawyers from the Federal Public Defender's (FPD) office for status conferences on four occasions in late 2000. Kirkpatrick was

---

also evaluated by a court-appointed psychiatrist, Dr. McEwen, for two and a half hours. Following Dr. McEwen's examination, however, Kirkpatrick declined to take part in the process any further. He refused to be interviewed by three experts retained by the FPD, doctors Robert Weinstock, Xavier Amador, and Roderick Pettis.

He also refused to attend the referee's evidentiary hearing in March 2001. There, Dr. McEwen testified that Kirkpatrick was competent to waive his habeas petition and he had no "mental disease, disorder or defect." She also opined that if Kirkpatrick decided to waive his state habeas exhaustion petition, his decision to proceed on his own and represent himself would be voluntary, knowing, and intelligent. Although the FPD-supplied experts did not have the opportunity to meet with Kirkpatrick in person, they reviewed Dr. McEwen's report and each testified that her conclusions were not adequately supported. However, each FPD expert also testified that he was not in a position to express a diagnostic conclusion as to Kirkpatrick's competence because he did not interview Kirkpatrick personally.

Referee Judge Graham credited Dr. McEwen's opinions over the FPD experts' opinions because he thought they were "based upon extraordinary qualifications of training and experience, careful review of the available history, and perhaps the only substantial mental health interview Mr. Kirkpatrick has ever allowed." Based on Dr. McEwen's opinions and his interactions with Kirkpatrick, the referee concluded that Kirkpatrick had voluntarily requested to withdraw his state habeas exhaustion petition and was competent to do so. But because Kirkpatrick "refused to engage in sufficient discussion" with the referee to permit him to make a more specific determination, the referee fell

short of concluding that Kirkpatrick’s waiver was “knowing” or “intelligent.” The referee submitted his findings in a report to the California Supreme Court, along with the hearing transcripts, Dr. McEwen’s written report, and copies of relevant exhibits, letters, and briefs. The California Supreme Court adopted the referee’s conclusion that Kirkpatrick was competent to withdraw his state habeas exhaustion petition, but—differing from the referee’s conclusion—also found that he “made a knowing, intelligent, and voluntary waiver of his right to proceed.” As a result, the California Supreme Court summarily granted Kirkpatrick’s request and dismissed his state habeas exhaustion petition as waived.

Back in federal court in December 2001, Kirkpatrick’s lawyers filed an amended federal habeas petition, including the claims from his state habeas exhaustion petition that the California Supreme Court had deemed waived. Kirkpatrick then filed a pro se request to waive his amended federal petition. The district court, however, denied the request after Kirkpatrick again refused to participate in a competency evaluation.

After the state moved to dismiss the claims Kirkpatrick had waived in state court on grounds that such claims were unexhausted, Kirkpatrick argued that his waiver in the California Supreme Court was invalid because it was not voluntary, knowing, and intelligent. The district court upheld the California Supreme Court’s conclusion that the waiver in state court was valid, and it dismissed as unexhausted all the state claims in Kirkpatrick’s amended federal habeas petition that had been part of his waived state habeas exhaustion petition.

In making this determination, the district court applied 28 U.S.C. § 2254(d) deference to the California Supreme



Court's finding that Kirkpatrick's waiver had been voluntary, knowing, and intelligent. It stated, "Under [the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)], the decision of the California Supreme Court must be given deference, and cannot . . . be reviewed *de novo* by this court." Rather, the district court noted that its "power to review the decision of the California Supreme Court is extremely limited." Applying this highly deferential standard, the district court concluded that because "there is evidence to support the conclusory findings of the California Supreme Court," its conclusion must be upheld. To be sure of its decision, the district court also conducted its own analysis and concluded there was evidence to support the California Supreme Court's finding of waiver. *See* Appendix 1. The court then concluded that "[t]here has been no unreasonable determination of the facts or a decision contrary to, or involving an unreasonable application of, clearly established federal law." As a result, the district court dismissed as unexhausted all the claims Kirkpatrick had presented in his state habeas exhaustion petition.

On June 9, 2011, Kirkpatrick filed a revised amended federal habeas petition asserting the exhausted claims that had been presented to the California Supreme Court on direct appeal. In Claim 17(C) of his revised amended federal habeas petition, Kirkpatrick argued that allowing the jury to consider the facts that he poisoned Shirley Johnson's dogs and threatened her property during the penalty phase of his trial violated his Eighth Amendment right against arbitrary and capricious sentencing. Following the logic of the California Supreme Court, the district court interpreted Kirkpatrick's claim as directed to the narrowing requirement under California Penal Code § 190.2, and not to the choice of punishment under California Penal Code § 190.3. Like the California Supreme Court, the district court denied

Kirkpatrick’s Eighth Amendment claim on the theory that the special circumstances of California Penal Code § 190.2—not the factors for penalty selection set out in § 190.3—perform the constitutionally required narrowing function. The district court further agreed with the California Supreme Court that any error of state law was “harmless because the magnitude and circumstances of the underlying crimes were such that the result would not have been any different even if the objectionable evidence had not been admitted.” The district court granted Kirkpatrick a certificate of appealability on Claim 17(C), and this appeal followed.

## II. ANALYSIS

### A. *Kirkpatrick’s Eighth Amendment Claim*

The district court certified only one issue for appellate review: Claim 17(C) of Kirkpatrick’s revised amended federal habeas petition, regarding whether the jury’s consideration of the facts that he threatened Shirley Johnson’s property and poisoned her dogs at the penalty selection phase of his trial violated Kirkpatrick’s Eighth Amendment right against arbitrary and capricious sentencing. To obtain relief on this claim, Kirkpatrick must show that the jury’s consideration of these facts amounts to prejudicial constitutional error. *Davis v. Ayala*, 135 S. Ct. 2187, 2197 (2015).

As a threshold issue, there is some doubt whether Kirkpatrick properly raised this issue on appeal.<sup>2</sup>

---

<sup>2</sup> The Supreme Court has long drawn a distinction between the “narrowing” and “selection” phases of capital sentencing as it applies to cruel and unusual punishment under the Eighth Amendment. The

---

“narrowing” phase requires that states define the circumstances that place a defendant in the class of people eligible for the death penalty. *Zant v. Stephens*, 462 U.S. 862, 878 (1983). States must limit judges’ and juries’ discretion to impose the death penalty on a defendant because giving them unfettered discretion to decide who receives the death penalty is “cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.” *Furman v. Georgia*, 408 U.S. 238, 239–40 (1972) (per curiam); *see also Godfrey v. Georgia*, 446 U.S. 420 (1980); *Gregg v. Georgia*, 428 U.S. 153 (1976).

By contrast, the “selection” phase occurs after a jury has found that a defendant is eligible for the death penalty and must decide whether to sentence the defendant to death or life imprisonment without parole. In contrast to the requirement during the narrowing phase that states must limit judges’ and juries’ discretion in determining who is eligible for the death penalty, the Court has stated that the selection stage requires only “an *individualized* determination on the basis of the character of the individual and the circumstances of the crime.” *Zant*, 462 U.S. at 879 (emphasis in original).

To the California Supreme Court and the federal district court, Kirkpatrick appears to have raised his Eighth Amendment argument only in context of the narrowing phase and not the penalty selection phase. Accordingly, the California Supreme Court and federal district court addressed Kirkpatrick’s Eighth Amendment argument as one that alleged his rights were violated at the narrowing phase of his trial, not the penalty selection phase of his trial. But on appeal to this court, Kirkpatrick argues that independent of any narrowing that took place during the guilt phase of his trial to determine whether he was eligible for the death penalty, the jury’s consideration of the facts that he threatened Johnson’s property and poisoned her dogs at the penalty selection phase resulted in the arbitrary and capricious infliction of the death penalty in violation of the Eighth Amendment. Kirkpatrick also argues that his Eighth Amendment claim is exhausted because he fairly presented it to the California Supreme Court and federal district court, and they merely improperly construed his argument as only a narrowing argument.

We have doubts as to whether Kirkpatrick’s Eighth Amendment argument concerning the penalty selection phase of his trial was fairly

Nonetheless, we assume without deciding that Kirkpatrick’s certified claim is exhausted because it makes no difference to the result. *See* 28 U.S.C. § 2254(b)(2).

Next, the parties dispute what standard of review applies to Kirkpatrick’s Eighth Amendment claim. The warden argues that AEDPA applies because Kirkpatrick’s habeas petition was filed in 1998, after AEDPA was enacted. Kirkpatrick does not dispute that his habeas petition is generally subject to AEDPA’s standards, but argues that we should apply *de novo* review to his Eighth Amendment claim because the California Supreme Court did not adjudicate the claim on the merits. *See Johnson v. Williams*, 568 U.S. 289 (2013). Again, we need not decide this issue because we deny Kirkpatrick relief even under the more favorable standard of *de novo* review. *See Berghuis v. Thompkins*, 560 U.S. 370, 390 (2010) (“Courts can . . . deny writs of habeas corpus under § 2254 by engaging in *de novo* review when it is unclear whether AEDPA deference applies, because a habeas petitioner will not be entitled to a writ of habeas corpus if his or her claim is rejected on *de novo* review.” (citing 28 U.S.C. § 2254(a)). Additionally, regardless of what standard of review applies, to obtain relief, Kirkpatrick must prove the claimed error was not harmless—that a trial error of federal law “had substantial and injurious effect or influence in determining the jury’s verdict.” *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993) (citation omitted). Indeed, “a prisoner who seeks federal habeas corpus relief must satisfy [the harmless error standard

---

presented to the California Supreme Court and federal district court. However, because we may deny Kirkpatrick’s habeas petition on the merits notwithstanding his failure to exhaust his Eighth Amendment claim in state court, 28 U.S.C. § 2254(b)(2), we analyze the merits of his Eighth Amendment claim.

---

established in *Brecht*], and if the state court adjudicated his claim on the merits, the *Brecht* test subsumes the limitations imposed by AEDPA.” *Davis*, 135 S. Ct. at 2199 (citing *Fry v. Pliler*, 551 U.S. 112, 119–20 (2007)). Thus, we proceed to analyze the merits of Kirkpatrick’s Eighth Amendment claim.

Kirkpatrick contends that his Eighth Amendment rights were violated when the trial court allowed the jury to consider evidence that Kirkpatrick poisoned Shirley Johnson’s dogs and threatened damage to her property because those acts are not enumerated under California Penal Code § 190.3, which explains the type of evidence the jury may consider when determining whether to impose a sentence of death or life imprisonment without parole. The parties do not dispute that the jury should not have considered those acts as aggravating evidence. Indeed, the California Supreme Court held that although the evidence was admissible to provide context to Kirkpatrick’s threats against Johnson’s daughter, “the court should have modified the [jury] instructions to delete references to poisoning animals and threatening injury to property.” *Kirkpatrick*, 874 P.2d at 263–64. The court explained that California Penal Code § 190.3 permits the jury to consider “only those threats of violent injury that are directed against a person or persons,” not animals or property. *Id.* at 264 (citing *People v. Boyd*, 700 P.2d 782, 792–93 (Cal. 1985) (in bank)).

While we recognize that the jury’s consideration of Kirkpatrick’s dog poisoning and property threats was error under California state law, *Kirkpatrick*, 874 P.2d at 263–64, we assume without deciding and solely for the sake of argument that this error amounts to constitutional error under the Eighth Amendment, because “that does not necessarily mean that [Kirkpatrick] is entitled to habeas relief,” *Davis*,

135 S. Ct. at 2197. On collateral review, “[f]or reasons of finality, comity, and federalism,” habeas petitioners must also show the trial error “resulted in ‘actual prejudice.’” *Id.* (quoting *Brecht*, 507 U.S. at 637). Under this test, relief is proper only when a federal court “is in grave doubt about whether a trial error of federal law had substantial and injurious effect or influence in determining the jury’s verdict.” *O’Neal v. McAninch*, 513 U.S. 432, 436 (1995) (internal quotation marks omitted).

Kirkpatrick has not shown he was prejudiced by the jury’s consideration of Shirley Johnson’s testimony that Kirkpatrick threatened her property and poisoned her dogs. In California, once the jury has determined that a special circumstance exists under California Penal Code § 190.2 that renders the defendant eligible for the death penalty, it must then determine whether to impose on the defendant a sentence of death or life imprisonment without parole under California Penal Code § 190.3. Section 190.3 instructs, in relevant part:

After having heard and received all of the evidence, and after having heard and considered the arguments of counsel, the trier of fact shall consider, take into account and be guided by the aggravating and mitigating circumstances referred to in this section, and *shall* impose a sentence of death if the trier of fact concludes that the aggravating circumstances outweigh the mitigating circumstances.

Cal. Penal Code § 190.3 (emphasis added).

Besides the evidence that Kirkpatrick poisoned Johnson’s dogs and threatened to damage her property, the

prosecution presented substantial aggravating evidence of Kirkpatrick's immoral and callous character, which Kirkpatrick does not challenge. First, the jury could consider the circumstances of the crime of conviction—his “execution style” double-murder of two Taco Bell employees. Cal. Penal Code § 190.3, factor (a). Second, the jury could consider the presence of criminal activity by the defendant that involved the use or threat of force or violence against a person. *Id.* factor (b); *Kirkpatrick*, 874 P.2d at 264. Under this factor, the jury could consider Stephen Thomas's testimony that when he was sixteen, Kirkpatrick dragged him to a park bathroom, choked him, and tried to stick his head in a toilet. Another witness, Jacob De Binion, testified that he once accepted Kirkpatrick's invitation to drink beer in the back of a van, and Kirkpatrick physically forced him to perform oral sex and kiss him and threatened to kill De Binion if he refused. Further, even if the jury improperly considered the portions of Shirley Johnson's testimony referring to property threats and dog poisoning, Kirkpatrick does not challenge that the jury could consider that Kirkpatrick threatened to “do damage” to Johnson and her daughter if she did not find and return Kirkpatrick's calculator.

By contrast, the *only* mitigating evidence presented to the jury comprised Kirkpatrick's testimony explaining that he did not want to involve his family in his trial, reasserting his innocence, and noting that he aspired to be a writer and would write in prison if given the chance. In light of the substantial aggravating evidence presented in comparison to the minimal mitigation evidence, absent the improperly-considered facts, the jury still would have found “the ‘bad’ evidence is so substantial in comparison with the ‘good’ that it warrants death *instead of life without parole.*” *People v. Brown*, 40 Cal. 3d 512, 542 n.13 (1985), *rev'd on other*

*grounds*, 479 U.S. 538 (1987). Thus, we are not left with grave doubt that the jury’s consideration of Kirkpatrick’s property threats and dog poisoning had a substantial and injurious effect on the jury’s decision. *Brecht*, 507 U.S. at 637. We hold, therefore, that any constitutional error arising from the jury’s consideration of these facts was harmless. *Davis*, 135 S. Ct. at 2197.

***B. Kirkpatrick’s Uncertified Claims***

Although the district court certified only one issue for appeal, Kirkpatrick has briefed two additional uncertified issues. Pursuant to Ninth Circuit Rule 22-1(e), if a petitioner elects to brief any uncertified issues alongside the certified issues, it will be “construed as a motion to expand the [certificate of appealability (COA)] and will be addressed by the merits panel to such extent as it deems appropriate.”

Under 28 U.S.C. § 2253(c)(2), a COA may issue only when the petitioner “has made a substantial showing of the denial of a constitutional right.” This showing can be established by demonstrating that “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)).

In his first uncertified claim (his “waiver claim”), Kirkpatrick argues that the district court erred in dismissing as unexhausted the claims from Kirkpatrick’s state habeas exhaustion petition that the California Supreme Court deemed waived. Kirkpatrick argues that the California Supreme Court erred in finding that he validly waived his state habeas exhaustion petition because he was not competent to withdraw his petition, and his waiver was not



voluntary, knowing, and intelligent. In his second uncertified claim, Kirkpatrick alleges that the district court erred in dismissing his original penalty-phase ineffective assistance of counsel claim as unexhausted. There, he argues that his trial counsel failed to investigate “to uncover any and all available mitigating evidence to present at the penalty phase of a capital trial.” We think Kirkpatrick’s waiver claim merits further discussion, but we agree with the district court that his original ineffective assistance of counsel claim is unexhausted. We decline to address it because it fails to meet the standard warranting certification.

As to Kirkpatrick’s waiver claim, we consider whether the California Supreme Court erred in granting Kirkpatrick’s request to waive his state habeas exhaustion petition based on its conclusion that he was competent to waive his petition and his waiver was voluntary, knowing, and intelligent.

### **1. Standard of Review**

First, Kirkpatrick argues that *de novo* review should apply to the question whether he validly waived his state habeas exhaustion petition in the California Supreme Court. When Kirkpatrick presented this argument to the district court, it disagreed and held that it owed deference to the California Supreme Court’s finding of waiver under 28 U.S.C. § 2254(d). We agree with the district court that we owe deference to the California Supreme Court’s finding of waiver, but not under 28 U.S.C. § 2254(d).

Under 28 U.S.C. § 2254(d), a habeas petition seeking relief from a state court’s judgment “shall not be granted with respect to any claim that was adjudicated on the merits,” unless it (1) “resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme

Court of the United States;” or (2) “resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” The Supreme Court has defined “claim” as used in 28 U.S.C. § 2254 as “an asserted federal basis for relief from a state court’s judgment of conviction.” *Gonzalez v. Crosby*, 545 U.S. 524, 530 (2005). And an adjudication on the merits is “a decision finally resolving the parties’ claims . . . that is based on the substance of the claim advanced, rather than on a procedural, or other, ground.” *Lambert v. Blodgett*, 393 F.3d 943, 969 (9th Cir. 2004) (citation omitted).

Kirkpatrick’s handwritten “Waiver Form” to the California Supreme Court requesting to withdraw his state habeas exhaustion petition is not “an asserted federal basis for relief from a state court’s judgment of conviction.” *Gonzalez*, 545 U.S. at 530. If we were to conclude that his waiver was invalid, Kirkpatrick would not be entitled to relief from his state court conviction; rather, he could merely continue litigating the merits of the claims contained within his state habeas exhaustion petition. Additionally, because his withdrawal is a waiver of his right to pursue habeas relief, it is not a decision resolving his claims based on the substance of his habeas petition. Thus, under § 2254(d) alone, we would not be subject to AEDPA’s deferential framework.

However, under § 2254(e)(1), in proceedings evaluating a prisoner’s habeas petition, “[f]actual determinations by state courts are presumed correct absent clear and convincing evidence to the contrary.” *Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003) (citing 28 U.S.C. § 2254(e)(1)). Unlike § 2254(d), § 2254(e)(1)’s application is not limited to claims adjudicated on the merits. Rather, it appears to

apply to all factual determinations made by state courts. *See Sophanthavong v. Palmateer*, 378 F.3d 859, 866–67 (9th Cir. 2004); *Gonzalez v. Pliler*, 341 F.3d 897, 903 (9th Cir. 2003). Thus, we defer to the California Supreme Court’s factual determinations unless Kirkpatrick provides clear and convincing evidence that its factual findings were wrong.

Whether a petitioner is competent to withdraw his habeas petition is a question of fact, *Massie ex rel. Kroll v. Woodford*, 244 F.3d 1192, 1194 (9th Cir. 2001), and the parties agree this inquiry is generally subject to deference under § 2254(e)(1). Likewise, whether a waiver is knowing and intelligent is a question of fact, *United States v. Doe*, 155 F.3d 1070, 1074 (9th Cir. 1998) (en banc), and thus this inquiry is also subject to deference under § 2254(e)(1).<sup>3</sup>

---

<sup>3</sup> Kirkpatrick argues that the panel need not defer to the California Supreme Court’s factual findings under § 2254(e)(1) because its factual findings resulted from a deficient fact-finding process. But “before we can determine that the state-court [fact-finding] process is defective in some material way, or perhaps non-existent, we must more than merely doubt whether the process operated properly.” *Taylor v. Maddox*, 366 F.3d 992, 1000 (9th Cir. 2004), *overruled on other grounds by Murray v. Schriro*, 745 F.3d 984, 999–1000 (9th Cir. 2014). “Rather, we must be satisfied that any appellate court to whom the defect is pointed out would be unreasonable in holding that the state court’s fact-finding process was adequate.” *Id.* If not, we must presume the state court’s factual findings are correct. *Id.*; 28 U.S.C. § 2254(e)(1).

We recognize that there was no in-depth questioning as to whether Kirkpatrick “appreciate[d] the consequences of his decision, that he underst[ood] the possible grounds for appeal but d[id] not wish to pursue them, and that he ha[d] a reason for not delaying execution.” *Dennis ex rel. Butko v. Budge*, 378 F.3d 880, 889 (9th Cir. 2004); *Whitmore v. Arkansas*, 495 U.S. 149, 165–66 (1990). But that is only because

However, whether a waiver is voluntary is a mixed question of law and fact. *Id.*; *Collazo v. Estelle*, 940 F.2d 411, 415–16 (9th Cir. 1991) (en banc) (reviewing *de novo* the voluntariness of a confession and reviewing for clear error whether a waiver was knowing and intelligent). Pre-AEDPA, we reviewed *de novo* mixed questions of law and fact; but after AEDPA was enacted, our court, sitting en banc, found that AEDPA “restricts the scope of federal review of mixed questions of fact and law.” *Jeffries v. Wood*, 114 F.3d 1484, 1498 (9th Cir. 1997) (en banc) (citing 28 U.S.C. § 2254(e)), *overruled on other grounds by Gonzalez v. Arizona*, 677 F.3d 383 (9th Cir. 2012) (en banc). Specifically, we held that “[*d*]e novo review is no longer appropriate; deference to the state court factual findings is.” *Id.*<sup>4</sup> To review the California Supreme Court’s conclusion

---

Kirkpatrick chose not to attend several evidentiary hearings the referee scheduled, not because of any failing on the state court’s part.

Additionally, though it is unusual that the California Supreme Court made its own factual determinations after reviewing the evidence and the referee’s findings, that is simply a function of that court’s *de novo* fact-finding power in habeas cases. *See In re Thomas*, 129 P.3d 49, 53 (Cal. 2006). The California Supreme Court was not bound by the referee’s findings and was free to make its own factual determinations. *Id.*

To the extent we harbor any doubts about the peculiarities in the process here, mere doubts are not enough to discount the California Supreme Court’s factual findings, and Kirkpatrick has presented no other evidence that its fact-finding process was otherwise deficient. Thus, we defer to the California Supreme Court’s factual findings regarding Kirkpatrick’s waiver of his state habeas exhaustion petition under 28 U.S.C. § 2254(e)(1).

<sup>4</sup> Our original published opinion, now withdrawn, was premised on the conclusion that mixed questions of fact and law are reviewed *de novo*. *See Kirkpatrick v. Chappell*, 872 F.3d 1047, 1057 n.6 (9th Cir. 2017) (withdrawn). However, we now recognize that *Jeffries* requires a

on the mixed issue of voluntariness, we “must first separate the legal conclusions from the factual determinations that underlie it.” *Lambert*, 393 F.3d at 977–78. “Fact-finding underlying the state court’s decision is accorded the full deference of [§ 2254(e)(1)].” *Id.* at 978. Because Kirkpatrick challenges only the factual findings underlying the California Supreme Court’s conclusion that his waiver was voluntary, we defer to those factual findings under § 2254(e)(1).<sup>5</sup>

Kirkpatrick cites to *Campbell v. Wood*, 18 F.3d 662 (9th Cir. 1994) (en banc) and *Moran v. Godinez*, 57 F.3d 690 (9th Cir. 1994), to support his assertion that we should apply *de novo* review to the finding of a voluntary waiver because it is a mixed question of law and fact. Of course, these cases pre-date AEDPA and our holdings in *Lambert* and *Jeffries*. 393 F.3d at 977–78; 114 F.3d at 1498. Moreover, even pre-AEDPA cases held that the factual issues underlying the voluntariness inquiry were entitled to a “presumption of correctness,” while the legal question of voluntariness was not. *See Marshall v. Lonberger*, 459 U.S. 422, 431–32 (1983); *Rupe v. Wood*, 93 F.3d 1434, 1444 (9th Cir. 1996); *Collazo*, 940 F.2d at 415; *Iaea v. Sunn*, 800 F.2d 861, 864 (9th Cir. 1986). Thus, we presume the California Supreme Court’s findings that Kirkpatrick was competent to withdraw his habeas petition and that his withdrawal was voluntary,

---

different standard. 114 F.3d at 1498. That analytical change drives the different outcome reached in the opinion issued today.

<sup>5</sup> We need not address what standard of review would apply to the California Supreme Court’s legal conclusion as to voluntariness because Kirkpatrick’s claims of error are directed to the court’s factual determinations.

knowing, and intelligent are correct unless Kirkpatrick rebuts them by clear and convincing evidence.

**2. Whether Kirkpatrick can rebut the California Supreme Court’s finding of waiver**

To waive a petitioner’s right to further habeas proceedings, the petitioner must be competent and his waiver must be voluntary, knowing, and intelligent. *Rees v. Peyton*, 384 U.S. 312, 313–14 (1966); *Dennis ex rel. Butko v. Budge*, 378 F.3d 880, 889 (9th Cir. 2004). A petitioner is competent to waive further habeas proceedings so long as he lacks a mental disease, disorder, or defect that substantially affects “the prisoner’s capacity to appreciate his options and make a rational choice among them.” *Dennis*, 378 F.3d at 889 (emphasis omitted) (citing *Whitmore v. Arkansas*, 495 U.S. 149, 166 (1990)). Whether a waiver is voluntary, knowing, and intelligent involves two distinct inquiries. *Moran v. Burbine*, 475 U.S. 412, 421 (1986). “First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception.” *Id.* And second, “the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” *Id.* A petitioner’s waiver of his right to proceed is voluntary, knowing, and intelligent where his “statements to the court demonstrate that he appreciates the consequences of his decision, that he understands the possible grounds for appeal but does not wish to pursue them, and that he has a reason for not delaying execution.” *Dennis*, 378 F.3d at 889.

Important here, we are not tasked with determining whether Kirkpatrick was competent to waive his state habeas exhaustion petition and whether his waiver was voluntary, knowing, and intelligent. We are tasked only with deciding

whether Kirkpatrick has presented clear and convincing evidence to rebut the California Supreme Court's finding that Kirkpatrick validly waived his state habeas exhaustion petition. Kirkpatrick offers several arguments why his waiver of his state habeas exhaustion petition was invalid, but none of his arguments provide clear and convincing evidence that the California Supreme Court's waiver determination was wrong.

Kirkpatrick first argues that his handwritten letter to the California Supreme Court stating that he wished to withdraw his state habeas exhaustion petition is insufficient to constitute waiver because it does not demonstrate that his waiver was voluntary, knowing, and intelligent. Along that same line, Kirkpatrick argues that his waiver was invalid because he was never questioned on the record about his decision, and without such a colloquy a factfinder could not determine whether his waiver was knowing and intelligent.

While Kirkpatrick's handwritten "Waiver Form" on its own is likely not enough to establish that he was competent to waive his state habeas exhaustion petition and that his waiver was voluntary, knowing, and intelligent, the California Supreme Court had other evidence before it when it determined Kirkpatrick's waiver was valid. After the referee concluded the evidentiary hearings, he submitted a written report to the California Supreme Court (along with the hearing transcripts, Dr. McEwen's report, and copies of other relevant records) containing substantial evidence that Kirkpatrick desired to waive his state habeas exhaustion petition. For example, in a colloquy with the referee when Kirkpatrick first participated in the proceedings, he was asked what he "would like to accomplish at the bottom line in this process," to which Kirkpatrick responded, "Competency and vacating of the appeal." During the same

hearing, Kirkpatrick demonstrated that he understood the potential consequences of waiving his petition:

[Warden]: If he is raising an issue in the State Court that's not previously been exhausted, and you go to Federal Court and try to raise it, we can make a claim and the Federal Court buys that and says, "You can't litigate that issue as good as you may think it is." It might limit your possibilities of what you can raise in Federal Court.

[Kirkpatrick]: I understand that my writ for exhaustion is already filed by the PD's office.

[Warden]: If you withdraw that, then it won't have the impact of doing the exhaustion because it will be withdrawn. There is a potential that when we go back to Judge Keller's courtroom and you withdraw it, you can't raise it there again. There is a possibility he might do that.

[Kirkpatrick]: I can appreciate that.

[Warden]: So that means if you say, "Gee, I changed my mind," he may say, "Mr. Kirkpatrick, sorry, you can't raise it."

[Kirkpatrick]: You are looking out there, Robert. Thanks.

At the end of the first hearing, Referee Judge Graham told Kirkpatrick that although it was "only a preliminary observation . . . I can tell you right now based upon what I



---

have seen here today, I don't see that you have any mental or emotional limitations that would get in the way of your being a perfectly rational and intelligent participant in the litigation process."

Additionally, Dr. McEwen, the only psychologist to interview Kirkpatrick personally, testified that she "believe[d] he ha[d] the capacity" to "appreciate his position and make a rational choice with respect to continuing or abandoning further litigation." And she did not think Kirkpatrick was suffering "from a mental disease, disorder or defect which may substantially affect his capacity" to forgo rationally further litigation.

Rather, Dr. McEwen thought Kirkpatrick's actions were part of a "conscious, deliberate set of responses that provide him with a certain degree of pleasure. The reward being attention, slowing down of the process." She observed that Kirkpatrick's hope was to gain "more and more control over his case" through hiring different lawyers or representing himself. The referee asked Dr. McEwen, "[A]ssuming that he has made the decision to proceed on his own and represent himself, was that a knowing, intelligent, and voluntary decision of his?" Dr. McEwen opined, "yes."

Dr. McEwen's written report reiterated her "medical opinion that [Kirkpatrick] shows no evidence of mental impairment which would diminish his capacity to make a knowing, intelligent and voluntary decision pertaining to his legal choices." Rather, "[t]he clinical evidence suggests that he indeed made his decision to withdraw his petition in a

conscious, goal-directed manner, free of any intervening mental illness.”<sup>6</sup>

Kirkpatrick also argues that some of his statements to the referee and Dr. McEwen show that he did not want to withdraw his petition to expedite his execution. Rather, he argues that he wanted to exercise more control over his case, which he planned to do through firing his current counsel and then representing himself or hiring black lawyers, with

---

<sup>6</sup> Kirkpatrick argues that the referee erred in determining he was competent to waive his state habeas exhaustion petition because he failed to order Kirkpatrick to submit to competency determinations by the FPD’s experts, failed to order Kirkpatrick to be examined in an inpatient psychiatric facility, failed to require Kirkpatrick to be examined by a second mental health expert, and failed to videotape Kirkpatrick’s interview with Dr. McEwen. Kirkpatrick argues that Dr. McEwen’s testimony alone “provided no reliable or reasonable basis for the state court to conclude that Kirkpatrick was competent to waive his [state habeas] exhaustion petition,” particularly because the FPD’s experts reviewed Dr. McEwen’s testimony and found it to be flawed. Kirkpatrick admits, however, that the FPD’s experts could not give definitive opinions because they did not interview Kirkpatrick in person.

This argument is flawed. First, the referee could not force Kirkpatrick to attend the evidentiary hearings to determine his competency after Kirkpatrick refused to attend and answer questions. It follows logically that it would have been futile for the referee to order Kirkpatrick to submit to further examinations. And Kirkpatrick cites no authority to support the proposition that the referee was required to take any of these measures. Second, the referee acted reasonably in basing his competency determination on Dr. McEwen’s testimony because he found that her opinions were “based upon extraordinary qualifications of training and experience, careful review of the available history, and perhaps the only substantial mental health interview Mr. Kirkpatrick has ever allowed.” Finally, even if the district court prematurely determined that Kirkpatrick was competent to waive his state habeas exhaustion petition, that certainly does not amount to clear and convincing evidence that the California Supreme Court’s competency finding was wrong.

the hope of obtaining a new trial to establish his innocence. On *de novo* review, that argument could provide a basis for considering whether Kirkpatrick's waiver was really knowing or intelligent. But under § 2254(e)(1), it does not amount to the clear and convincing evidence necessary to set aside the California Supreme Court's well supported factual findings. Kirkpatrick clearly desired more control over the proceedings, but that is not evidence that he did not understand or appreciate the consequences of his decision. We are bound by the California Supreme Court's factual conclusion, especially in light of the specific evidence from Dr. McEwen and Kirkpatrick himself that supports it. As to Kirkpatrick's claim that a colloquy on the record is required to validate a waiver, Kirkpatrick cites to no binding authority that a colloquy is required, particularly where the defendant refused to participate in court proceedings where a colloquy would have occurred.<sup>7</sup> Indeed, in *Dennis* we noted that

---

<sup>7</sup> We note, however, that where courts have previously found such waivers to be knowing, voluntary, and intelligent, they have done so after the court questions the petitioner on the record regarding his intentions and whether he understands the consequences of the waiver. *See Demosthenes v. Baal*, 495 U.S. 731, 732–35 (1990) (state postconviction court found a valid waiver after an evidentiary hearing at which the petitioner testified that he understood his waiver would result in his death); *Whitmore*, 495 U.S. at 165 (finding valid waiver based on colloquy between counsel and trial court with the petitioner, including a discussion of the “possible grounds for appeal” he was waiving); *Comer v. Schriro*, 480 F.3d 960, 965–66 (9th Cir. 2007) (en banc) (per curiam); *id.* at 966 (Paez, J. concurring) (describing the district court's “thorough findings, including its finding that Comer understood his legal claims” that he was waiving after hearing Comer's testimony that he “underst[ood] that the merits of his habeas appeal are legally strong . . . but that he wished to halt his legal challenges even so”); *Dennis*, 378 F.3d at 891; *Massie*, 244 F.3d at 1196–97; *see also Fahy v. Horn*, 516 F.3d 169, 183–85 (3d Cir. 2008); *Sanchez-Velasco v. Sec'y of Dep't of Corr.*, 287 F.3d 1015, 1032–33 (11th Cir. 2002); *St. Pierre v. Cowan*, 217 F.3d 939, 947–48 (7th Cir. 2000) (noting the lack of “any kind of

courts “have a measure of discretion in affording a hearing that is suitable in the circumstances” when determining the validity of a petitioner’s waiver. 378 F.3d at 894.

Kirkpatrick urges us to follow the Third Circuit’s opinion in *Fahy v. Horn*, 516 F.3d 169 (3d Cir. 2008). There, Henry Fahy was convicted of capital murder and sentenced to death in Pennsylvania. *Id.* at 176. Fahy filed multiple petitions for post-conviction relief. *Id.* at 177. After his third petition for post-conviction relief was denied, Fahy appealed to the Pennsylvania Supreme Court. *Id.* While his appeal was pending, “Fahy filed a handwritten pro se motion” asking the court “to allow him to withdraw his appeal and to waive all collateral proceedings so that his death sentence could be carried out.” *Id.* The Pennsylvania Supreme Court remanded his appeal to the post-conviction relief court to conduct a colloquy to determine whether he “fully underst[ood] the consequences of his request to withdraw his appeal and to waive all collateral proceedings.” *Id.* On remand, the judge granted Fahy a one-week extension to consider his waiver request. *Id.* at 178. During that week, Fahy changed his mind and signed a sworn affidavit stating that he “no longer wished to waive his appellate rights, that he wanted to proceed with his appeal, and that he desired continued representation by counsel.” *Id.* But when he appeared before the judge for a second time, he stated that he changed his mind yet again and that he did not want legal representation nor did he want to pursue further litigation. *Id.* The judge then asked Fahy several questions

---

proceeding, formal or informal, at which any court was able to assure itself that [the] waiver . . . satisfied the requirements for a knowing and voluntary waiver and that [the petitioner] intended it to be a waiver”). The State has not identified any cases in which a court determined that there was a valid waiver in the absence of such a colloquy.

before informing him that he would tell “the Supreme Court of Pennsylvania that [he was] knowingly waiving all [his] appellate rights and all [post-conviction relief] rights.” *Id.* The Pennsylvania Supreme Court subsequently affirmed the post-conviction court’s determination that Fahy validly waived his right to further appellate and collateral proceedings. *Id.*

Fahy then filed a motion to stay his execution and an amended federal habeas petition in federal district court. *Id.* The district court held that although Fahy was competent when he waived his right to further appellate and collateral proceedings in state court, he was “improperly induced to waive his rights.” *Id.* at 178–79. The government appealed to the Third Circuit. *Id.* As to waiver, the Third Circuit recognized that it must defer to the state court’s factual findings under 28 U.S.C. § 2254(e)(1); however, the court refused to defer to the state court’s finding of waiver in Fahy’s case. *Id.* at 181–87. It held that “when a state court’s waiver colloquy fails to reveal whether the requirements of a valid waiver have been met due to procedural infirmities, substantive deficiencies, and an insufficient probing into a defendant’s knowledge of the rights he is waiving, the findings by that court concerning the waiver are too unreliable to be considered ‘factual determinations.’” *Id.* at 183. Thus, the court held that the trial court’s finding of waiver was not “entitled to the presumption of correctness.” *Id.* In so holding, the court emphasized a few important points.

First, the court noted that Fahy’s waiver resulted from “procedurally infirm” proceedings because the post-conviction relief court denied his counsel’s request to ask Fahy about his waiver, which Fahy had requested in a letter to the court, and the court “explicitly refused to consider any

evidence of coercion.” *Id.* at 184–85. Second, Fahy expressly stated in his colloquy with the judge that he had not discussed all the issues pertaining to his waiver with his lawyers. *Id.* The court stated that this “inadequate colloquy” did not “reveal that he had any knowledge whatsoever of the purpose of federal habeas corpus or its procedures.” *Id.* at 186. Finally, the court emphasized that Fahy’s equivocation—that he first filed a handwritten waiver form, then filed a signed affidavit stating he did not want to waive his appellate rights, and then changed his mind again and decided to waive further appellate and collateral proceedings—compelled its conclusion that Fahy’s waiver was not knowing and voluntary. *Id.* The court concluded that this “record of equivocation . . . does not support an enforceable waiver,” and thus proceeded to review the merits of Fahy’s appeal. *Id.* at 187.

The Third Circuit’s decision in *Fahy* differs from this case in several significant respects. First, unlike in *Fahy* where the court refused to consider evidence of coercion and was unbothered by Fahy’s express statement that he had not discussed his case with his attorneys, Kirkpatrick makes no claim that the referee did not allow him or his counsel the opportunity to discuss whether his waiver was voluntary, knowing, and intelligent. In fact, the opposite occurred: the referee engaged with Kirkpatrick to the extent he could, noting that it was a “pleasure to talk to [him]” at the first hearing. The court ordered a professional evaluation of Kirkpatrick’s competency, and Dr. McEwen interviewed Kirkpatrick for two and a half hours. It was Kirkpatrick who refused to engage with the court and his lawyers after Dr. McEwen assessed his competency.<sup>8</sup> Thus, any “procedural

---

<sup>8</sup> We do not suggest that Kirkpatrick’s refusal to participate in the referee’s evidentiary hearing altered the State’s burden to prove the

infirmity” that occurred in Kirkpatrick’s case was of his own making. Second, and most importantly, unlike the petitioner in *Fahy*, Kirkpatrick never made any affirmative indication that he no longer wanted to waive his state habeas exhaustion petition.<sup>9</sup> In fact, he submitted a nearly identical waiver during his federal district court habeas proceedings. Even if Kirkpatrick’s conduct of refusing to participate in the referee’s evidentiary hearings supports a counter-finding that he did not want to waive his state habeas exhaustion petition, it does not amount to clear and convincing evidence that the California Supreme Court’s waiver determination was wrong. His refusal to participate after requesting the opportunity to withdraw his petition—a process he repeated in federal district court—is entirely consistent with Dr. McEwen’s testimony that “he has an agenda” and is simply trying to manipulate the process.

---

validity of his waiver. *See Brewer v. Williams*, 430 U.S. 387, 404 (1977) (“[I]t was incumbent upon the State to prove ‘an intentional relinquishment or abandonment of a known right or privilege.’” (citation omitted)). Nor did Kirkpatrick’s refusal “relieve [the] court of the duty to ensure that a definitive waiver ha[d] occurred before it deprive[d] the petitioner of remedies that are available under state law.” *St. Pierre v. Cowan*, 217 F.3d 939, 949 (7th Cir. 2000).

<sup>9</sup> After Kirkpatrick attended the first evidentiary hearing, he refused to attend the following four evidentiary hearings. The referee sent Kirkpatrick two separate letters telling him that if he “actually wish[ed] to withdraw [his] habeas corpus petition, it seems critical that you attend” the evidentiary hearing. Kirkpatrick never responded and never attended the subsequent evidentiary hearings. Kirkpatrick argues that his silence and refusal to attend further evidentiary hearings shows he did not want to waive his state habeas exhaustion petition. But this is not necessarily evidence that Kirkpatrick no longer wanted to waive his state habeas exhaustion petition. It could equally be evidence of Kirkpatrick’s unwillingness to cooperate with the court as part of a strategy to delay his court proceedings and execution.

Finally, Kirkpatrick argues that his waiver was involuntary because evidence exists to suggest he wrote his “Waiver Form” under duress. Kirkpatrick notes that he wrote multiple letters to the state court asserting that he believed prison guards were trying to kill him, retaliate against him by withholding showers and food, and that the prison denied him medical attention, medication, legal documents, access to the library, and access to the prison yards. Kirkpatrick does not explain how these events influenced his decision to waive his state habeas exhaustion petition. Nonetheless, even if Kirkpatrick’s letters to the state court exhibited evidence of duress, both Dr. McEwen and the referee, who talked to Kirkpatrick personally, determined that his waiver was voluntary. Kirkpatrick’s assertions do not amount to clear and convincing evidence that the California Supreme Court’s finding that Kirkpatrick’s waiver was voluntary was wrong.

While we agree that the California Supreme Court’s waiver finding was unconventional, ultimately the California Supreme Court was not bound to accept the referee’s findings. *See In re Thomas*, 129 P.3d 49, 53 (Cal. 2006). Kirkpatrick has not presented clear and convincing evidence to rebut the California Supreme Court’s finding that he validly waived his state habeas exhaustion petition. Thus, we presume its findings were correct, and affirm the district court’s dismissal of Kirkpatrick’s waived claims.<sup>10</sup>

---

<sup>10</sup> Nothing in this opinion should be construed to minimize or modify the constitutional requirements of a competency determination and a voluntary, knowing, and intelligent waiver.



### **III. CONCLUSION**

Because Kirkpatrick cannot show the jury's consideration of the facts that he poisoned Shirley Johnson's dogs and threatened her property had a substantial and injurious effect on the jury's decision to impose the death penalty, Kirkpatrick is not entitled to relief on his Eighth Amendment claim. Additionally, Kirkpatrick has not presented clear and convincing evidence to rebut the California Supreme Court's finding that Kirkpatrick validly waived his state habeas exhaustion petition. Thus, we affirm the district court's denial of federal habeas relief to Kirkpatrick.

**AFFIRMED.**

**Appendix 1**

The district court's independent analysis whether there was evidence to support the California Supreme Court's finding of waiver:

The district court stated, "[t]he evidence supporting the California Supreme Court's findings would include, but is not limited to, the following statements made during status conferences and in the evidentiary hearing before Judge Graham":

Court: "What is it you would like to accomplish at the bottom line in this process?"

Petitioner: "Competency and vacating of the appeal."

\* \* \*

Respondent: "If he is raising an issue in the state court that's not previously been exhausted, and you go to federal court and try to raise it, we can make a claim and the federal court buys that and says, 'You can't litigate that issue as good as you may think it is.' It might limit your possibilities of what you can raise in federal court."

Petitioner: "I understand that my writ for exhaustion is already filed by the PD's office."

Respondent: "If you withdraw that, then it won't have the impact of doing the

exhaustion because it will be withdrawn. There is a potential that when we go back to Judge Keller's courtroom and you withdraw it, you can't raise it there again. There is a possibility he might do that."

Petitioner: "I can appreciate that."

Respondent: "So that means if you say, 'Gee, I changed my mind,' he may say, Mr. Kirkpatrick, sorry, you can't raise it."

Petitioner: "You are looking out there, Robert. Thanks."

Respondent: "I am here to do justice. . . . [D]o you understand what I am trying to communicate?"

Petitioner: "Yeah, you are covering your ass."

\* \* \*

Court: "Mr. Kirkpatrick, I know it is only a preliminary observation, but I can tell you right now based upon what I have seen here today, I don't see that you have any mental or emotional limitations that would get in the way of your being a perfectly rational and intelligent participant in the litigation process, and but for the circumstances in which we find ourselves its been a pleasure to talk to you."

\* \* \*

[Psychiatrist] Dr. McEwen: “He made it quite plain that he knew why I was there.”

Court: “What did he say to you?”

Dr. McEwen: “He recognized that I was coming to talk to him about all these things that you see. We talked about coming in to this courtroom and talking to this Judge, and he talked about you and he talked about the Attorney General. So it was quite plain to me that he knew this was in response to some of his—it was in direct response to some of his requests in his case . . . .”

Dr. McEwen: “There’s not a clear—it should be obvious that there’s not a clear step-by-step plan that is particularly realistic. In the back of my mind I thought this person may simply be trying to stymie everybody else’s efforts on his case. I had that impression from his written material and from seeing him in person.”

Dr. McEwen: “[T]his is apparently a conscious, deliberate set of responses that provide him with a certain degree of pleasure. The reward being attention, slowing down of the process. His hope being that he has more and more control over his case. I want to have you understand that this is someone who has responded to being on death row in a very particular way. It is a combination of the

environment he's in and his particular personality. I think he's conscious of what he's doing. . . . He knew exactly what he was doing with me."

Dr. McEwen: "He thinks that he is going to be found competent. He tells me—he says, "There's nothing wrong with me."

Dr. McEwen: "[H]e certainly has some trends that are like a personality disorder, but these would not be the sorts of things that would interfere with the aforesaid decision-making abilities."

Dr. McEwen: "[B]ut I have to say I think that this man knows what he is doing, has an agenda, doesn't have the slightest interest in being seen as mentally ill. . . . I think I feel pretty strongly that he has character trends, argumentative, contrary character trends and a lot of energetic intelligence to keep himself very much occupied in this pursuit that he is involved in. It is a goal-directed pursuit, and I think that he is trying not just to frustrate people and make people upset, but he's also trying to feel a sense of being in control of his life."

Respondent: "[W]hat is your answer to this question: Whether Mr. Kirkpatrick has the capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation?"

Dr. McEwen: “I believe he has the capacity to do that.”

Respondent: “Secondly, whether Mr. Kirkpatrick is suffering from a mental disease, disorder or defect which may substantially affect his capacity to do those things?”

Dr. McEwen: “I believe he does not suffer from that type of condition.”

....

Respondent: “Assuming that he has made the decision to proceed on his own and represent himself, was that a knowing, intelligent, and voluntary decision of his?”

Dr. McEwen: “I would say yes.”

The district court also found excerpts of Dr. McEwen’s written findings persuasive, as the only psychiatrist to interview Kirkpatrick in person:

“Based upon my examination of Mr. Kirkpatrick and upon review of the documents noted above, it is my medical opinion that he shows no evidence of mental impairment which would diminish his capacity to make a knowing, intelligent and voluntary decision pertaining to his legal choices. He is not suffering from any mental condition or defect that could interfere with either his ability to comprehend his situation

or his ability to make rational decisions regarding litigation.”

“The clinical evidence suggests that he indeed made his decision to withdraw the petition in a conscious, goal-directed manner, free of any intervening mental illness.”

“He is stimulated by and takes pleasure in confounding the ‘powers that be.’ Wanting control is a natural human reaction, and not necessarily maladaptive.”

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

JUN 13 2019

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

WILLIAM KIRKPATRICK, Jr.,

Petitioner-Appellant,

v.

KEVIN CHAPPELL, Warden, California  
State Prison at San Quentin,

Respondent-Appellee.

No. 14-99001

D.C. No. 2:96-cv-00351-WDK  
Central District of California,  
Los Angeles

ORDER

Before: WARDLAW, BEA, and CHRISTEN, Circuit Judges.

This case was originally decided by a panel comprised of Judge Stephen Reinhardt, Judge Kim McLane Wardlaw, and Judge Alex Kozinski. Appellee's petition for panel rehearing and rehearing en banc was pending when Judge Kozinski retired. Following Judge Kozinski's retirement, Judge Christen was drawn by lot to replace him. Following the death of Judge Reinhardt, Judge Bea was drawn by lot to replace him. Ninth Circuit General Order 3.2.h. The newly constituted panel granted Appellee's petition for rehearing before a three-judge panel on July 18, 2018. The newly constituted panel re-heard the appeal on December 10, 2018. The original opinion filed on October 10, 2017, is ordered withdrawn.



UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

JUL 18 2018

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

WILLIAM KIRKPATRICK, Jr.,

Petitioner-Appellant,

v.

KEVIN CHAPPELL, Warden, California  
State Prison at San Quentin,

Respondent-Appellee.

No. 14-99001

D.C. No. 2:96-cv-00351-WDK  
Central District of California,  
Los Angeles

ORDER

Before: WARDLAW, BEA, and CHRISTEN, Circuit Judges.

Appellee's petition for rehearing before a three-judge panel is GRANTED.

Oral argument will take place during the week of December 10, 2018, in San Francisco, California. The date and time will be determined by separate order. For further information or special requests regarding scheduling, please contact Calendar Unit Supervisor Arden Wong at arden\_wong@ca9.uscourts.gov or (415) 355-8191.

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

WILLIAM KIRKPATRICK, JR.,  
*Petitioner-Appellant,*

v.

KEVIN CHAPPELL, Warden,  
California State Prison at San  
Quentin,

*Respondent-Appellee.*

No. 14-99001

D.C. No.  
2:96-cv-00351-  
WDK

OPINION

Appeal from the United States District Court  
for the Central District of California  
William D. Keller, Senior District Judge, Presiding

Argued and Submitted February 17, 2017  
Pasadena, California

Filed October 10, 2017

Before: Stephen Reinhardt, Alex Kozinski,  
and Kim McLane Wardlaw, Circuit Judges.

Opinion by Judge Reinhardt;  
Dissent by Judge Kozinski

**SUMMARY\***

---

**Habeas Corpus / Death Penalty**

The panel vacated the district court's order dismissing for lack of exhaustion claims in William Kirkpatrick, Jr's habeas corpus petition challenging his murder conviction and death sentence, and remanded to the district court so that it may adjudicate those claims on the merits.

The district court dismissed the claims as unexhausted on the ground that, although Kirkpatrick presented them to the California Supreme Court, he subsequently waived them by means of a handwritten, pro se filing. The California Supreme Court ruled that the handwritten form constituted a valid waiver despite the conclusion of the referee it appointed that there was not enough evidence that the waiver was made knowingly, voluntarily, and intelligently. The district court agreed with the California Supreme Court.

The panel held that there is insufficient evidence in the record to support a finding that Kirkpatrick's handwritten form constituted a valid waiver of his right to proceed and that the State of California failed to carry its burden to the contrary. Consequently, the panel held that the district court erred in dismissing the claims as unexhausted.

Dissenting, Judge Kozinski wrote that the majority failed to defer to the California Supreme Court whose findings are supported by more than enough evidence, and that under de

---

\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

---

KIRKPATRICK V. CHAPPELL 3

---

novo review Kirkpatrick would fare no better, but that none of this matters because California has no functional death penalty.

---

### COUNSEL

Patricia A. Young (argued) and Mark R. Drozdowski, Deputy Federal Public Defenders; Hilary Potashner, Federal Public Defender; Office of the Federal Public Defender, Los Angeles, California; for Petitioner-Appellant.

Robert C. Schneider (argued), A. Scott Hayward, and Jaime L. Fuster, Deputy Attorneys General; Lance E. Winters, Senior Assistant Attorney General; Gerald A. Engler, Chief Assistant Attorney General; Office of the Attorney General, Los Angeles, California; for Respondent-Appellee.

---

### OPINION

REINHARDT, Circuit Judge:

William Kirkpatrick, Jr., was convicted of murder and sentenced to death in California more than thirty years ago. His case has followed a long and complicated procedural path to this court. He now appeals the district court's dismissal of certain claims for relief in his federal habeas corpus petition. He contends that the district court was wrong to dismiss those claims as unexhausted and should instead have adjudicated them on the merits – something that has not yet happened in any court, state or federal.

The district court dismissed the claims as unexhausted on the ground that, although Kirkpatrick presented them to the California Supreme Court, he subsequently waived them by means of a handwritten, pro se filing. The California Supreme Court ruled that the handwritten form constituted a valid waiver despite the conclusion of the referee it appointed that there was not enough evidence that the waiver was made knowingly, voluntarily, and intelligently, as the Constitution requires. The district court agreed with the California Supreme Court.

We conclude that there is insufficient evidence in the record to support a finding that Kirkpatrick's handwritten form constituted a valid waiver of his right to proceed and that the State failed to carry its burden to the contrary. Consequently, we hold that the district court erred in dismissing the claims as unexhausted. We remand the case to the district court so that it may adjudicate the claims in question on the merits.<sup>1</sup>

## I. BACKGROUND

### A.

In September 1983, two men were murdered at a Taco Bell in Burbank, California. Both victims, who worked at the restaurant, were shot in the head point blank. Police soon arrested and charged Kirkpatrick with the double murder. He was 23 years old at the time.

---

<sup>1</sup> Kirkpatrick also appeals the dismissal of one other claim that was admittedly exhausted, but for reasons we explain below, we do not reach that claim here.

---

KIRKPATRICK V. CHAPPELL

5

In the three decades in which Kirkpatrick's case has been pending in various courts, he has repeatedly tried to represent himself or to interfere with his defense when represented by counsel and has repeatedly expressed dissatisfaction with and distrust of his lawyers. Shortly after the State brought charges against him, the trial court appointed two lawyers, two psychiatrists, and an investigator to assist in Kirkpatrick's defense. Kirkpatrick, however, requested that he be appointed as co-counsel for purposes of the trial.<sup>2</sup> He also insisted on proceeding to trial quickly – even after another possible perpetrator, Eddie Salazar, was arrested in connection with the same crimes. A few weeks after voir dire, Kirkpatrick sent a letter to the court criticizing his attorneys' performance. The lawyers explained that they were having problems with their client, whose desires clashed with their legal advice.

The State's theory of the case at trial was that Kirkpatrick stole a .22 caliber gun from a Union 76 gas station, and used it to murder the Taco Bell employees several days later, with the help of Salazar, his co-conspirator. The prosecution also said that Kirkpatrick told acquaintances about the crime after it had been committed.

To support this theory, the prosecution called 42 witnesses. Several testified that they saw Kirkpatrick with a gun that looked like the murder weapon in the days before the shooting. One witness testified that he saw Kirkpatrick and Salazar together shortly before the shootings, and another witness testified that he saw the two men, with a gun, immediately afterwards. The prosecution introduced evidence of bullets found in Kirkpatrick's car, and car stereo

---

<sup>2</sup> This request was denied.

equipment that had allegedly been stolen from the Union 76 gas station. The prosecution also entered the .22 caliber gun – the supposed murder weapon – into evidence, although the firearms examiner could not be sure that that particular weapon had fired the bullets collected at the crime scene.

Kirkpatrick testified in his own defense, despite counsel’s advice that it was not in his best interest to do so. He discussed his location the night of the crimes, and said that he had intended to visit a friend in Whittier but was not able to do so because his car battery died. He said that he purchased a new car battery in the early morning following the time at which the shootings occurred and then slept in a motel. The defense’s three other witnesses corroborated his whereabouts at several points in time, but did not provide any concrete alibi. Kirkpatrick’s lawyer conceded that whoever committed the crimes committed first degree murder, and apologetically told the jury that lawyers “deal with . . . facts as best they can.”

The jury deliberated for five days and, during their deliberation, asked for a read-back of the testimony of four witnesses. The jury found Kirkpatrick guilty on all counts and found true all death-qualifying special circumstances. During the jury’s deliberations, the court received another letter from Kirkpatrick complaining about his lawyers; he said that he no longer considered them his attorneys.

### **B.**

Kirkpatrick asked to represent himself at the penalty phase of the trial – the proceeding at which the jury would decide whether to sentence him to life with the possibility of parole, or to death. The court denied Kirkpatrick’s request on

---

KIRKPATRICK V. CHAPPELL

7

the grounds that his request was untimely and that there was no overwhelming reason for the court in its discretion to allow Kirkpatrick to proceed pro se. The court nevertheless granted him co-counsel status when he threatened not to appear unless he could proceed pro se. The court asked about his letter and complaints against his attorneys, and Kirkpatrick said that at some points the lawyers “went completely against everything [he] requested,” including requests to subpoena witnesses that were ignored. His lawyers did not dispute these claims.

To support a sentence of death, the prosecution presented evidence of Kirkpatrick’s troubling past actions as aggravating circumstances. The defense’s mitigation presentation took place the same day, and consisted solely of Kirkpatrick’s brief testimony, in which he simply reasserted his innocence and said that he was from New York and aspired to be a writer.

Beyond that, the defense essentially prepared no case for mitigation at the penalty phase. The lawyer and investigator spoke to only one person, Kirkpatrick’s mother, in preparation for their presentation of mitigating evidence. They believed that she would be “very, very helpful to the defense,” but she was never called to testify. This may have been at Kirkpatrick’s insistence, as he instructed his lawyers not to interview or present any family members as witnesses. Kirkpatrick also stated that he did not want any of his family members brought to court or even contacted at all, and the investigator did not interview any of Kirkpatrick’s other family members or friends. Although his lawyers stated that Kirkpatrick should be evaluated psychiatrically, Kirkpatrick said that he did not want to meet with a psychiatrist, and the court “accept[ed] Mr. Kirkpatrick’s position on that.” In any



event, no evidence of Kirkpatrick's difficult upbringing, his disadvantaged social background, his history of mental health problems and drug abuse, or his relationships with friends and family was ever presented to the court or even investigated by the defense team.

All that Kirkpatrick said in his closing statement was that he had not received a fair trial. He said that his attorneys failed to call certain witnesses and failed to ask specific questions. He said he was "frightened" and "mad" that prosecutors were sending an innocent person to jail. He also told jurors that he did not blame them for finding him guilty and that he would have done the same thing if he had been in their position.

The prosecution replied that Kirkpatrick was "an anarchist," and that "[h]is contribution to society has been pain, suffering, and misery." It said that "the circumstances in aggravation far outweigh any circumstances in mitigation, if any" and that the jury could impose a sentence of life without parole, rather than a sentence of death, only if it ignored the aggravating factors.

Two days after the jury began its penalty selection deliberations, it returned a death verdict for both murders. The court proceeded to hold a sentencing hearing at which it reviewed the aggravating and mitigating circumstances and found that the only mitigating factors were the defendant's lack of prior felony convictions and his young age. It sentenced Kirkpatrick to death.<sup>3</sup>

---

<sup>3</sup> Kirkpatrick's supposed co-conspirator, Eddie Salazar, was also convicted for his participation in the Taco Bell crimes and was later sentenced to two concurrent terms of 25 years to life.

---

KIRKPATRICK V. CHAPPELL 9

C.

Kirkpatrick filed a direct appeal in the California Supreme Court and a state habeas petition claiming penalty phase ineffective assistance of counsel. The California Supreme Court affirmed Kirkpatrick's conviction in a lengthy opinion. *People v. Kirkpatrick*, 874 P.2d 248 (1994). It also summarily denied the habeas petition, although two of the justices voted to grant relief for penalty phase ineffective assistance.

Kirkpatrick later filed a federal habeas petition in the Central District of California raising numerous claims for relief. This time, he was represented by Federal Public Defenders rather than the lawyers appointed by the state court. The district court found that a number of the claims in the federal petition had not been exhausted in state court. Accordingly, it stayed consideration of the petition to permit Kirkpatrick to return to state court. Kirkpatrick then filed a petition in the California Supreme Court raising the claims that the district court had found to be unexhausted; he presented more than twenty such claims.

A year and a half later, while his petition was pending in the California Supreme Court, Kirkpatrick sent that court a letter and attached a handwritten document entitled "Waiver Form." The form stated, in its entirety: "I *do not* wish to proceed with my petition for writ of habeas corpus review in this matter. I wish the sentence and the judgement [sic] of execution in *People v. William Kirkpatrick, Jr.* 1459044 to be carried out at this time." The document was signed and dated by Kirkpatrick.

The California Supreme Court then confronted the question whether this document constituted a valid waiver of Kirkpatrick's petition. The Court appointed a referee, Marin County Superior Court Judge Stephen Graham, to examine whether the waiver satisfied the Constitution's requirements – that is, whether Kirkpatrick was competent to waive the petition and whether the waiver was knowing, voluntary, and intelligent.

The referee did not recommend that the court find the waiver valid. He told the court that he was unable to conclude that the waiver was “knowing” or “intelligent” because Kirkpatrick “refused to engage in sufficient discussion with the Referee to permit the Referee to determine whether the request to withdraw the pending habeas corpus petition is made knowingly and intelligently.” The report continued, “The Referee . . . is not able to assess, with the limitations imposed by Mr. Kirkpatrick, whether the act is done in the context of sufficient information and understanding of present circumstances and potential consequences to be found to be knowing and intelligent.”

The referee's investigation was fatally impeded by Kirkpatrick's refusal to participate. Initially, Kirkpatrick cooperated with the referee. He appeared for status conferences on four occasions, and was evaluated by a court-appointed psychiatrist for two and a half hours. Following that examination, however, Kirkpatrick refused to participate further. He refused to be interviewed by three different experts retained by the Federal Public Defender. He also refused to attend the referee's evidentiary hearing in March

---

KIRKPATRICK V. CHAPPELL 11

---

2001.<sup>4</sup> At no point in the investigation was he interviewed under oath or on the record about his understanding of the waiver's significance. As a result, the referee concluded that there was no evidentiary basis on which to determine that Kirkpatrick's waiver was valid.

Notwithstanding the referee's report, the California Supreme Court approved the waiver. It reversed the referee's recommendation without taking any further evidence, without giving any reasons for its decision, and without interviewing Kirkpatrick under oath or otherwise about his intentions or understanding of the waiver's legal effect. In a two sentence order, it simply stated that Kirkpatrick "made a knowing, intelligent, and voluntary waiver of his right to proceed." Having found the waiver valid, the court dismissed Kirkpatrick's petition, which if resolved on the merits would have served to exhaust his claims.

**D.**

The case returned to federal court. Following the California Supreme Court's dismissal of the petition, Kirkpatrick's lawyers filed an amended federal habeas petition. This petition included the claims presented in his state court petition – that is, the claims that the state court decided that Kirkpatrick had waived.

---

<sup>4</sup> At that hearing, the court-appointed psychiatrist testified that Kirkpatrick had no "mental disease, disorder or defect." Although the experts supplied by the Federal Public Defender never had the opportunity to meet with Kirkpatrick themselves, they reviewed the report prepared by the psychiatrist and "expressed doubt as to the value of [her] opinions" because they disputed her methodology and believed that she "fail[ed] to address issues . . . raised by her report."

The State then moved in district court to dismiss the purportedly waived claims. Kirkpatrick objected, arguing that the California Supreme Court was wrong to find that his waiver was valid; he asserted that the waiver was not actually voluntary, knowing, and intelligent. The district court, however, upheld the state court's conclusion that the waiver was valid and dismissed the claims that had been the subject of the waiver.

These more than twenty-odd claims have not been adjudicated on the merits by any court. The claims challenge numerous aspects of Kirkpatrick's conviction and sentence. They include: the claim that law enforcement officials failed to investigate or provide exculpatory evidence; the claim that law enforcement officials conducted unconstitutional interrogations of Kirkpatrick; the claim that the decision to pursue the death penalty was based on Kirkpatrick's race; the claim that the trial court failed to provide Kirkpatrick with alternate counsel; the claim that the trial court was biased against Kirkpatrick; the claim that Kirkpatrick was improperly excluded from courtroom proceedings; the claim that Kirkpatrick was actually innocent; the claim that the prosecution improperly joined separate allegations in a single trial; the claim that Kirkpatrick was not competent to stand trial; the claim of numerous instances of prosecutorial misconduct prior to and during the guilt phase; the claim that the statute under which Kirkpatrick was charged is unconstitutional; the claim that the guilt phase jury instructions were unconstitutional; the claim of cumulative error prior to and during the guilt phase; the claim that the trial court erroneously allowed the jury to consider lack of remorse as an aggravating factor; the claim that trial counsel provided ineffective assistance of counsel by failing to present mitigating evidence at the penalty phase; the claim

that other mistakes at the penalty phase rendered counsels' assistance ineffective; the claim that trial counsel abandoned Kirkpatrick; the claim of numerous instances of prosecutorial misconduct during the penalty phase; the claim of ineffective assistance of appellate counsel; the claim of Due Process and Equal Protection violations in the appellate process; the claim that the death penalty as applied to Kirkpatrick is unconstitutional; and the claim that the cumulative impact of these numerous errors renders Kirkpatrick's conviction and sentence unconstitutional.

In dismissing these claims, the district court applied deference under the Antiterrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C. § 2254, to the California Supreme Court's determination that Kirkpatrick's waiver had been knowing, voluntary, and intelligent. It stated that "[u]nder AEDPA, the decision of the California Supreme Court must be given deference, and cannot . . . be reviewed de novo by this court." Applying the highly deferential standard, the district court concluded that because "there is [some] evidence to support the conclusory findings of the California Supreme Court," its conclusion must be upheld. "There has been no unreasonable determination of the facts or a decision contrary to, or involving an unreasonable application of, clearly established federal law," it said. The district court also held, in the alternative, that the California Supreme Court's decision that the waiver was valid was actually correct.

Kirkpatrick filed a revised amended petition, which omitted the claims that the district court deemed unexhausted, but reasserted other claims that had been resolved by the state court on direct appeal. The district court dismissed those claims as well, on the ground that none entitled Kirkpatrick

to relief under AEDPA. The district court granted a Certificate of Appealability as to one claim only – a reasserted claim that related solely to a penalty issue – and Kirkpatrick timely appealed.

## II. DISCUSSION

We consider here only the question whether the district court was wrong to dismiss as unexhausted the twenty-plus claims that the state court dismissed because of Kirkpatrick's purported waiver. Kirkpatrick maintains that the district court erred in upholding the waiver of those claims because the waiver was not valid. He asks that we review – and vacate – the district court's order dismissing the claims, and requests that they be remanded to that court for adjudication on the merits.

The waiver issue was not mentioned in the Certificate of Appealability granted by the district court. It was, however, properly raised by Kirkpatrick in his briefs on appeal. At our invitation, the State responded to Kirkpatrick's briefing of the issue, and Kirkpatrick replied to the State's response. Thus, the issue is fully briefed before us. We now expand the Certificate of Appealability and proceed to consider whether the district court erred in dismissing Kirkpatrick's purportedly unexhausted claims.<sup>5</sup> *Slack v. McDaniel*, 529 U.S. 473, 484–85 (2000).

---

<sup>5</sup> Because we expand the Certificate of Appealability to include the dismissal of the claims that the district court deemed unexhausted, and resolve that issue in the manner described below, we do not reach the originally certified issue regarding a penalty question.

We review de novo a district court's denial of a habeas petition, or any part of it, as unexhausted. *Rhoades v. Henry*, 638 F.3d 1027, 1034 (9th Cir. 2011). Similarly, we review de novo mixed questions of law and fact, such as whether Kirkpatrick's waiver of the claims was knowing, voluntary, and intelligent and therefore constitutionally valid. *Moran v. Godinez*, 57 F.3d 690, 698 (9th Cir. 1994) ("Whether a waiver of constitutional rights was made knowingly and voluntarily is a mixed question of law and fact which we review de novo."); *Campbell v. Wood*, 18 F.3d 662, 672 (9th Cir. 1994) (en banc).

**A.**

A defendant's waiver of "his right to proceed" must be "knowing, voluntary, and intelligent." *Whitmore v. Arkansas*, 495 U.S. 149, 165 (1990). A court must inquire into whether a waiver meets these conditions in order "to determine whether the defendant actually *does* understand the significance and consequences of a particular decision and whether the decision is uncoerced." *Godinez v. Moran*, 509 U.S. 389, 401 n.12 (1993).

There are "two distinct dimensions" to the knowing, voluntary, and intelligent requirement. *Moran v. Burbine*, 475 U.S. 412, 421 (1986). "First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception." *Id.*; see also *Comer v. Schriro*, 480 F.3d 960, 965 (9th Cir. 2007) (en banc) (per curiam) ("A waiver of constitutional rights is voluntary if, under the totality of the circumstances, it was the product of a free and deliberate choice rather than coercion or improper inducement."). "Second, the waiver must have been made



with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” *Burbine*, 475 U.S. at 421.

In its briefs, the State agreed that Kirkpatrick’s waiver is valid only if it was knowing, voluntary, and intelligent. At oral argument, however, the State took “inconsistent positions” on whether the waiver needed to satisfy these requirements, and eventually, in a post-argument letter, firmly changed its position and stated that it did not. Assuming that the state did not waive its right to make this tardy and inconsistent argument, its solitary citation to *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973), does not compel or even support its newfound position. *Schneckloth* observed that the knowing, voluntary, and intelligent requirement does not necessarily apply “in every situation where a person has failed to invoke a constitutional protection” and is most often applied in the context of constitutional trial rights. *Id.* at 235–37. The Supreme Court has made clear, however, and we have long recognized, that the requirement *does* apply to a habeas petitioner’s waiver of his right to proceed further with his case or claim. See *Demosthenes v. Baal*, 495 U.S. 731, 732–36 (1990) (applying the knowing, voluntary, and intelligent requirement to a habeas petitioner who had “filed a petition for state postconviction relief, but, prior to the hearing, changed his mind and withdrew the petition”); *Dennis ex rel. Butko v. Budge*, 378 F.3d 880, 882–83 (9th Cir. 2004) (applying the knowing, voluntary, and intelligent requirement to a habeas petitioner who wrote a letter to the Nevada Supreme Court stating, “I no longer wish to pursue any appeals and want my sentence to be carried out”); *Comer v. Stewart*, 215 F.3d 910, 912, 917 (9th Cir. 2000) (applying the knowing, voluntary,

and intelligent requirement to a habeas petitioner who allegedly “[did] not wish to pursue further legal remedies”).

Accordingly, Kirkpatrick’s waiver “must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” *Burbine*, 475 U.S. at 421. In short, the waiver is constitutionally valid only if it was knowing, voluntary, and intelligent. *Whitmore*, 495 U.S. at 165.

In deciding whether a waiver meets this constitutional requirement, “courts indulge in every reasonable presumption against waiver.” *Brewer v. Williams*, 430 U.S. 387, 404 (1977). “[T]he proper standard to be applied in determining the question of waiver as a matter of federal constitutional law” is that it is “incumbent upon the State to prove ‘an intentional relinquishment or abandonment of a known right or privilege.’” *Id.* (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938), and noting that this “standard has been reiterated in many cases”). In other words, “the burden of proving the validity of a waiver of constitutional rights is always on the government.” *Burbine*, 475 U.S. at 450.

## B.

The California Supreme Court understood that the knowing, voluntary, and intelligent standard applied. Contrary to the recommendation of its referee, however, it decided that Kirkpatrick’s waiver met those requirements and was therefore constitutionally valid. The district court believed that it was required to defer to this conclusion under AEDPA. We turn now to the question of what level of deference, if any, the district court must apply to the state court’s determination under that statute.

When a district court reviews a state court's decision in a habeas case, it ordinarily defers to its conclusions and asks only whether the state court's adjudication "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d).

The district court reviewed the California Supreme Court's approval of Kirkpatrick's waiver under this deferential regime. It stated that because "there is [some] evidence to support the conclusory findings of the California Supreme Court," its conclusion must be upheld. It further stated, "There has been no unreasonable determination of the facts or a decision contrary to, or involving an unreasonable application of, clearly established federal law." "Under AEDPA," the district court explained, "the decision of the California Supreme Court must be given deference, and cannot . . . be reviewed de novo by this court." It declared that its "power to review the decision of the California Supreme Court is extremely limited" (by AEDPA) and that its approach must be "highly deferential."

This is where the district court went wrong. Contrary to its belief, Section 2254(d) of AEDPA applies only to the review of *claims* that have been adjudicated on the *merits*. The section reads: "An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to *any claim that was adjudicated on the merits* in State court proceedings unless" the deferential requirements of AEDPA are satisfied. 28 U.S.C. § 2254(d) (emphasis added). The Supreme Court

has defined the word “claim” in the AEDPA statute as “an asserted federal basis for relief from a state court’s judgment of conviction.” *Gonzalez v. Crosby*, 545 U.S. 524, 530 (2005). *See also Cristin v. Brennan*, 281 F.3d 404, 418 (3d Cir. 2002) (“By stating that an ‘application for a writ of habeas corpus’ can be granted ‘with respect to any claim,’ the sentence clearly implies that Congress used the term ‘claim’ as a substantive request for the writ of habeas corpus.”). By its terms, therefore, AEDPA only provides for deferential review of a state court’s adjudication on the merits of a claim for relief – that is, a claim that could provide a “basis for relief from a state court’s judgment of conviction.” *Crosby*, 545 U.S. at 530. With respect to such “claims,” a federal court may grant the application only if the deferential requirements of AEDPA are satisfied. A federal court’s determination is not subject to the deferential framework of AEDPA, however, when it simply reviews a state court’s disposition of a question that does not constitute a claim for relief, does not decide the merits of such a claim, and does not provide a “basis for relief from a state court’s judgment of conviction” (or imposition of a sentence). *Id.* A decision regarding the validity of a waiver of a defendant’s right to pursue a claim is by no stretch of the legal imagination a decision on the merits of the claim itself.

Kirkpatrick’s assertion that his waiver was not knowing, voluntary, and intelligent is simply not an affirmative “claim” for relief. Although Kirkpatrick does contend that the state court made a legal error, he does not, on the basis of that error, claim entitlement to the writ of habeas corpus. If we agree with Kirkpatrick, our agreement would not provide him with “relief from the state court’s judgment of conviction” or with a vacatur of his sentence. It would simply enable him to pursue the claims that the district court ignored – claims that

might themselves provide the “basis for relief” if *they* were decided in Kirkpatrick’s favor “on the merits” (or the basis for no relief whatsoever if they failed “on the merits”). As a result, the district court was wrong to apply AEDPA deference to the state court’s determination of the constitutional validity of Kirkpatrick’s waiver. It should, instead, have reviewed the state court’s decision as to the validity of the waiver by determining *de novo* whether the state had carried its burden of proving that the waiver was knowing, voluntary, and intelligent.<sup>6</sup>

The Third Circuit has reached the same conclusion. A district court, it held, “need not defer under § 2254(d) to the state court’s determination that [petitioner’s] waiver was valid.” *Fahy v. Horn*, 516 F.3d 169, 180 (3d Cir. 2008). The court reasoned that “a ‘claim’ is that which, if granted, provides entitlement to relief on the merits. Because

---

<sup>6</sup> The dissent contends that the finding of “a knowing, intelligent, and voluntary waiver” constitutes a finding of fact to which we must accord deference under 28 U.S.C. 2254(e)(1). However, in *United States v. Cazares*, we explained:

A waiver is an “intentional relinquishment or abandonment of a known right or privilege.” *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938). The finding of a knowing and voluntary waiver is a mixed question of law and fact which we review *de novo*. *Terrovona v. Kincheloe*, 852 F.2d 424, 427 (9th Cir.1988). The ultimate issue of voluntariness is a legal question requiring independent federal determination. *Arizona v. Fulminante*, 499 U.S. 279, 286, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991).

788 F.3d 956 (9th Cir. 2015) (quoting *Campbell*, 18.F3d at 672); see *Lambert v. Blodgett*, 393 F.3d 943, 976 (9th Cir. 2004) (Section “2254(e)(1) is restricted to pure questions of historical fact.”).

resolution of the question as to whether [petitioner's] waiver was valid will not entitle him to relief on the merits of his habeas petition, the waiver question is not a 'claim.' Therefore, the state court's determination that the waiver was valid is not entitled to deference under § 2254(d)." *Id.* (citation omitted). We agree with our fellow circuit without the slightest reservation.

### C.

When a district court applies the wrong legal standard, as it did below, we ordinarily remand the case so that it may apply the correct one in the first instance. Here, however, we find it unnecessary to do so because the parties agree that the district court held in the alternative that, putting AEDPA deference aside, Kirkpatrick's waiver was actually valid. The district court stated that it "conducted its own review of the proceedings underpinning the referee's report and the decision of the California Supreme Court to be certain that there has been no improper result," and concluded that it "agrees with the findings of the California Supreme Court." We review the district court's alternate holding *de novo*, because the validity of the waiver is, as we have noted above, a mixed question of fact and law. *Godinez*, 57 F.3d at 698.

We hold that the district court's conclusion that Kirkpatrick's waiver was valid lacks a sufficient basis in the record and accordingly remand for an adjudication of the merits of the claims at issue.

#### 1.

The record does not supply an adequate basis upon which to conclude that the waiver was knowing, voluntary, and

intelligent because it contains good reason to believe that Kirkpatrick did not understand the legal implications of the waiver. Kirkpatrick's handwritten filing stated: "I do not wish to proceed with my petition for writ of habeas corpus review in this matter. I wish the sentence and the judgement [sic] of execution . . . to be carried out at this time." There is substantial evidence in the record that he believed that the waiver would not result in his abandonment of his claims altogether but would, instead, permit him to take over his case personally and pursue those claims pro se. More specifically, there is clear evidence that he did not wish to have the State proceed with his execution forthwith but rather that he intended to litigate his case further on the merits. This evidence undermines any finding that the waiver was "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Burbine*, 475 U.S. at 421.

As an example, there are Kirkpatrick's statements to the referee. Before Kirkpatrick refused to engage further with him, the two men met for an initial conference at which the referee explained that he was brought in to assess whether Kirkpatrick's waiver had been made knowingly, voluntarily, and intelligently. The referee explained the purpose and legal effect of his inquiry as follows: "they [*i.e.*, the court] want to be sure that before they allow you to effectually relieve your attorney, who is currently appointed and in place, they want to be sure that you are competent and that you understand what's going on." Kirkpatrick replied, "I believe it is the Court's intent to give me full control of my case. . . . I think if they're fair and honest, they will agree with me that I am entitled to my day in court. . . . I believe it is their intention to give me that control of the case." The referee seemed to agree: "If we end up concluding and they're satisfied with the

factual conclusion that you are competent and that you understand what's going on and that you are making a knowing and voluntary waiver, then I suspect that they probably will give you your wish and relieve counsel and let you go on your way." This exchange appears clearly to reveal a desire by Kirkpatrick to proceed further with his claims, not to withdraw them, and certainly not to have his death sentence "carried out at this time."

Kirkpatrick's statements to the psychiatrist, who examined him for two and a half hours at the referee's request, support the same conclusion. In her post-examination report, the psychiatrist stated that Kirkpatrick's "ultimate goal" is "a re-trial." "[H]e makes it plain that he wants to run his own case, to be in charge of his own defense, to represent himself." Later in the report, the referee reiterated the same conclusion: "He wants to represent himself, plans to 'hire Black lawyers,' who will go to the media and get a re-trial on the original conviction."

As for the waiver form itself, the psychiatrist concluded that Kirkpatrick did not understand that the waiver would relinquish his claims. She wrote, "He gives one the clear impression that his wish to withdraw the Petition does not indicate that he wants to speed the process toward execution. In his 7/23/00 request [*i.e.*, the waiver form], he wrote 'I wish the sentence and judgment of execution . . . to be carried out at this time.' But he tells me that he has no intention of discontinuing litigation."

These statements to the referee and to the psychiatrist are entirely inconsistent with the state court's conclusion that the waiver form demonstrated Kirkpatrick's knowing and intelligent decision to abandon the claims entirely. To the



contrary, they show that Kirkpatrick did not fully understand “the consequences of the decision to abandon” his right to proceed – in direct contravention of the Constitution’s requirements. *Burbine*, 475 U.S. at 421. His own conduct further supports this conclusion. Kirkpatrick told the court, “my intention is to stay alive as long as possible, Judge,” thus communicating a desire that was the precise opposite of what his waiver would have accomplished. Of equal importance, Kirkpatrick gave no indication at any point in the proceedings that he was aware of the contents of his exhaustion petition. On the basis of the record, therefore, it is clear that the State failed to carry its burden of demonstrating that Kirkpatrick’s waiver was knowing, voluntary, and intelligent.

## 2.

There is another deficiency in the record that also precludes a finding that Kirkpatrick’s waiver was valid. Where courts have previously found waivers of habeas claims to be knowing, voluntary, and intelligent, and therefore valid, they have done so after a hearing at which the court conducts a colloquy to assess the petitioner’s intentions and whether he understands the consequences of the waiver. *See, e.g., Demosthenes*, 495 U.S. at 732–33 (concluding that a state court waiver was valid only after that court questioned the petitioner under oath and concluded specifically that the waiver was intelligently executed); *Dennis*, 378 F.3d at 884 (accepting a state court waiver as valid because that court “engaged in a comprehensive colloquy” with the petitioner during which “[t]he court had [petitioner] re-read his initial habeas petition . . . and the court reviewed with [petitioner] the assignments of error alleged in the petition” and the petitioner in court “asserted his desire to give up his right to pursue each of these claims”); *Fahy*, 516 F.3d at 183–85

(holding that even though the state court did engage in a colloquy with the petitioner, that colloquy was insufficient to establish that the waiver was knowing and voluntary because the state court had refused to permit petitioner's counsel to ask him questions that would probe the waiver's validity); *see also St. Pierre v. Cowan*, 217 F.3d 939, 947 (7th Cir. 2000) (finding that a waiver was not valid because no court ever had a chance to question the petitioner on the record as to his intentions and understanding).

Here, the state court never questioned Kirkpatrick on the record as to whether he understood the consequences of the waiver or the nature of the claims he was waiving. As a result, the court had no opportunity to assess Kirkpatrick's state of mind or to assure itself that the handwritten "Waiver Form" reflected his knowing, voluntary, and intelligent choice. All that the court could possibly have relied on in finding the waiver valid was the form itself and the record of the referee's investigation – which concluded that there was *not* enough evidence to find the waiver valid.

Under the circumstances, it is clear that an independent review of the record necessarily reveals that the state wholly failed to carry its burden of showing that Kirkpatrick's waiver was knowing, voluntary, and intelligent. We therefore hold that the district court erred in concluding that the purported waiver was valid, whether as a result of applying AEDPA deference to the state court's determination or as a result of its independent review of the record before the state court.

We recognize that it was the petitioner who rendered difficult or impossible the judicial examination that might have enabled the court to determine the validity of his waiver. This is not, however, a case in which a petitioner is being

rewarded for obstructionism at the State's expense. If Kirkpatrick's intention truly were to abandon his claims, his failure to participate in the orderly judicial process designed to determine that intent would serve only to frustrate his own effort; it is he who would suffer most from his noncooperation. If his intention were not to abandon those claims but rather to continue to pursue them, a conclusion that the waiver form was not valid would serve principally to enable the court to arrive at the right result under the Constitution. Either way, the State suffers little if any injury from proceeding to a determination of the merits of Kirkpatrick's claims rather than relying on a dubious waiver of critical constitutional rights that is unsupported by the record. In any event, Kirkpatrick's refusal to cooperate with the referee's investigation provides another reason to believe that his intent was not to waive his claims and that his purported waiver was not fully knowing and intelligent as the Constitution requires.

**D.**

In view of the above, we vacate the district court's order dismissing the claims that Kirkpatrick purportedly waived, and remand those claims to the district court for adjudication on the merits. That court shall consider the claims de novo on remand. Because the claims were erroneously dismissed as waived by the California Supreme Court, they were never adjudicated on the merits in state court. Thus, they must be considered de novo because there is no state court judgment to which the federal court might properly defer. *Harrington v. Richter*, 562 U.S. 86, 92 (2011); *Cone v. Bell*, 556 U.S. 449, 472 (2009).

---

KIRKPATRICK V. CHAPPELL

27

### III. CONCLUSION

The district court's order dismissing the claims in Kirkpatrick's petition for lack of exhaustion is **VACATED**, and the case is **REMANDED** to the district court so that it may adjudicate those claims on the merits.

---

KOZINSKI, Circuit Judge, dissenting:

My colleagues err repeatedly but it doesn't much matter.

#### I

The majority's first blunder is failing to defer to the California Supreme Court, which found unanimously that Kirkpatrick made a "rational choice with respect to withdrawing" his habeas petition and "a knowing, intelligent, and voluntary waiver of his right to proceed." The Antiterrorism and Effective Death Penalty Act ("AEDPA") requires deference to that finding. Under 18 U.S.C. § 2254(e)(1), "a determination of a factual issue made by a State court" in a state habeas proceeding "shall be presumed to be correct." This is true "whether the court be a trial court or an appellate court." *Sumner v. Mata*, 449 U.S. 539, 547 (1981).

The majority quotes selectively from *Lambert v. Blodgett* that "2254(e)(1) is restricted to pure questions of historical fact." 393 F.3d 943, 976 (9th Cir. 2004). But we also said that "an issue that involves inquiry into a state of mind may be considered a question of fact." *Id.* "Knowing, intelligent

and voluntary” are all states of mind. So *Blodgett* requires us to defer.

Plenty of evidence supports the state court’s finding. After receiving Kirkpatrick’s waiver letter, the California Supreme Court appointed Judge Stephen Graham to assess its validity. He, in turn, appointed Dr. Diane McEwen—a forensic psychiatrist of thirty years experience—to interview Kirkpatrick. Dr. McEwen found that Kirkpatrick “indeed made his decision to withdraw the petition in a conscious, goal-directed manner, free of any intervening mental illness.” Kirkpatrick appeared “intelligent, self-determined, oriented, consistent, deliberate and unwavering in his positions.” Consistent with his medical records, Kirkpatrick showed “no evidence of mental impairment.”

Judge Graham questioned Kirkpatrick about what he intended to accomplish with his waiver. Kirkpatrick answered: “Competency and vacating of the appeal.” Judge Graham advised Kirkpatrick that his appeal contained “some possibility of ultimately preventing [his] execution.” The government attorney then further explained to Kirkpatrick that waiving his state appeal could limit his federal claims. Kirkpatrick said: “I can appreciate that.”

Judge Graham reported that Kirkpatrick wasn’t “suffering from any mental disease, disorder or defect which may substantially affect his capacity to appreciate his position and to make a rational choice with respect to continuing or abandoning further litigation.” The California Supreme Court acknowledged Judge Graham’s report, adopted his findings as to mental capacity and voluntariness, and further found that Kirkpatrick acted knowingly and intelligently. It therefore granted his request to withdraw the petition. My

---

KIRKPATRICK V. CHAPPELL 29

colleagues don't agree with the California Supreme Court's findings but there's more than enough evidence to support them.

**II**

Were I to review de novo, Kirkpatrick would fare no better. To me, Kirkpatrick seems crazy like a fox. As he told Judge Graham with a smile, his "intention is to stay alive as long as possible." The majority cites this as proof that Kirkpatrick didn't grasp the consequences of waiving his appeals. More likely, Kirkpatrick well understood that withdrawing his petition would trigger this protracted litigation. This was a savvy move: It's been seventeen years since Kirkpatrick sent his letter to the California Supreme Court. Now he'll spend many more years litigating his merits claims. According to Dr. McEwen, Kirkpatrick is "living with what he's got" and "trying to drive everybody else crazy." This man is playing us.

**III**

The majority also invents a colloquy requirement and faults the state courts for failing to comply. Maj. Op. 24–26. But courts have "discretion in affording a hearing that is suitable in the circumstances." *Dennis ex rel. Butko v. Budge*, 378 F.3d 880, 894 (9th Cir. 2004). Courts need this flexibility to deal with troublemakers like Kirkpatrick who refuse to attend hearings. Furthermore, we're bound by the Supreme Court case law as it stood at the time of the state court's decision in 2001. *Lockyer v. Andrade*, 538 U.S. 63, 71–72 (2003). No such case requires a colloquy.

The majority points to cases where a colloquy was held *sufficient*, but none says a colloquy is *necessary*. *Demosthenes v. Baal*<sup>1</sup> noted that the state court found a valid waiver after defendant was questioned in open court, but doesn't say there must be a colloquy. 495 U.S. 731, 735 (1990). Nor does *Dennis*, where we accepted a waiver that followed a “comprehensive colloquy” with the petitioner, but never hinted that the waiver would be invalid without the colloquy. 378 F.3d at 884. *Dennis* is, in any event, irrelevant because it's not a Supreme Court case. See *Lockyer*, 538 U.S. at 71–72.

#### IV

But none of this matters because California doesn't have a death penalty. Sure, there's a death row in California—the biggest in the Western Hemisphere. Evelyn Nieves, *Rash of Violence Disrupts San Quentin's Death Row*, N.Y. Times (May 22, 2001), <http://www.nytimes.com/2001/05/22/us/rash-of-violence-disrupts-san-quentin-s-death-row.html>. At last count, it housed 747 inmates. Cal. Dep't of Corr. & Rehab., Death Row Tracking System Condemned Inmate List at 29 (June 2017), available at [http://www.cdcr.ca.gov/capital\\_punishment/docs/condemnedinmatelistsecure.pdf](http://www.cdcr.ca.gov/capital_punishment/docs/condemnedinmatelistsecure.pdf). But there have been only thirteen executions since 1976, the most recent over ten years ago. Arthur L. Alarcón & Paula M. Mitchell, *Executing the Will of the Voters?: A Roadmap to Mend or End the California Legislature's Multi-Billion-Dollar Death Penalty Debate*, 44 Loy. L.A. L. Rev. 41, 51 (2011). Death row inmates in California are far more likely

---

<sup>1</sup> I remember that case well. See Alex Kozinski, *Tinkering with Death*, New Yorker, Feb. 10, 1997, at 48.

---

KIRKPATRICK V. CHAPPELL 31

to die from natural causes or suicide than execution. *Id.* at 53.

There are plausible reasons to oppose the death penalty. Some think it barbaric. It's also exceptionally expensive: California taxpayers have lavished approximately \$5 billion on their capital punishment system. Jazmine Ulloa, *Will ending the death penalty save California more money than speeding up executions?*, L.A. Times, Nov. 1, 2016, <http://www.latimes.com/politics/la-pol-ca-death-penalty-costs-snap-20161101-story.html>. Then, there's the risk that we might be putting innocent people to death. *See Glossip v. Gross*, 135 S. Ct. 2726, 2756–59 (2015) (Breyer, J., dissenting). Or that race may be a factor in how the death penalty is imposed.<sup>2</sup> And there's the impulse to follow other Western democracies that have abandoned this hoary punishment. *See* Carol S. Steiker & Jordan M. Steiker, *Courting Death* 22 (2016). But it's "settled that capital punishment is constitutional." *Glossip*, 135 S. Ct. at 2732. So the people of California are entitled to have a death penalty if they choose. Vox populi, vox dei.

---

<sup>2</sup> *See, e.g.*, GAO, Report to the Senate and House Committees on the Judiciary: Death Penalty Sentencing 5–6 (1990) (synthesizing studies from 1972 to 1990 and finding that victim race influences death sentencing rate but defendant's race may not); Glenn L. Pierce & Michael L. Radelet, *Impact of Legally Inappropriate Factors on Death Sentencing for California Homicides, 1990–1999, The Empirical Analysis*, 46 Santa Clara L. Rev. 1, 19 (2005) ("[H]omicides [in California] involving non-Hispanic white victims are 3.7 times as likely to result in a death sentence than those with non-Hispanic African American victims."). *But see* Richard Berk et al., *Statistical Difficulties in Determining the Role of Race in Capital Cases: A Re-analysis of Data from the State of Maryland*, 21 J. Quantitative Criminology 365, 386 (2005) (finding that race appears to have little or no impact on capital sentencing rates).



The people have made their views plain by voting for the death penalty ten times in the last forty-five years. In 1972, the California Supreme Court held that the state constitution didn't permit capital punishment. *People v. Anderson*, 493 P.2d 880, 883 (Cal. 1972). Voters swiftly amended the constitution to say it does. Prop. 17 (Cal. 1972). After the United States Supreme Court held that the death penalty is constitutional in *Gregg v. Georgia*, 428 U.S. 153, 186–87 (1976), California voters greatly expanded the list of death-eligible crimes. Prop. 7 (Cal. 1978). Ballot measures in 1990, 1996 and 2000 further added to this list. Prop. 114 (Cal. 1990); Prop. 115 (Cal. 1990); Prop. 195 (Cal. 1996); Prop. 196 (Cal. 1996); Prop. 18 (Cal. 2000). In 2012, voters were asked to repeal the death penalty. Prop. 34 (Cal. 2012). They said no. And last year they rebuffed another repeal effort and, instead, approved a counter-proposition designed to speed up the appeals process and presumably bring about swifter executions.<sup>3</sup>

Nonetheless, California has no functional death penalty. How this came about is no mystery. As part of a nationwide campaign to have lethal injection declared unconstitutional, California death row inmates challenged the state's execution protocol in 2006. A district court eventually held that California's execution method was "broken." *Morales v. Tilton*, 465 F.Supp.2d 972, 974 (N.D. Cal. 2006). That ruling likely was wrong in light of subsequent Supreme Court cases. In *Baze v. Rees*, the Court held that Kentucky's lethal

---

<sup>3</sup> Whether this purpose will be achieved remains to be seen. The California Supreme Court recently considered the constitutionality of this proposition. It upheld most of it but declared its five-year time limit on capital appeals aspirational. *Briggs v. Brown*, 400 P.3d 29, 57 (Cal. 2017).

---

KIRKPATRICK V. CHAPPELL 33

---

injection protocol, which mirrored California's, was constitutional. 553 U.S. 35, 49–56 (2008); *see also Glossip*, 135 S.Ct. at 2737–38. Regardless, the state did not appeal. Instead, state officials set about revamping California's execution protocol. They have been busy with that task since 2006. Other states have managed to amend their protocols and the Supreme Court has consistently brushed aside challenges to execution drug cocktails. *See Glossip*, 135 S.Ct. 2726. But California officials haven't managed to come up with a workable protocol.

Meanwhile, the people of California labor under the delusion that they live in a death penalty state. They may want capital punishment to save innocent lives by deterring murders.<sup>4</sup> But executions must actually be carried out if they're to have any deterrent effect.<sup>5</sup> Maybe death penalty

---

<sup>4</sup> *See, e.g., Hashem Dezhbakhsh, et al., Does Capital Punishment Have a Deterrent Effect? New Evidence from Post-moratorium Panel Data*, 5 Am. L. & Econ. Rev. 344 (2003) (estimating that each execution results in eight to eighteen fewer murders); Cass R. Sunstein & Adrian Vermeule, *Is Capital Punishment Morally Required? Acts, Omissions, and Life-Life Tradeoffs*, 58 Stan. L. Rev. 703, 713 (2005) (“the recent evidence of a deterrent effect from capital punishment seems impressive”). *But see* John J. Donohue & Justin Wolfers, *Uses and Abuses of Empirical Evidence in the Death Penalty Debate*, 58 Stan. L. Rev. 791, 794 (2005) (the death penalty “is applied so rarely that the number of homicides it can plausibly have caused or deterred cannot be reliably disentangled from the large year-to-year changes in the homicide rate”).

<sup>5</sup> Joanna M. Sheperd, *Murders of Passion, Execution Delays, and the Deterrence of Capital Punishment*, 33 J. Legal Stud. 283, 313 (2004) (executions appear to have a larger deterrent effect than do death sentences); Kenneth C. Land, et al., *The Short-term Effects of Executions on Homicides: Deterrence, Displacement, or Both?*, 47 Criminology

supporters believe in just retribution; that goal, too, is frustrated if there's no active execution chamber. Or perhaps the point is closure for victims' families, but these are surely false hopes. Kirkpatrick murdered Rose Falconio's sixteen-year-old son more than thirty years ago, and her finality is nowhere near. If the death penalty is to serve whatever purpose its proponents envision, it must actually be carried out. A phantom death penalty is a cruel and expensive hoax.

Which is why it doesn't matter what we hold today. One way or the other, Kirkpatrick will go on to live a long life "driv[ing] everybody else crazy," while copious tax dollars are spent litigating his claims. And my colleagues and I will continue to waste countless hours disputing obscure points of law that have no relevance to the heinous crimes for which Kirkpatrick and his 746 housemates continue to evade their lawful punishment. It's as if we're all performers in a Gilbert and Sullivan operetta. We make exaggerated gestures and generate much fanfare. But in the end it amounts to nothing.

---

1009, 1038 (Oct. 2009) (concluding that "evidence exists of modest, short-term reductions in the numbers of homicides in Texas in the months of or after executions").



U.S.

# ***Rash of Violence Disrupts San Quentin's Death Row***

By **EVELYN NIEVES** MAY 22, 2001

Death rows are usually among the quietest wards in a prison, the ones where hopes fly high that good behavior might mean the difference between life and a lethal injection.

San Quentin's death row, the largest in the Western Hemisphere, with 593 condemned men confined to concrete cells a century and a half old, has been no exception, prison officials say. Until fairly recently that is.

In the last 18 months, in what San Quentin officials and advocates for prisoners call an unprecedented breach of conduct, a group of death row inmates have become increasingly hostile and violent. Classified as Grade B's for their unruly behavior and gang affiliations and housed apart from other death row prisoners in a three-story building, the Adjustment Center, these inmates have attacked guards 67 times in a year and a half, triple the rate of attacks by Grade B prisoners just a few years ago, say officials at San Quentin, which is just north of San Francisco, in Marin County.

Of the 85 Grade B inmates, 45 have been involved in assaults or attempted assaults on guards in the last year, officials say. They have slashed the wrists of guards with crude, homemade razors; thrown spears fashioned from paper clips; kicked guards; and increased the number of "gassings" -- throwing stored, fermented feces and urine in an officer's face -- officials say.

The California Department of Corrections, and San Quentin officials in particular, contend that disruptive death row prisoners should be locked up at some other prison.

ADVERTISEMENT



Given San Quentin's age and lack of a modern security system, like a remote electronic locking system for the cells or Plexiglas doors, guards are at a disadvantage dealing with inmates who have decided they have nothing left to lose, prison officials say. The officials have enlisted a local assemblyman, Joe Nation, a Democrat from San Rafael, to draft a bill that would lift the requirement that San Quentin house all male death row inmates. (The state's 12 women on death row are housed at Chowchilla.) The bill has passed its first committee in the California Assembly and is expected to get a full vote in about three weeks.

"The facility is antiquated, and death row is antiquated," Russ Heimerich, a spokesman for the Department of Corrections, said. "It only makes sense."

Advocates for prisoners disagree. They say some of the tension on death row in the last year was created when San Quentin suspended visiting rights for the condemned for a year after the gang-related stabbing of one inmate by another in the visitation center. (Visits have been reinstated for Grade A condemned prisoners, with each inmate and his visitors placed in a glass-walled cell, rather than in a large room with other inmates and guests.)

More tension was created among the Grade B prisoners when their outdoor exercise was suspended for several months after another attack on an inmate by a fellow prisoner.

Advocates for prisoners say there are good reasons to keep death row at San Quentin.

The prison's proximity to federal and state courts in San Francisco and metropolitan airports gives lawyers and other professionals easier access to prisoners in preparing challenges to convictions and sentences, said Steve Fama, a lawyer for the Prison Law Office in San Rafael, near San Quentin.

And, Mr. Fama said, a large number of family members and friends and spiritual advisers who provide support to condemned prisoners are established in the area, and San Quentin has experience in operating programs for the condemned that balance the inmates' safety with security and constitutional rights.

"The bill, as introduced, is written in such a way that it would allow transfer of all death row inmates from San Quentin," Mr. Fama said. "The language is very broad."


Paul Smith, chief of staff for Mr. Nation, said the death row bill would have amendments to address the concerns of people like Mr. Fama.

### California Today

The news and stories that matter to Californians (and anyone else interested in the state), delivered weekday mornings.

Enter your email address [Sign Up]

You agree to receive occasional updates and special offers for The New York Times's products and services.

I'm not a robot  [Privacy - Terms](#)

*cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017*

[SEE SAMPLE](#) | [MANAGE EMAIL PREFERENCES](#) | [PRIVACY POLICY](#) | [OPT OUT OR CONTACT US ANYTIME](#)

"We're going to make sure it applies to only a few inmates and that they be transferred to Folsom, here in Sacramento, to address the concerns to access," Mr. Smith said.

Vernell Crittendon, the public information officer at San Quentin, also said the bill would apply to only a few inmates.

"We're talking at most half a dozen inmates," Mr. Crittendon said, "those that are doing the most disruptions."

Because of the attacks, 14 officers requested and received transfers from the Adjustment Center, Mr. Crittendon said, and 4 have quit.

He said that in the last month, since the local news media reported the proposed legislation, the attacks had subsided. He attributed that to San

Quentin's reputation among inmates as one of the best places to be confined, partly because its design makes it less restrictive and partly because it alone among the state's 33 prisons offers college-level classes.

"We had an inmate whose sentence was commuted who was transferred, and he wrote a letter, begging to come back here on death row," Mr. Crittendon said.

Six San Quentin inmates will receive associate of arts degrees later this month, he added.

San Quentin officials would not allow reporters to see death row or the Adjustment Center or talk to any death row prisoners. None of the staff members mentioned that in 1997, a Grade B prisoner, Sammy Marshall, died after being pepper-sprayed and dragged from his cell by officers. But outside the Adjustment Center the other day, guards wearing riot gear -- helmets with shields, padded vests (to shield against stabbings) and a full complement of guns and batons -- talked about their need for extra security.

"We've added staff and made sure that three officers escort each inmate to their exercise space," said Sgt. Robert Trono, who has worked at San Quentin for 18 years.

Sergeant Trono added that he could not remember death row inmates ever before causing so much trouble. He said that the rabble-rousers, all gang-affiliated, had brought their street mentality to the prison.

In the last year and a half, he said, he has been speared, spit on and, on six occasions, showered with feces and urine.

"There's a lot of gangs," Sergeant Trono said. "You name them, we've got them."

We're interested in your feedback on this page. [Tell us what you think.](#)

**More in U.S. »**



**Las Vegas Shooting:  
F.B.I. Still Pursuing  
Motive; Gunman's  
Girlfriend Returns**

**For Music Fans Drawn  
to Las Vegas, a Retreat  
Became a Trap**

---

**NEWS**

World

U.S.

Politics

N.Y.

Business

Tech

Science

Health

Sports

Education

Obituaries

Today's Paper

Corrections

*cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017*

---

**OPINION**

Today's Opinion

Op-Ed Columnists

Editorials

Op-Ed Contributors

Letters

Sunday Review

Video: Opinion

---



**ARTS**

Today's Arts

Art & Design

Books

Dance

Movies

Music

N.Y.C. Events Guide

Television

Theater

Video: Arts

---

**LIVING**

Automobiles

Crossword

Food

Education

Fashion & Style

Health

Jobs

Magazine

N.Y.C. Events Guide

Real Estate

T Magazine

Travel

Weddings & Celebrations

*cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017*

---

**LISTINGS & MORE**

Reader Center

Classifieds

[Tools & Services](#)

[N.Y.C. Events Guide](#)

[Multimedia](#)

[Photography](#)

[Video](#)

[NYT Store](#)

[Times Journeys](#)

[Subscribe](#)

[Manage My Account](#)

[NYTCo](#)

---

**SUBSCRIBE**

[Home Delivery](#)

[Gift Subscriptions](#)

[Crossword](#)

[Email Newsletters](#)

[Alerts](#)

[Corporate Subscriptions](#)

[Education Rate](#)

[Mobile Applications](#)

[Replica Edition](#)

*cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017*

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION  
DIVISION OF ADULT OPERATIONS  
Death Row Tracking System  
Condemned Inmate List (Secure) Printed Date: 10/03/2017

Sex : Male/Female Sort By : Last Name

LastName	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
ABBOTT	JOE	47	31	02/22/2006	02/16/2006	10/30/2000	San Bernardino	No Action
ABEL	JOHN	73	47	10/06/1997	09/26/1997	01/04/1991	Orange	No Action
ACREMAN	ROBERT	49	27	10/03/2002	10/03/2002	10/03/1995	Tulare	No Action
ADAMS	MARCUS	47	24	08/20/2003	08/04/2003	09/07/1994	Los Angeles	No Action
ADCOX	KEITH	56	21	07/13/1983	07/11/1983	05/27/1982	Tuolumne	Affirmed
AGUAYO	JOSEPH	75	53	08/14/1996	08/08/1996	07/26/1995	Sacramento	No Action
AGUILAR	JEFFREY	31	22	10/31/2013	10/24/2013	08/16/2008	Ventura	No Action
AGUIRE	JASON	42	28	08/24/2009	08/14/2009	08/12/2003	Orange	No Action
ALCALA	RODNEY	74	36	06/25/1980	08/20/1986	06/20/1979	Orange	Reversed/a
ALDANA	ROMAN	30	19	08/09/2010	07/30/2010	09/09/2006	Riverside	No Action
ALEXANDER	ANDRE	65	28	05/07/1996	04/23/1996	06/04/1980	Los Angeles	No Action
ALFARO	MARIA	45	19	07/20/1992	07/14/1992	06/15/1990	Orange	Affirmed
ALLEN	MICHAEL	19	19	12/22/1997	12/12/1997	08/05/1991	Los Angeles	No Action
ALVAREZ	FRANCISCO	49	27	06/29/2000	06/28/2000	11/15/1994	Kern	No Action
ALVAREZ	MANUEL	56	26	09/20/1989	09/14/1989	05/17/1987	Sacramento	Affirmed
ALVAREZ	ALBERTO	34	23	02/10/2010	02/08/2010	01/07/2006	San Mateo	No Action
AMEZCUA	OSWALDO	42	25	04/27/2005	04/20/2005	06/19/2000	Los Angeles	No Action
ANDERSON	JAMES	64	26	12/09/1979	11/30/1979	03/04/1979	Riverside	Affirmed
ANDERSON	ERIC	43	29	11/07/2005	10/28/2005	04/14/2003	San Diego	No Action
ANDREWS	JESSE	67	30	06/18/1984	06/08/1984	12/09/1979	Los Angeles	Affirmed
ARGUETA	CARLOS	32	19	02/28/2007	02/16/2007	02/15/2004	Los Angeles	No Action
ARIAS	PEDRO	55	25	03/05/1990	02/22/1990	05/23/1987	Sacramento	Affirmed
ARIAS	LORENZO	39	22	09/19/2008	09/10/2008	07/09/2000	San Bernardino	No Action
ARMSTRONG	JAMELLE	37	19	07/28/2004	07/16/2004	12/29/1998	Los Angeles	No Action
ARMSTRONG	CRAIG	36	20	01/26/2005	01/05/2005	09/30/2001	Los Angeles	No Action

1069001 archived on October 14, 2017  
cited in Kirkpatrick v. Chappell, No. 1069001

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure) Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
ASHMIUS	TROY	55	22	07/30/1986	07/25/1986	05/19/1984	Sacramento	Affirmed
AVALOS	EMILIO	40	25	03/05/2013	02/22/2013	12/19/2001	Riverside	No Action
AVENA	CARLOS	56	19	02/22/1982	02/12/1982	09/13/1980	Los Angeles	Affirmed
AVILA	JOSEPH	48	22	05/03/1999	04/29/1999	01/12/1991	Riverside	No Action
AVILA	JOHNNY	60	34	03/31/1995	03/21/1995	08/01/1991	Fresno	Affirmed
AVILA	ALEJANDRO	42	27	07/25/2005	07/22/2005	07/15/2002	Orange	Affirmed
AYALA	HECTOR	66	34	12/06/1989	11/30/1989	04/26/1985	San Diego	Affirmed
AYALA	RONALDO	67	35	02/16/1989	02/09/1989	04/26/1985	San Diego	Affirmed
BACON	ROBERT	54	33	05/25/1999	05/20/1999	10/26/1995	Solano	No Action
BAKER	PAUL	56	43	01/26/2009	01/16/2009	05/11/2004	Los Angeles	No Action
BALCOM	JASON	47	18	02/14/2014	02/14/2014	07/18/1988	Orange	No Action
BANKS	KELVYN	44	23	07/08/1999	07/08/1999	07/01/1996	Los Angeles	No Action
BANKSTON	ANTHONY	52	28	01/30/1995	01/20/1995	05/10/1991	Los Angeles	No Action
BARBAR	MICHAEL	69	53	12/26/2012	12/14/2012	11/14/2009	Riverside	No Action
BARNETT	MAX	72	41	11/30/1988	11/30/1988	07/06/1986	Butte	Affirmed
BARNWELL	LAMAR	51	27	08/21/1996	08/09/1996	12/05/1992	Los Angeles	Affirmed
BARREIRA	MARCO	54	34	12/20/2001	12/13/2001	06/11/1997	Los Angeles	No Action
BARRETT	JOSEPH	47	26	03/29/2004	03/29/2004	04/09/1996	Imperial	No Action
BATTLE	THOMAS	43	27	09/12/2003	09/04/2003	11/13/2000	San Bernardino	No Action
BEAMES	JOHN	65	42	11/07/1995	10/11/1995	01/19/1994	Tulare	Affirmed
BECERRA	FRANK	46	24	11/10/1997	10/31/1997	12/26/1994	Los Angeles	No Action
BECERRADA	RUBEN	54	36	03/02/2009	02/11/2009	08/07/1999	Los Angeles	No Action
BECK	JAMES	61	34	11/02/1992	10/27/1992	05/20/1990	Alameda	No Action
BEELER	RODNEY	65	34	05/12/1989	05/05/1989	12/30/1985	Orange	Affirmed
BELL	MICHAEL	47	27	06/30/1999	06/24/1999	01/20/1997	Stanislaus	No Action
BELL	RONALD	68	29	03/06/1979	03/02/1979	02/02/1978	Contra Costa	Affirmed

*14-99001 archived on October 4, 2017*  
*696k v. Chappell, No. 14-99001 cited in Kirkpatrick*

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure) Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
BELL	STEVEN	52	27	03/10/1994	03/07/1994	06/04/1992	San Diego	Affirmed
BELL	CIMARRON	43	30	08/17/2011	08/09/2011	11/11/2003	Los Angeles	No Action
BELMONTES	FERNANDO	56	20	10/06/1982	10/06/1982	03/15/1981	San Joaquin	Affirmed
BELTRAN	JULIAN	43	28	10/22/2007	10/12/2007	01/23/2002	Los Angeles	No Action
BELTRAN JR	FRANCISCO	32	25	11/03/2014	10/31/2014	01/24/2010	Kern	No Action
BENAVIDES	VINCENTE	68	43	06/21/1993	06/16/1993	11/17/1991	Kern	Affirmed
BENNETT	ERIC	46	24	01/15/1997	01/09/1997	10/14/1994	Orange	No Action
BENSON	RICHARD	70	39	05/23/1987	04/30/1987	01/05/1986	Santa Barbara	Affirmed
BERNOUDY	KEVIN	38	27	03/14/2011	03/04/2011	05/11/2006	Los Angeles	No Action
BERRYMAN	RODNEY	51	21	12/08/1988	11/28/1988	09/07/1987	Kern	Affirmed
BERTSCH	JOHN	59	28	12/29/2000	12/29/2000	12/22/1985	Sacramento	No Action
BITTAKER	LAWRENCE	77	39	07/19/2001	03/22/1981	06/24/1979	Los Angeles	Affirmed
BIVERT	KENNETH	47	27	07/19/2001	07/19/2001	02/05/1997	Monterey	No Action
BLACKSHER	ERVEN	40	40	02/10/1999	02/09/1999	05/11/1995	Alameda	No Action
BLAIR	JAMES	78	45	08/17/1989	08/09/1989	09/24/1984	Los Angeles	Affirmed
BLOOM	ROBERT	53	18	08/01/1984	07/23/1984	04/24/1982	Los Angeles	Reversed/a
BOLDEN	CLIFFORD	66	34	07/19/1991	07/19/1991	09/09/1986	San Francisco	Affirmed
BOLIN	PAUL	70	42	03/06/1991	02/25/1991	09/12/1989	Kern	Affirmed
BONILLA	STEVEN	70	41	01/20/1995	01/20/1995	10/20/1987	Alameda	Affirmed
BOOKER	RICHARD	40	18	12/02/1999	11/22/1999	08/10/1995	Riverside	No Action
BOX	CHRISTOPHER	48	20	03/01/1991	02/22/1991	08/09/1989	San Diego	Affirmed
BOYCE	KEVIN	46	26	10/04/2000	09/29/2000	08/14/1997	Orange	No Action
BOYER	RICHARD	60	26	12/22/1984	12/14/1984	12/07/1982	Orange	Affirmed
BOYETTE	MAURICE	44	19	05/07/1993	05/07/1993	05/23/1992	Alameda	Affirmed
BRACAMONTES	MANUEL	54	28	12/19/2005	12/14/2005	06/19/1991	San Diego	No Action
BRADFORD	MARK	49	20	07/11/1990	07/03/1990	04/18/1988	Los Angeles	Affirmed

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure) Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
BRADY	ROGER	51	28	03/24/1999	03/16/1999	12/27/1993	Los Angeles	No Action
BRAMIT	MICHAEL	41	18	09/15/1997	09/08/1997	06/14/1994	Riverside	No Action
BRANNER	WILLIE	67	31	02/26/1982	02/26/1982	10/31/1980	Santa Clara	Affirmed
BRASURE	SPENCER	47	26	08/28/1998	08/24/1998	09/07/1996	Ventura	Affirmed
BREAUX	DAVID	61	28	03/19/1987	03/12/1987	06/17/1984	Sacramento	Affirmed
BREWER	DENNIS	58	27	05/1/1988	05/04/1988	03/03/1986	San Bernardino	Affirmed
BRIM	RONALD	52	43	10/09/2013	10/03/2013	09/23/2008	Los Angeles	No Action
BROOKS	DONALD	52	34	07/23/2001	07/16/2001	03/24/1999	Los Angeles	No Action
BROTHERS	VINCENT	55	41	09/27/2007	09/20/2007	07/06/2003	Kern	No Action
BROWN	ANDREW	48	20	05/21/1992	05/14/1992	1/11/1988	Riverside	Affirmed
BROWN	JOHN	69	32	06/17/1982	06/15/1982	06/07/1980	Orange	Affirmed
BROWN	ALBERT	63	27	03/01/1982	02/22/1982	10/28/1980	Riverside	Affirmed
BROWN	STEVEN	49	21	03/01/1996	02/23/1996	12/03/1988	Tulare	No Action
BROWN	SHERHAUN	49	30	07/05/2012	06/07/2012	05/07/2007	San Bernardino	No Action
BROWN	LATECE	46	38	06/27/2012	06/21/2012	10/23/2008	Los Angeles	No Action
BROWN	MICHAEL	42	25	03/10/2016	03/09/2016	06/19/2000	Kern	No Action
			25			06/18/2000	Kern	No Action
BRYANT	STANLEY	59	30	10/30/1995	10/19/1995	08/28/1988	Los Angeles	No Action
BUENROSTRO	DORA	57	35	10/09/1998	10/02/1998	10/27/1994	Riverside	No Action
BUETTNER	JEFFREE	42	27	05/05/2010	04/23/2010	05/28/2002	Riverside	No Action
BUNYARD	JERRY	67	30	02/02/1981	02/02/1981	11/01/1979	San Joaquin	No Action
BURGENER	MICHAEL	67	31	01/13/1992	09/04/1981	10/31/1980	Riverside	Reversed/a
BURNEY	SHAUN	43	18	09/26/1994	09/16/1994	06/10/1992	Orange	No Action
BURRIS	NATHAN	54	46	01/18/2013	12/18/2012	08/11/2009	Contra Costa	No Action
BURTON	ANDRE	54	20	06/12/1985	06/04/1985	02/25/1983	Los Angeles	Affirmed
BUTLER	RAYMOND	42	19	08/07/1996	07/29/1996	03/25/1994	Los Angeles	No Action

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure) Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
CABALLERO	ROBERT	40	33	02/25/2015	02/19/2015	11/05/2009	Los Angeles	No Action
CAGE	MICKY	49	31	11/24/2003	11/14/2003	11/09/1998	Riverside	No Action
CAIN	TRACY	54	24	07/21/1988	07/12/1988	10/18/1986	Ventura	Affirmed
CAIN	ANTHONY	42	29	01/27/2010	01/15/2010	02/11/2004	Los Angeles	No Action
CAMACHO	ADRIAN	42	28	02/10/2006	02/07/2006	06/13/2003	San Diego	No Action
CANALES	OSMAN	36	26	01/14/2013	01/04/2013	09/26/2007	Los Angeles	No Action
CAPERS	LEE	43	25	09/27/2006	09/22/2006	11/10/1998	San Bernardino	No Action
CAPISTRANO	JOHN	47	26	01/21/1998	01/06/1998	12/09/1995	Los Angeles	No Action
CARASI	PAUL	52	30	06/03/1998	05/26/1998	05/14/1995	Los Angeles	Affirmed
CARDENAS	REFUGIO	33	20	04/27/2007	03/29/2007	10/09/2003	Tulare	No Action
CAREY	DEWAYNE	56	34	12/23/1996	12/16/1996	04/19/1995	Los Angeles	Affirmed
CARO	SOCORRO	60	43	04/09/2002	04/05/2002	11/22/1999	Ventura	No Action
CARPENTER	DAVID	87	51	11/26/1984	11/16/1984	03/29/1981	Los Angeles	Affirmed
						10/11/1980	San Diego	Affirmed
CARRASCO	ROBERT	60	38	03/03/1999	02/05/1999	12/16/1994	Los Angeles	No Action
CARRINGTON	CELESTE	55	30	12/02/1994	11/23/1994	01/26/1992	San Mateo	No Action
CARTER	DEAN	62	31	02/07/1990	02/06/1990	02/11/1986	Los Angeles	Affirmed
						04/14/1984	San Diego	Affirmed
CARTER	TRACEY	49	19	04/25/1990	04/20/1990	04/09/1987	Los Angeles	Affirmed
CASARES	JOSE	61	33	03/20/1992	03/13/1992	03/30/1989	Tulare	No Action
CASE	CHARLES	77	53	10/29/1996	10/25/1996	06/20/1993	Sacramento	No Action
CASTANEDA	GABRIEL	56	37	01/13/2000	01/09/2000	03/30/1998	San Bernardino	No Action
CASTRO	ROBERT	39	30	02/27/2014	02/27/2014	05/18/2008	Riverside	No Action
CATLIN	STEVEN	72	31	07/10/1990	07/06/1990	05/06/1976	Kern	Affirmed
CERVANTES	DANIEL	39	30	04/18/2013	10/28/2013	05/06/2008	Riverside	No Action
CHAMPION	STEVEN	55	19	12/20/1982	12/10/1982	12/12/1980	Los Angeles	Affirmed

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure) Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
CHARLES <input type="checkbox"/>	EDWARD <input type="checkbox"/>	45 <input type="checkbox"/>	23 <input type="checkbox"/>	01/25/1999 <input type="checkbox"/>	01/15/1999 <input type="checkbox"/>	11/06/1994 <input type="checkbox"/>	Orange <input type="checkbox"/>	No Action <input type="checkbox"/>
CHATMAN <input type="checkbox"/>	ERIK <input type="checkbox"/>	52 <input type="checkbox"/>	23 <input type="checkbox"/>	04/14/1993 <input type="checkbox"/>	04/09/1993 <input type="checkbox"/>	10/07/1987 <input type="checkbox"/>	Santa Clara <input type="checkbox"/>	Affirmed <input type="checkbox"/>
CHAVEZ <input type="checkbox"/>	JUAN <input type="checkbox"/>	32 <input type="checkbox"/>	19 <input type="checkbox"/>	04/14/2008 <input type="checkbox"/>	03/28/2008 <input type="checkbox"/>	06/06/2004 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
CHEARY <input type="checkbox"/>	CHRISTOPHER <input type="checkbox"/>	26 <input type="checkbox"/>	20 <input type="checkbox"/>	02/03/2017 <input type="checkbox"/>	01/30/2017 <input type="checkbox"/>	05/07/2011 <input type="checkbox"/>	Tulare <input type="checkbox"/>	No Action <input type="checkbox"/>
CHEATHAM <input type="checkbox"/>	STEVEN <input type="checkbox"/>	40 <input type="checkbox"/>	24 <input type="checkbox"/>	05/06/2009 <input type="checkbox"/>	04/24/2009 <input type="checkbox"/>	07/01/2001 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	22 <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	12/20/1998 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	24 <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10/30/2000 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
CHHOUN <input type="checkbox"/>	RUN <input type="checkbox"/>	44 <input type="checkbox"/>	22 <input type="checkbox"/>	03/31/2000 <input type="checkbox"/>	01/04/2000 <input type="checkbox"/>	08/09/1995 <input type="checkbox"/>	San Bernardino <input type="checkbox"/>	No Action <input type="checkbox"/>
CHISM <input type="checkbox"/>	CALVIN <input type="checkbox"/>	40 <input type="checkbox"/>	20 <input type="checkbox"/>	11/14/2001 <input type="checkbox"/>	10/24/2001 <input type="checkbox"/>	06/12/1997 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
CHOYCE <input type="checkbox"/>	WILLIAM <input type="checkbox"/>	63 <input type="checkbox"/>		12/15/2008 <input type="checkbox"/>	12/15/2008 <input type="checkbox"/>	06/12/1997 <input type="checkbox"/>	San Joaquin <input type="checkbox"/>	No Action <input type="checkbox"/>
CISNEROS <input type="checkbox"/>	LEONARDO <input type="checkbox"/>	33 <input type="checkbox"/>	21 <input type="checkbox"/>	09/15/2014 <input type="checkbox"/>	09/08/2014 <input type="checkbox"/>	12/10/2004 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	20 <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	08/04/2004 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
CLAIR <input type="checkbox"/>	KENNETH <input type="checkbox"/>	58 <input type="checkbox"/>	28 <input type="checkbox"/>	12/09/1987 <input type="checkbox"/>	12/04/1987 <input type="checkbox"/>	11/15/1984 <input type="checkbox"/>	Orange <input type="checkbox"/>	Affirmed <input type="checkbox"/>
CLARK <input type="checkbox"/>	DOUGLAS <input type="checkbox"/>	32 <input type="checkbox"/>	32 <input type="checkbox"/>	03/24/1983 <input type="checkbox"/>	03/16/1983 <input type="checkbox"/>	07/31/1980 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	Affirmed <input type="checkbox"/>
CLARK <input type="checkbox"/>	RICHARD <input type="checkbox"/>	53 <input type="checkbox"/>	21 <input type="checkbox"/>	12/19/1987 <input type="checkbox"/>	12/18/1987 <input type="checkbox"/>	07/19/1985 <input type="checkbox"/>	Santa Clara <input type="checkbox"/>	Affirmed <input type="checkbox"/>
CLARK <input type="checkbox"/>	ROYAL <input type="checkbox"/>	55 <input type="checkbox"/>	29 <input type="checkbox"/>	02/10/1995 <input type="checkbox"/>	02/03/1995 <input type="checkbox"/>	01/26/1991 <input type="checkbox"/>	Fresno <input type="checkbox"/>	No Action <input type="checkbox"/>
CLARK <input type="checkbox"/>	WILLIAM <input type="checkbox"/>	63 <input type="checkbox"/>	38 <input type="checkbox"/>	01/05/1998 <input type="checkbox"/>	12/29/1997 <input type="checkbox"/>	10/18/1991 <input type="checkbox"/>	Orange <input type="checkbox"/>	No Action <input type="checkbox"/>
CLEVELAND <input type="checkbox"/>	DELLANO <input type="checkbox"/>	54 <input type="checkbox"/>	28 <input type="checkbox"/>	12/23/1991 <input type="checkbox"/>	12/19/1991 <input type="checkbox"/>	10/12/1990 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	Affirmed <input type="checkbox"/>
CODDINGTON <input type="checkbox"/>	HERBERT <input type="checkbox"/>	58 <input type="checkbox"/>	29 <input type="checkbox"/>	01/30/1989 <input type="checkbox"/>	01/20/1989 <input type="checkbox"/>	05/17/1988 <input type="checkbox"/>	El Dorado <input type="checkbox"/>	Affirmed <input type="checkbox"/>
COFFMAN <input type="checkbox"/>	CYNTHIA <input type="checkbox"/>	55 <input type="checkbox"/>	25 <input type="checkbox"/>	10/05/1992 <input type="checkbox"/>	08/31/1989 <input type="checkbox"/>	11/07/1986 <input type="checkbox"/>	San Bernardino <input type="checkbox"/>	Affirmed <input type="checkbox"/>
COLBERT <input type="checkbox"/>	TECUMSEH <input type="checkbox"/>	33 <input type="checkbox"/>	21 <input type="checkbox"/>	12/18/2008 <input type="checkbox"/>	12/15/2008 <input type="checkbox"/>	10/29/2004 <input type="checkbox"/>	San Diego <input type="checkbox"/>	No Action <input type="checkbox"/>
COLE <input type="checkbox"/>	STEPHEN <input type="checkbox"/>	66 <input type="checkbox"/>	37 <input type="checkbox"/>	07/22/1992 <input type="checkbox"/>	07/16/1992 <input type="checkbox"/>	08/14/1988 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	Affirmed <input type="checkbox"/>
COLLINS <input type="checkbox"/>	SCOTT <input type="checkbox"/>	47 <input type="checkbox"/>	22 <input type="checkbox"/>	12/26/1996 <input type="checkbox"/>	12/19/1996 <input type="checkbox"/>	01/23/1992 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
COMBS <input type="checkbox"/>	MICHAEL <input type="checkbox"/>	51 <input type="checkbox"/>	25 <input type="checkbox"/>	07/21/1993 <input type="checkbox"/>	06/21/1993 <input type="checkbox"/>	10/24/1990 <input type="checkbox"/>	San Bernardino <input type="checkbox"/>	Affirmed <input type="checkbox"/>
CONTRERAS <input type="checkbox"/>	GEORGE <input type="checkbox"/>	42 <input type="checkbox"/>	20 <input type="checkbox"/>	02/25/1997 <input type="checkbox"/>	12/11/1996 <input type="checkbox"/>	12/29/1994 <input type="checkbox"/>	Tulare <input type="checkbox"/>	No Action <input type="checkbox"/>
CONTRERAS <input type="checkbox"/>	CARLOS <input type="checkbox"/>	39 <input type="checkbox"/>	30 <input type="checkbox"/>	05/02/2013 <input type="checkbox"/>	04/26/2013 <input type="checkbox"/>	04/28/2008 <input type="checkbox"/>	Riverside <input type="checkbox"/>	No Action <input type="checkbox"/>

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017



**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure) Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
CONTRERAS	DAVID	29	25	05/23/2017	05/12/2017	12/29/2012	Riverside	No Action
COOK	JOSEPH	54	29	09/27/1994	09/16/1994	07/09/1992	San Mateo	Affirmed
COOK	MICHAEL	45	26	07/31/2008	07/25/2008	01/24/1998	Riverside	No Action
COOPER	KEVIN	59	25	05/21/1985	05/15/1985	06/04/1983	San Diego	Affirmed
CORDOVA	JOSEPH	72	34	05/22/2007	05/11/2007	08/25/1979	Contra Costa	No Action
CORNWELL	GLEN	62	38	05/02/1995	04/21/1995	06/01/1993	Sacramento	Affirmed
CORONADO JR	JUAN	30	21	04/23/2015	04/17/2015	01/28/2008	Riverside	No Action
COWAN	ROBERT	69	36	08/13/1996	05/08/1996	09/01/1984	Kern	No Action
COX	MICHAEL	61	28	12/05/1985	11/26/1985	06/12/1984	El Dorado	Affirmed
COX	TIEQUON	51	18	05/07/1986	04/30/1986	08/31/1984	Los Angeles	Affirmed
CRAWFORD	CHARLES	43	22	06/07/2002	06/07/2002	04/15/1996	Alameda	No Action
CREW	MARK	62	27	07/28/1993	07/22/1993	08/23/1982	Santa Clara	Affirmed
CRITTENDEN	STEVEN	50	20	06/12/1989	06/12/1989	01/13/1987	Placer	Reversed/la
CRUZ	GERALD	28	28	11/02/1992	10/26/1992	05/20/1990	Alameda	No Action
CRUZ	TOMAS	49	24	09/22/1994	09/09/1994	10/21/1991	Sonoma	Affirmed
CUDJO	ARMENIA	59	28	06/06/1988	05/31/1988	03/21/1986	Los Angeles	Affirmed
CUMMINGS	RAYNARD	60	26	10/03/1985	09/20/1985	06/02/1983	Los Angeles	Affirmed
CUNNINGHAM	ALBERT	52	21	06/21/1989	06/16/1989	12/01/1985	Los Angeles	Affirmed
CUNNINGHAM	JOHN	67	42	01/26/1996	01/12/1996	06/27/1992	San Bernardino	No Action
CURL	ROBERT	60	30	07/20/1993	07/15/1993	03/24/1987	Fresno	No Action
DARCY	JONATHAN	55	31	04/17/1997	04/11/1997	02/02/1993	Orange	No Action
DALTON	KERRY	64	35	05/30/1995	05/23/1995	06/26/1988	San Diego	No Action
DANIELS	DAVID	49	32	03/16/2001	02/28/2001	12/28/1999	Sacramento	No Action
DANIELS	JACKSON	79	44	03/14/1984	01/31/1984	05/13/1982	Riverside	Affirmed
DANKS	JOSEPH	55	28	04/02/1993	04/02/1993	09/20/1990	Los Angeles	Affirmed
DAVEGIO	JAMES	57	38	09/26/2002	09/25/2002	12/02/1997	Alameda	No Action

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure) Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
DAVENPORT	JOHN	59	22	11/09/1981	11/04/1981	03/27/1980	Orange	Affirmed
DAVIS	RICHARD	63	39	09/26/1996	09/26/1996	10/01/1993	Santa Clara	No Action
DAVIS	STANLEY	55	23	11/20/1989	11/15/1989	10/01/1985	Los Angeles	Affirmed
DEBOSE	DONALD	40	21	07/26/1999	07/21/1999	12/17/1997	Los Angeles	No Action
DEEN	OMAR	48	29	10/20/2000	10/05/2000	04/10/1998	Imperial	No Action
DEERE	RONALD	64	29	11/23/1982	11/10/1982	03/04/1982	Riverside	Affirmed
DEHOYOS	RICHARD	60	32	09/02/1993	08/27/1993	03/20/1989	Orange	No Action
DELEON	SKYLAR	38	25	04/16/2009	04/16/2009	12/27/2003	Orange	No Action
DELGADO	ANTHONY	50	31	06/21/2000	06/21/2000	09/30/1998	Kings	No Action
DEMENT	RONNIE	53	28	10/04/1994	09/26/1994	04/09/1992	Fresno	No Action
DEMETRULIAS	GREGORY	64	36	05/24/1995	05/22/1995	01/10/1989	Riverside	Affirmed
DEMOLLE	ALEX	42	24	12/24/2007	12/14/2007	07/23/1999	Alameda	No Action
DENNIS	WILLIAM	67	35	09/07/1988	09/06/1988	10/31/1984	Santa Clara	Affirmed
DENNIS	CALVIN	26	26	02/09/2009	01/30/2009	10/02/2006	Los Angeles	No Action
DENT	ANTHONY	44	29	09/16/2009	09/10/2009	01/27/2002	Los Angeles	No Action
DEPRIEST	TIM	57	30	06/04/1994	05/27/1994	12/17/1989	Orange	Affirmed
DICKEY	COLIN	52	24	03/10/1992	02/27/1992	11/07/1988	Fresno	Affirmed
DIXON	JAMES	45	24	05/09/2008	05/02/2008	07/19/1996	Los Angeles	No Action
			29			08/18/2001	Los Angeles	No Action
DONALDSON	JASON	48	29	02/22/1989	10/05/2004	08/04/1998	Los Angeles	No Action
DOOLIN	KEITH	44	22	06/24/1996	06/18/1996	07/29/1995	Fresno	Affirmed
DREWS	MARTIN	53	38	07/24/2007	07/09/2007	12/27/2001	Imperial	No Action
DUENAS	ENRIQUE	45	26	01/27/1999	01/22/1999	10/30/1997	Los Angeles	No Action
DUFF	DEWEY	60	38	03/14/2002	03/08/2002	02/24/1995	Sacramento	No Action
DUNKLE	JOHN	56	21	02/07/1990	02/07/1990	11/08/1981	San Mateo	Affirmed
DUNLAP	DEAN	58	33	04/24/2006	04/14/2006	01/10/1992	San Bernardino	No Action

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure)

Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
DUNN <input type="checkbox"/>	AARON <input type="checkbox"/>	39 <input type="checkbox"/>	28 <input type="checkbox"/>	07/14/2010 <input type="checkbox"/>	07/06/2010 <input type="checkbox"/>	03/25/2006 <input type="checkbox"/>	Sacramento <input type="checkbox"/>	No Action <input type="checkbox"/>
DUNSON <input type="checkbox"/>	ROBERT <input type="checkbox"/>	36 <input type="checkbox"/>	26 <input type="checkbox"/>	05/25/2015 <input type="checkbox"/>	05/15/2015 <input type="checkbox"/>	11/26/2007 <input type="checkbox"/>	Riverside <input type="checkbox"/>	No Action <input type="checkbox"/>
DUONG <input type="checkbox"/>	ANH <input type="checkbox"/>	42 <input type="checkbox"/>	24 <input type="checkbox"/>	03/12/2003 <input type="checkbox"/>	03/07/2003 <input type="checkbox"/>	05/06/1999 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
DWORAK <input type="checkbox"/>	DOUGLAS <input type="checkbox"/>	51 <input type="checkbox"/>	35 <input type="checkbox"/>	07/06/2005 <input type="checkbox"/>	06/30/2005 <input type="checkbox"/>	04/22/2001 <input type="checkbox"/>	Ventura <input type="checkbox"/>	No Action <input type="checkbox"/>
DYKES <input type="checkbox"/>	ERNEST <input type="checkbox"/>	44 <input type="checkbox"/>	20 <input type="checkbox"/>	12/22/1995 <input type="checkbox"/>	11/03/1995 <input type="checkbox"/>	07/26/1993 <input type="checkbox"/>	Alameda <input type="checkbox"/>	No Action <input type="checkbox"/>
EARP <input type="checkbox"/>	RICKY <input type="checkbox"/>	55 <input type="checkbox"/>	26 <input type="checkbox"/>	02/26/1992 <input type="checkbox"/>	02/21/1992 <input type="checkbox"/>	08/22/1988 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	Affirmed <input type="checkbox"/>
EDWARDS <input type="checkbox"/>	ROBERT <input type="checkbox"/>	56 <input type="checkbox"/>	25 <input type="checkbox"/>	09/14/1998 <input type="checkbox"/>	09/09/1998 <input type="checkbox"/>	05/12/1986 <input type="checkbox"/>	Orange <input type="checkbox"/>	No Action <input type="checkbox"/>
ELLIOTT <input type="checkbox"/>	MARCHAND <input type="checkbox"/>	49 <input type="checkbox"/>	21 <input type="checkbox"/>	06/10/1992 <input type="checkbox"/>	06/03/1992 <input type="checkbox"/>	12/15/1988 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
ELLIS <input type="checkbox"/>	JAMES <input type="checkbox"/>	29 <input type="checkbox"/>	22 <input type="checkbox"/>	07/05/2017 <input type="checkbox"/>	06/16/2017 <input type="checkbox"/>	11/23/2017 <input type="checkbox"/>	San Bernardino <input type="checkbox"/>	No Action <input type="checkbox"/>
ENRACA <input type="checkbox"/>	SONNY <input type="checkbox"/>	45 <input type="checkbox"/>	23 <input type="checkbox"/>	07/29/1999 <input type="checkbox"/>	07/23/1999 <input type="checkbox"/>	11/19/1994 <input type="checkbox"/>	Riverside <input type="checkbox"/>	No Action <input type="checkbox"/>
ERSKINE <input type="checkbox"/>	SCOTT <input type="checkbox"/>	54 <input type="checkbox"/>	30 <input type="checkbox"/>	09/07/2004 <input type="checkbox"/>	09/01/2004 <input type="checkbox"/>	03/27/1993 <input type="checkbox"/>	San Diego <input type="checkbox"/>	No Action <input type="checkbox"/>
ERVIN <input type="checkbox"/>	CURTIS <input type="checkbox"/>	64 <input type="checkbox"/>	34 <input type="checkbox"/>	06/28/1991 <input type="checkbox"/>	06/28/1991 <input type="checkbox"/>	11/06/1986 <input type="checkbox"/>	Alameda <input type="checkbox"/>	Affirmed <input type="checkbox"/>
ERVINE <input type="checkbox"/>	DENNIS <input type="checkbox"/>	70 <input type="checkbox"/>	48 <input type="checkbox"/>	06/06/1996 <input type="checkbox"/>	05/31/1996 <input type="checkbox"/>	03/02/1995 <input type="checkbox"/>	Sacramento <input type="checkbox"/>	No Action <input type="checkbox"/>
ESPARZA <input type="checkbox"/>	ANGEL <input type="checkbox"/>	33 <input type="checkbox"/>	21 <input type="checkbox"/>	03/04/2015 <input type="checkbox"/>	02/20/2015 <input type="checkbox"/>		Riverside <input type="checkbox"/>	No Action <input type="checkbox"/>
ESPINOZA <input type="checkbox"/>	ANTONIO <input type="checkbox"/>	56 <input type="checkbox"/>	21 <input type="checkbox"/>	09/17/1986 <input type="checkbox"/>	09/17/1986 <input type="checkbox"/>	01/25/1982 <input type="checkbox"/>	San Joaquin <input type="checkbox"/>	Affirmed <input type="checkbox"/>
ESPINOZA <input type="checkbox"/>	JOHNNY <input type="checkbox"/>	36 <input type="checkbox"/>	21 <input type="checkbox"/>	02/01/2006 <input type="checkbox"/>	01/24/2006 <input type="checkbox"/>	01/09/2002 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
ESPINOZA <input type="checkbox"/>	PEDRO <input type="checkbox"/>	28 <input type="checkbox"/>	19 <input type="checkbox"/>	11/07/2012 <input type="checkbox"/>	11/07/2012 <input type="checkbox"/>	03/02/2008 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
EUBANKS <input type="checkbox"/>	SUSAN <input type="checkbox"/>	53 <input type="checkbox"/>	34 <input type="checkbox"/>	10/20/1999 <input type="checkbox"/>	10/13/1999 <input type="checkbox"/>	10/26/1997 <input type="checkbox"/>	San Diego <input type="checkbox"/>	No Action <input type="checkbox"/>
EVANS <input type="checkbox"/>	STEVE <input type="checkbox"/>	70 <input type="checkbox"/>	56 <input type="checkbox"/>	01/15/2009 <input type="checkbox"/>	01/09/2009 <input type="checkbox"/>	08/19/2003 <input type="checkbox"/>	Orange <input type="checkbox"/>	No Action <input type="checkbox"/>
EVANS <input type="checkbox"/>	CHRISTOPHER <input type="checkbox"/>	44 <input type="checkbox"/>	30 <input type="checkbox"/>	04/23/2010 <input type="checkbox"/>	04/23/2010 <input type="checkbox"/>	12/26/2002 <input type="checkbox"/>	Alameda <input type="checkbox"/>	No Action <input type="checkbox"/>
FAIRBANKS <input type="checkbox"/>	ROBERT <input type="checkbox"/>	65 <input type="checkbox"/>	34 <input type="checkbox"/>	09/11/1989 <input type="checkbox"/>	09/05/1989 <input type="checkbox"/>	12/12/1985 <input type="checkbox"/>	San Mateo <input type="checkbox"/>	Affirmed <input type="checkbox"/>
FAJARDO <input type="checkbox"/>	JONATHAN <input type="checkbox"/>	29 <input type="checkbox"/>	19 <input type="checkbox"/>	05/03/2011 <input type="checkbox"/>	04/22/2011 <input type="checkbox"/>	12/15/2006 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
FAMALARO <input type="checkbox"/>	JOHN <input type="checkbox"/>	60 <input type="checkbox"/>	34 <input type="checkbox"/>	09/15/1997 <input type="checkbox"/>	09/05/1997 <input type="checkbox"/>	06/02/1991 <input type="checkbox"/>	Orange <input type="checkbox"/>	No Action <input type="checkbox"/>
FARLEY <input type="checkbox"/>	RICHARD <input type="checkbox"/>	69 <input type="checkbox"/>	40 <input type="checkbox"/>	01/22/1992 <input type="checkbox"/>	01/17/1992 <input type="checkbox"/>	02/16/1988 <input type="checkbox"/>	Santa Clara <input type="checkbox"/>	No Action <input type="checkbox"/>
FARNAM <input type="checkbox"/>	JACK <input type="checkbox"/>	52 <input type="checkbox"/>	18 <input type="checkbox"/>	06/21/1989 <input type="checkbox"/>	06/15/1989 <input type="checkbox"/>	11/19/1982 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	Affirmed <input type="checkbox"/>
FAUBER <input type="checkbox"/>	CURTIS <input type="checkbox"/>	55 <input type="checkbox"/>	24 <input type="checkbox"/>	05/25/1988 <input type="checkbox"/>	05/16/1988 <input type="checkbox"/>	07/16/1986 <input type="checkbox"/>	Ventura <input type="checkbox"/>	Affirmed <input type="checkbox"/>

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure) Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
FAYED <input type="checkbox"/>	JAMES <input type="checkbox"/>	54 <input type="checkbox"/>	45 <input type="checkbox"/>	11/28/2011 <input type="checkbox"/>	11/17/2011 <input type="checkbox"/>	07/28/2008 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
FELIX <input type="checkbox"/>	MIGUEL <input type="checkbox"/>	36 <input type="checkbox"/>	22 <input type="checkbox"/>	06/09/2015 <input type="checkbox"/>	05/26/2015 <input type="checkbox"/>	04/11/2004 <input type="checkbox"/>	Riverside <input type="checkbox"/>	No Action <input type="checkbox"/>
FIERROS <input type="checkbox"/>	EUSEBIO <input type="checkbox"/>	28 <input type="checkbox"/>	19 <input type="checkbox"/>	05/30/2012 <input type="checkbox"/>	05/18/2012 <input type="checkbox"/>	01/19/2008 <input type="checkbox"/>	Riverside <input type="checkbox"/>	No Action <input type="checkbox"/>
FLETCHER <input type="checkbox"/>	MARCUS <input type="checkbox"/>	33 <input type="checkbox"/>	21 <input type="checkbox"/>	12/01/2011 <input type="checkbox"/>	11/18/2011 <input type="checkbox"/>	04/01/2005 <input type="checkbox"/>	Riverside <input type="checkbox"/>	No Action <input type="checkbox"/>
FLINNER <input type="checkbox"/>	MICHAEL <input type="checkbox"/>	50 <input type="checkbox"/>	33 <input type="checkbox"/>	04/05/2004 <input type="checkbox"/>	03/29/2004 <input type="checkbox"/>	06/11/2000 <input type="checkbox"/>	San Diego <input type="checkbox"/>	No Action <input type="checkbox"/>
FLORES <input type="checkbox"/>	ALFRED <input type="checkbox"/>	37 <input type="checkbox"/>	21 <input type="checkbox"/>	05/28/2003 <input type="checkbox"/>	05/19/2003 <input type="checkbox"/>	03/19/2001 <input type="checkbox"/>	San Bernardino <input type="checkbox"/>	No Action <input type="checkbox"/>
FLORES <input type="checkbox"/>	JOSEPH <input type="checkbox"/>	47 <input type="checkbox"/>	30 <input type="checkbox"/>	04/27/2005 <input type="checkbox"/>	04/20/2005 <input type="checkbox"/>	06/19/2000 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
FLORES <input type="checkbox"/>	RALPH <input type="checkbox"/>	36 <input type="checkbox"/>	24 <input type="checkbox"/>	09/17/2008 <input type="checkbox"/>	09/08/2008 <input type="checkbox"/>	12/26/2004 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
FORD <input type="checkbox"/>	WAYNE <input type="checkbox"/>	55 <input type="checkbox"/>	36 <input type="checkbox"/>	03/23/2007 <input type="checkbox"/>	03/16/2007 <input type="checkbox"/>	10/26/2007 <input type="checkbox"/>	San Bernardino <input type="checkbox"/>	No Action <input type="checkbox"/>
FORTE <input type="checkbox"/>	MELVIN <input type="checkbox"/>	67 <input type="checkbox"/>	31 <input type="checkbox"/>	08/05/2011 <input type="checkbox"/>	08/16/1982 <input type="checkbox"/>	01/01/1981 <input type="checkbox"/>	Santa Clara <input type="checkbox"/>	Affirmed <input type="checkbox"/>
FOSTER <input type="checkbox"/>	RICHARD <input type="checkbox"/>	70 <input type="checkbox"/>	44 <input type="checkbox"/>	12/30/1996 <input type="checkbox"/>	12/23/1996 <input type="checkbox"/>	08/26/1991 <input type="checkbox"/>	San Bernardino <input type="checkbox"/>	No Action <input type="checkbox"/>
FOWLER <input type="checkbox"/>	RICKY <input type="checkbox"/>	36 <input type="checkbox"/>	23 <input type="checkbox"/>	02/05/2013 <input type="checkbox"/>	01/25/2013 <input type="checkbox"/>	10/25/2003 <input type="checkbox"/>	San Bernardino <input type="checkbox"/>	No Action <input type="checkbox"/>
FRANKLIN, JR. <input type="checkbox"/>	LONNIE <input type="checkbox"/>	65 <input type="checkbox"/>	33 <input type="checkbox"/>	08/17/2016 <input type="checkbox"/>	08/10/2016 <input type="checkbox"/>	08/10/1985 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
FRAZIER <input type="checkbox"/>	ROBERT <input type="checkbox"/>	35 <input type="checkbox"/>	39 <input type="checkbox"/>	12/15/2006 <input type="checkbox"/>	12/15/2006 <input type="checkbox"/>	05/13/2003 <input type="checkbox"/>	Contra Costa <input type="checkbox"/>	No Action <input type="checkbox"/>
FRAZIER <input type="checkbox"/>	TRAVIS <input type="checkbox"/>	54 <input type="checkbox"/>	33 <input type="checkbox"/>	09/11/2013 <input type="checkbox"/>	08/21/2013 <input type="checkbox"/>	05/19/2009 <input type="checkbox"/>	Kern <input type="checkbox"/>	No Action <input type="checkbox"/>
FREDERICKSON <input type="checkbox"/>	DANIEL <input type="checkbox"/>	60 <input type="checkbox"/>	27 <input type="checkbox"/>	06/19/1992 <input type="checkbox"/>	06/19/1992 <input type="checkbox"/>	09/03/1984 <input type="checkbox"/>	Alameda <input type="checkbox"/>	No Action <input type="checkbox"/>
FRIEND <input type="checkbox"/>	JACK <input type="checkbox"/>	61 <input type="checkbox"/>	29 <input type="checkbox"/>	09/14/1988 <input type="checkbox"/>	09/12/1988 <input type="checkbox"/>	05/14/1985 <input type="checkbox"/>	Amador <input type="checkbox"/>	Affirmed <input type="checkbox"/>
FRYE <input type="checkbox"/>	JERRY <input type="checkbox"/>	51 <input type="checkbox"/>	19 <input type="checkbox"/>	12/21/1987 <input type="checkbox"/>	12/11/1987 <input type="checkbox"/>	10/12/1984 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	Affirmed <input type="checkbox"/>
FUDGE <input type="checkbox"/>	KEITH <input type="checkbox"/>	47 <input type="checkbox"/>	25 <input type="checkbox"/>	08/28/1996 <input type="checkbox"/>	08/19/1996 <input type="checkbox"/>	05/12/1995 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	Affirmed <input type="checkbox"/>
FUJAYA <input type="checkbox"/>	FREDDIE <input type="checkbox"/>	64 <input type="checkbox"/>	56 <input type="checkbox"/>	01/15/2013 <input type="checkbox"/>	01/14/2013 <input type="checkbox"/>	08/10/2009 <input type="checkbox"/>	Kern <input type="checkbox"/>	No Action <input type="checkbox"/>
FULLER <input type="checkbox"/>	ROBERT <input type="checkbox"/>	43 <input type="checkbox"/>	36 <input type="checkbox"/>	05/15/2013 <input type="checkbox"/>	05/15/2013 <input type="checkbox"/>	09/16/2010 <input type="checkbox"/>	Kings <input type="checkbox"/>	No Action <input type="checkbox"/>
GALVAN <input type="checkbox"/>	ROBERT <input type="checkbox"/>	43 <input type="checkbox"/>	19 <input type="checkbox"/>	04/12/1996 <input type="checkbox"/>	04/02/1996 <input type="checkbox"/>	12/04/1992 <input type="checkbox"/>	San Bernardino <input type="checkbox"/>	No Action <input type="checkbox"/>
GAMACHE <input type="checkbox"/>	RICHARD <input type="checkbox"/>	47 <input type="checkbox"/>	23 <input type="checkbox"/>	04/05/1995 <input type="checkbox"/>	03/23/1995 <input type="checkbox"/>	05/08/1993 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
GARCIA <input type="checkbox"/>	RANDY <input type="checkbox"/>	47 <input type="checkbox"/>	28 <input type="checkbox"/>	05/04/2001 <input type="checkbox"/>	04/27/2001 <input type="checkbox"/>	05/16/1998 <input type="checkbox"/>	Shasta <input type="checkbox"/>	No Action <input type="checkbox"/>
GARTON <input type="checkbox"/>	TODD <input type="checkbox"/>	65 <input type="checkbox"/>	28 <input type="checkbox"/>	08/11/1981 <input type="checkbox"/>	08/07/1981 <input type="checkbox"/>	12/10/1979 <input type="checkbox"/>	Alameda <input type="checkbox"/>	Affirmed <input type="checkbox"/>

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure) Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
GAY <input type="checkbox"/>	KENNETH <input type="checkbox"/>	59 <input type="checkbox"/>	25 <input type="checkbox"/>	10/03/1985 <input type="checkbox"/>	09/20/1985 <input type="checkbox"/>	06/02/1983 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
GEORGE <input type="checkbox"/>	JOHNATON <input type="checkbox"/>	59 <input type="checkbox"/>	35 <input type="checkbox"/>	07/24/1995 <input type="checkbox"/>	07/17/1995 <input type="checkbox"/>	10/05/1992 <input type="checkbox"/>	San Diego <input type="checkbox"/>	No Action <input type="checkbox"/>
GHEINT <input type="checkbox"/>	DAVID <input type="checkbox"/>	67 <input type="checkbox"/>	29 <input type="checkbox"/>	10/30/1979 <input type="checkbox"/>	10/30/1979 <input type="checkbox"/>	02/21/1979 <input type="checkbox"/>	Santa Clara <input type="checkbox"/>	Reversed/a <input type="checkbox"/>
GHOBRIAL <input type="checkbox"/>	JOHN <input type="checkbox"/>	47 <input type="checkbox"/>	28 <input type="checkbox"/>	04/15/2002 <input type="checkbox"/>	04/10/2002 <input type="checkbox"/>	03/17/1998 <input type="checkbox"/>	Orange <input type="checkbox"/>	No Action <input type="checkbox"/>
GIVENS <input type="checkbox"/>	TODD <input type="checkbox"/>	48 <input type="checkbox"/>	32 <input type="checkbox"/>	07/23/2004 <input type="checkbox"/>	07/06/2004 <input type="checkbox"/>	04/01/2001 <input type="checkbox"/>	Tulare <input type="checkbox"/>	No Action <input type="checkbox"/>
GOMEZ <input type="checkbox"/>	REUBEN <input type="checkbox"/>	47 <input type="checkbox"/>	27 <input type="checkbox"/>	04/10/2000 <input type="checkbox"/>	03/31/2000 <input type="checkbox"/>	05/26/1997 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
GONZALES <input type="checkbox"/>	IVAN <input type="checkbox"/>	51 <input type="checkbox"/>	29 <input type="checkbox"/>	01/21/1998 <input type="checkbox"/>	01/13/1998 <input type="checkbox"/>	07/21/1995 <input type="checkbox"/>	San Diego <input type="checkbox"/>	No Action <input type="checkbox"/>
GONZALES <input type="checkbox"/>	JOHN <input type="checkbox"/>	41 <input type="checkbox"/>	20 <input type="checkbox"/>	12/23/1998 <input type="checkbox"/>	12/18/1998 <input type="checkbox"/>	01/27/1996 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
GONZALES <input type="checkbox"/>	VERONICA <input type="checkbox"/>	48 <input type="checkbox"/>	26 <input type="checkbox"/>	07/22/1998 <input type="checkbox"/>	07/20/1998 <input type="checkbox"/>	07/21/1995 <input type="checkbox"/>	San Diego <input type="checkbox"/>	No Action <input type="checkbox"/>
GONZALES <input type="checkbox"/>	FRANK <input type="checkbox"/>	37 <input type="checkbox"/>	26 <input type="checkbox"/>	05/12/2008 <input type="checkbox"/>	05/12/2008 <input type="checkbox"/>	03/28/2006 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
GONZALEZ <input type="checkbox"/>	JESSE <input type="checkbox"/>	69 <input type="checkbox"/>	31 <input type="checkbox"/>	08/05/1981 <input type="checkbox"/>	07/28/1981 <input type="checkbox"/>	05/29/1979 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	Affirmed <input type="checkbox"/>
GORDON <input type="checkbox"/>	PATRICK <input type="checkbox"/>	60 <input type="checkbox"/>	27 <input type="checkbox"/>	05/28/1985 <input type="checkbox"/>	05/03/1985 <input type="checkbox"/>	12/18/1983 <input type="checkbox"/>	Sacramento <input type="checkbox"/>	Affirmed <input type="checkbox"/>
GORDON <input type="checkbox"/>	STEVEN <input type="checkbox"/>	48 <input type="checkbox"/>	45 <input type="checkbox"/>	02/10/2017 <input type="checkbox"/>	02/03/2017 <input type="checkbox"/>	11/12/2013 <input type="checkbox"/>	Orange <input type="checkbox"/>	No Action <input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	45 <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10/06/2013 <input type="checkbox"/>	Orange <input type="checkbox"/>	No Action <input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	45 <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	03/14/2014 <input type="checkbox"/>	Orange <input type="checkbox"/>	No Action <input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	45 <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10/24/2013 <input type="checkbox"/>	Orange <input type="checkbox"/>	No Action <input type="checkbox"/>
GOVIN <input type="checkbox"/>	VIRENDRA <input type="checkbox"/>	50 <input type="checkbox"/>	35 <input type="checkbox"/>	01/05/2005 <input type="checkbox"/>	12/21/2004 <input type="checkbox"/>	05/04/2002 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
GOVIN <input type="checkbox"/>	PRAVIN <input type="checkbox"/>	48 <input type="checkbox"/>	36 <input type="checkbox"/>	09/19/2005 <input type="checkbox"/>	09/08/2005 <input type="checkbox"/>	05/04/2005 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
GRAHAM <input type="checkbox"/>	JAWAUN <input type="checkbox"/>	41 <input type="checkbox"/>	90 <input type="checkbox"/>	01/12/2012 <input type="checkbox"/>	01/13/2012 <input type="checkbox"/>	01/22/2066 <input type="checkbox"/>	Riverside <input type="checkbox"/>	No Action <input type="checkbox"/>
GREEN <input type="checkbox"/>	EARL <input type="checkbox"/>	51 <input type="checkbox"/>	45 <input type="checkbox"/>	07/02/2012 <input type="checkbox"/>	06/25/2012 <input type="checkbox"/>	11/07/2010 <input type="checkbox"/>	Riverside <input type="checkbox"/>	No Action <input type="checkbox"/>
GUERRA <input type="checkbox"/>	JOSE <input type="checkbox"/>	58 <input type="checkbox"/>	32 <input type="checkbox"/>	12/06/1993 <input type="checkbox"/>	11/22/1993 <input type="checkbox"/>	10/25/1990 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	Affirmed <input type="checkbox"/>
GUERRERO <input type="checkbox"/>	JOSE <input type="checkbox"/>	44 <input type="checkbox"/>	25 <input type="checkbox"/>	06/26/2009 <input type="checkbox"/>	06/23/2009 <input type="checkbox"/>	07/15/1998 <input type="checkbox"/>	Madera <input type="checkbox"/>	No Action <input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	23 <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11/28/1995 <input type="checkbox"/>	Madera <input type="checkbox"/>	No Action <input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	22 <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	04/29/1995 <input type="checkbox"/>	Madera <input type="checkbox"/>	No Action <input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	26 <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11/22/1998 <input type="checkbox"/>	Madera <input type="checkbox"/>	No Action <input type="checkbox"/>
GUTIERREZ <input type="checkbox"/>	ALFRED <input type="checkbox"/>	47 <input type="checkbox"/>	27 <input type="checkbox"/>	08/19/1998 <input type="checkbox"/>	08/10/1998 <input type="checkbox"/>	10/11/1996 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure)

Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
HAJEK <input type="checkbox"/>	STEPHEN <input type="checkbox"/>	45 <input type="checkbox"/>	23 <input type="checkbox"/>	10/25/1995 <input type="checkbox"/>	10/18/1995 <input type="checkbox"/>	01/18/1995 <input type="checkbox"/>	Santa Clara <input type="checkbox"/>	Affirmed <input type="checkbox"/>
HALEY <input type="checkbox"/>	KEVIN <input type="checkbox"/>	53 <input type="checkbox"/>	20 <input type="checkbox"/>	10/12/1988 <input type="checkbox"/>	10/03/1988 <input type="checkbox"/>	09/27/1984 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	Reversed/a <input type="checkbox"/>
HALVORSEN <input type="checkbox"/>	ARTHUR <input type="checkbox"/>	75 <input type="checkbox"/>	43 <input type="checkbox"/>	11/28/1988 <input type="checkbox"/>	11/18/1988 <input type="checkbox"/>	03/31/1985 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
HAMILTON <input type="checkbox"/>	ALEXANDER <input type="checkbox"/>	30 <input type="checkbox"/>	18 <input type="checkbox"/>	11/02/2007 <input type="checkbox"/>	11/02/2007 <input type="checkbox"/>	04/23/2005 <input type="checkbox"/>	Contra Costa <input type="checkbox"/>	No Action <input type="checkbox"/>
HANN <input type="checkbox"/>	JASON <input type="checkbox"/>	42 <input type="checkbox"/>	27 <input type="checkbox"/>	02/27/2014 <input type="checkbox"/>	03/27/2014 <input type="checkbox"/>	04/01/2002 <input type="checkbox"/>	Riverside <input type="checkbox"/>	No Action <input type="checkbox"/>
HARDY <input type="checkbox"/>	WARREN <input type="checkbox"/>	40 <input type="checkbox"/>	22 <input type="checkbox"/>	02/03/2003 <input type="checkbox"/>	01/23/2003 <input type="checkbox"/>	12/29/1998 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
HARRIS <input type="checkbox"/>	LANELL <input type="checkbox"/>	51 <input type="checkbox"/>	25 <input type="checkbox"/>	01/24/1994 <input type="checkbox"/>	01/12/1994 <input type="checkbox"/>	08/07/1991 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	Affirmed <input type="checkbox"/>
HARRIS <input type="checkbox"/>	MAURICE <input type="checkbox"/>	51 <input type="checkbox"/>	28 <input type="checkbox"/>	12/30/1996 <input type="checkbox"/>	12/20/1996 <input type="checkbox"/>	08/09/1994 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	Affirmed <input type="checkbox"/>
HARRIS <input type="checkbox"/>	WILLIE <input type="checkbox"/>	48 <input type="checkbox"/>	28 <input type="checkbox"/>	08/26/1999 <input type="checkbox"/>	08/24/1999 <input type="checkbox"/>	05/20/1997 <input type="checkbox"/>	Kern <input type="checkbox"/>	No Action <input type="checkbox"/>
HARRIS <input type="checkbox"/>	KAI <input type="checkbox"/>	40 <input type="checkbox"/>	32 <input type="checkbox"/>	11/30/2009 <input type="checkbox"/>	11/20/2009 <input type="checkbox"/>	04/01/2009 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
HART <input type="checkbox"/>	WILLIAM <input type="checkbox"/>	64 <input type="checkbox"/>	33 <input type="checkbox"/>	06/01/1988 <input type="checkbox"/>	05/27/1988 <input type="checkbox"/>	03/24/1986 <input type="checkbox"/>	Riverside <input type="checkbox"/>	Affirmed <input type="checkbox"/>
HARTS <input type="checkbox"/>	TYRONE <input type="checkbox"/>	44 <input type="checkbox"/>	38 <input type="checkbox"/>	11/30/2015 <input type="checkbox"/>	01/30/2015 <input type="checkbox"/>	02/22/2011 <input type="checkbox"/>	Riverside <input type="checkbox"/>	No Action <input type="checkbox"/>
HARTSCH <input type="checkbox"/>	CISCO <input type="checkbox"/>	40 <input type="checkbox"/>	18 <input type="checkbox"/>	11/19/1998 <input type="checkbox"/>	11/13/1998 <input type="checkbox"/>	06/15/1995 <input type="checkbox"/>	Riverside <input type="checkbox"/>	No Action <input type="checkbox"/>
HAWKINS <input type="checkbox"/>	JEFFREY <input type="checkbox"/>	40 <input type="checkbox"/>	32 <input type="checkbox"/>	02/09/1990 <input type="checkbox"/>	01/31/1990 <input type="checkbox"/>	03/04/1987 <input type="checkbox"/>	Sacramento <input type="checkbox"/>	Affirmed <input type="checkbox"/>
HAWTHORNE <input type="checkbox"/>	ANDERSON <input type="checkbox"/>	57 <input type="checkbox"/>	23 <input type="checkbox"/>	02/26/1986 <input type="checkbox"/>	02/18/1986 <input type="checkbox"/>	12/18/1982 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	Affirmed <input type="checkbox"/>
HAWTHORNE <input type="checkbox"/>	CARLOS <input type="checkbox"/>	41 <input type="checkbox"/>	20 <input type="checkbox"/>	09/15/1997 <input type="checkbox"/>	09/05/1997 <input type="checkbox"/>	08/25/1996 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
HAYES <input type="checkbox"/>	ROYAL <input type="checkbox"/>	80 <input type="checkbox"/>	45 <input type="checkbox"/>	08/18/1986 <input type="checkbox"/>	08/08/1986 <input type="checkbox"/>	12/29/1981 <input type="checkbox"/>	Stanislaus <input type="checkbox"/>	Affirmed <input type="checkbox"/>
HAZLETT <input type="checkbox"/>	LARRY <input type="checkbox"/>	43 <input type="checkbox"/>	5 <input type="checkbox"/>	07/14/2004 <input type="checkbox"/>	07/14/2004 <input type="checkbox"/>	10/24/1978 <input type="checkbox"/>	Kern <input type="checkbox"/>	No Action <input type="checkbox"/>
HEARD <input type="checkbox"/>	JAMES <input type="checkbox"/>	65 <input type="checkbox"/>	39 <input type="checkbox"/>	10/18/1993 <input type="checkbox"/>	09/28/1993 <input type="checkbox"/>	12/19/1990 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	Reversed/a <input type="checkbox"/>
HEISHMAN <input type="checkbox"/>	HARVEY <input type="checkbox"/>	69 <input type="checkbox"/>	32 <input type="checkbox"/>	03/30/1981 <input type="checkbox"/>	03/30/1981 <input type="checkbox"/>	11/01/1979 <input type="checkbox"/>	Alameda <input type="checkbox"/>	Affirmed <input type="checkbox"/>
HELZER <input type="checkbox"/>	GLENN <input type="checkbox"/>	47 <input type="checkbox"/>	30 <input type="checkbox"/>	03/11/2005 <input type="checkbox"/>	03/11/2005 <input type="checkbox"/>	08/02/2000 <input type="checkbox"/>	Contra Costa <input type="checkbox"/>	No Action <input type="checkbox"/>
HENDERSON <input type="checkbox"/>	PAUL <input type="checkbox"/>	48 <input type="checkbox"/>	28 <input type="checkbox"/>	06/04/2001 <input type="checkbox"/>	05/25/2001 <input type="checkbox"/>	08/15/1997 <input type="checkbox"/>	Riverside <input type="checkbox"/>	No Action <input type="checkbox"/>
HENRIQUEZ <input type="checkbox"/>	CHRISTOPHER <input type="checkbox"/>	46 <input type="checkbox"/>	24 <input type="checkbox"/>	07/07/2000 <input type="checkbox"/>	06/02/2000 <input type="checkbox"/>	08/12/1995 <input type="checkbox"/>	Contra Costa <input type="checkbox"/>	No Action <input type="checkbox"/>
HERNANDEZ <input type="checkbox"/>	FRANCIS <input type="checkbox"/>	55 <input type="checkbox"/>	19 <input type="checkbox"/>	07/21/1983 <input type="checkbox"/>	07/12/1983 <input type="checkbox"/>	02/03/1981 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	Affirmed <input type="checkbox"/>
HERNANDEZ <input type="checkbox"/>	GEORGE <input type="checkbox"/>	41 <input type="checkbox"/>	28 <input type="checkbox"/>	02/10/2010 <input type="checkbox"/>	01/29/2010 <input type="checkbox"/>	07/26/2004 <input type="checkbox"/>	Riverside <input type="checkbox"/>	No Action <input type="checkbox"/>
HILL <input type="checkbox"/>	MICHAEL <input type="checkbox"/>	62 <input type="checkbox"/>	30 <input type="checkbox"/>	01/21/1988 <input type="checkbox"/>	01/21/1988 <input type="checkbox"/>	08/15/1985 <input type="checkbox"/>	Alameda <input type="checkbox"/>	Affirmed <input type="checkbox"/>

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
**Death Row Tracking System**  
**Condemned Inmate List (Secure)**

Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
HILL	IVAN	56	33	04/09/2007	03/28/2007	12/30/1993	Los Angeles	No Action
HILLHOUSE	DANNIE	56	30	10/21/1992	10/13/1992	03/09/1991	Butte	Affirmed
HIN	MAO	33	20	02/24/2006	02/24/2006	10/10/2003	San Joaquin	No Action
HINES	GARY	53	22	07/11/1988	07/08/1988	09/15/1986	Sacramento	Affirmed
HINTON	ERIC	48	19	12/20/1993	12/10/1993	05/24/1988	Los Angeles	Affirmed
HIRSCFIELD	RICHARD	68	32	02/01/2013	01/25/2013	12/20/1980	Sacramento	No Action
HOLLOWAY	DUANE	56	22	07/11/1985	07/08/1985	03/20/1983	Sacramento	Affirmed
HOLMES	KARL	43	20	01/29/1997	01/21/1997	10/31/1993	Los Angeles	No Action
HOLT	JOHN	50	22	06/06/1990	05/30/1990	07/06/1989	Kern	Affirmed
HORNING	DANNY	59	32	01/26/1995	01/26/1995	09/19/1990	San Joaquin	Affirmed
HOUSTON	ERIC	46	21	09/24/1993	09/20/1993	05/01/1992	Napa	Affirmed
HOVARTER	JACKIE	64	31	11/30/1990	11/30/1990	08/24/1984	Humboldt	Affirmed
HOWARD	ALPHONSO	50	21	10/28/1992	10/20/1992	04/02/1988	Los Angeles	Affirmed
HOWARD	DEMETRIUS	59	26	12/19/1995	12/07/1995	12/05/1992	San Bernardino	No Action
HOYOS	JAIMIE	59	34	07/20/1994	07/11/1994	05/26/1992	San Diego	Affirmed
HOYT	RYAN	38	21	03/14/2003	02/07/2003	08/06/2000	Santa Barbara	No Action
HRONIS	JEFFERY	59	28	12/29/2000	12/19/2000	12/22/1985	Sacramento	No Action
HUGGINS	MICHAEL	53	22	12/17/1993	12/17/1993	03/08/1986	Alameda	Affirmed
HUGHES	KRISTIN	55	27	10/12/1990	10/02/1990	09/07/1989	Monterey	Affirmed
HUGHES	MERVIN	48	30	06/10/2005	06/10/2005	01/16/1999	Alameda	No Action
HUGHES	MICHAEL	60	29	07/02/2012	06/22/2012	05/26/1986	Los Angeles	No Action
INGRAM	REYON	34	23	03/11/2009	03/06/2009	10/02/2006	Los Angeles	No Action
JABLONSKI	PHILLIP	71	45	08/19/1994	08/12/1994	04/26/1991	San Mateo	Affirmed
JACKSON	EARL	59	19	03/26/1979	03/19/1979	09/07/1977	Los Angeles	Affirmed
JACKSON	JONATHAN	43	22	02/24/2000	02/18/2000	06/15/1996	Riverside	Affirmed
JACKSON	MICHAEL	63	29	05/30/1984	05/21/1984	08/31/1983	Los Angeles	Affirmed

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure) Printed Date: 10/03/2017

LastName	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
JACKSON	BAILEY	46	30	11/16/2005	11/08/2005	05/15/2001	Riverside	No Action
JASSO	CHRISTOPHER	45	35	01/19/2010	01/08/2010	09/07/2007	Riverside	No Action
JENKINS	DANIEL	62	31	10/12/1988	10/06/1988	10/31/1985	Los Angeles	Affirmed
JENNINGS	MARTIN	57	36	07/30/1999	07/22/1999	02/07/1996	San Bernardino	No Action
JENNINGS	GLENN	64	51	11/12/2010	11/05/2010	06/02/2004	Sacramento	No Action
JOHN	EMRYS	27	19	08/22/2013	08/16/2013	10/15/2008	Riverside	No Action
JOHNSEN	BRIAN	47	22	06/23/1994	06/09/1994	03/01/1992	Stanislaus	No Action
JOHNSON	CEDRIC	51	30	12/28/1998	12/18/1998	09/26/1996	Los Angeles	No Action
JOHNSON	CLEAMON	49	23	12/22/1997	12/12/1997	08/05/1991	Los Angeles	No Action
JOHNSON	JERROLD	55	37	11/17/2000	11/16/2000	12/19/1998	Lake	No Action
JOHNSON	JOE	67	29	06/09/1981	05/28/1981	07/25/1979	Sacramento	No Action
JOHNSON	LAVERNE	60	29	05/06/1988	04/01/1988	01/15/1986	San Mateo	Affirmed
JOHNSON	MICHAEL	70	49	08/05/1998	04/27/1998	07/17/1996	Ventura	No Action
JOHNSON	WILLIE	56	25	08/05/1987	08/05/1987	07/01/1986	Contra Costa	Affirmed
JOHNSON	LUMORD	52	29	04/15/2002	04/08/2002	06/25/1994	Riverside	No Action
JOHNSON	BILLY	54	41	12/02/2009	11/23/2009	04/04/2004	Orange	No Action
JOHNSON	MILA	40	39	09/13/2010	09/03/2010	03/08/2002	Orange	No Action
JONES	ALBERT	53	30	09/25/1996	09/20/1996	08/09/2006	Los Angeles	No Action
JONES	BRYAN	55	23	09/28/1994	09/19/1994	12/13/1993	Riverside	No Action
JONES	ERNEST	53	28	04/24/1995	04/07/1995	08/15/1985	San Diego	No Action
JONES	JEFFREY	57	25	03/07/1989	02/22/1989	08/24/1992	Los Angeles	Affirmed
JONES	WILLIAM	61	40	02/17/1999	02/08/1999	01/21/1985	Sacramento	Affirmed
JONES	KIONGOZI	48	28	12/02/1998	11/17/1998	06/18/1996	Riverside	No Action
JONES	RONALD	47	19	06/12/1991	06/04/1991	12/06/1996	Los Angeles	No Action
JONES	STEVEN	50	38	08/26/2009	08/14/2009	10/18/1988	Los Angeles	Affirmed
JONES	STEVEN	50	38	08/26/2009	08/14/2009	11/12/2004	Los Angeles	No Action

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017



**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure)

Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Los Angeles	No Action
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Los Angeles	No Action
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Los Angeles	No Action
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Riverside	No Action
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Riverside	No Action
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	San Diego	Affirmed
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	San Bernardino	No Action
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Los Angeles	Affirmed
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	San Bernardino	Affirmed
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Los Angeles	Affirmed
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	San Bernardino	Affirmed
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Los Angeles	Affirmed
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Riverside	Affirmed
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Contra Costa	No Action
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Colusa	Affirmed
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Orange	No Action
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Los Angeles	Affirmed
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Los Angeles	No Action
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Los Angeles	Affirmed
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Los Angeles	No Action
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Orange	Affirmed
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Los Angeles	Affirmed
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Ventura	No Action
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Riverside	No Action
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Orange	Affirmed
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	San Luis Obispo	No Action
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Orange	No Action
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Los Angeles	Affirmed
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	San Bernardino	No Action
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Santa Clara	Affirmed
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Riverside	No Action

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure) Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
LEONARD	ERIC	48	22	06/19/1996	06/13/1996	02/12/1991	Sacramento	Affirmed
LEONARD	JOSE	38	24	05/18/2006	05/12/2006	05/01/2003	Riverside	No Action
LEONARD	THOMAS	70	46	10/13/1995	10/06/1995	07/15/1993	Shasta	Affirmed
LEONARD	RICHARD	56	27	04/25/1990	04/24/1990	03/01/1988	Tulare	No Action
LEWIS	ALBERT	61	33	05/31/1993	05/21/1993	07/21/1989	Los Angeles	Affirmed
LEWIS	JOHN	47	21	03/08/1993	03/03/1993	08/27/1991	Los Angeles	Affirmed
LEWIS	ROBERT	66	32	11/07/1984	11/01/1984	10/27/1983	Los Angeles	Affirmed
LEWIS	KEITH	66	45	02/25/2000	02/25/2000	01/18/1996	Alameda	No Action
LEWIS	MICHAEL	56	30	05/07/1998	05/01/1998	08/22/1991	Riverside	No Action
LEWIS	MILTON	64	36	12/11/1990	12/06/1990	12/24/1988	Shasta	Affirmed
LEWIS	RAYMOND	56	27	03/13/1991	03/06/1991	06/07/1988	Fresno	Affirmed
LEWIS	TRAVIS	30	21	08/15/2010	09/05/2010	04/03/2008	Los Angeles	No Action
LIGHTSEY	CHRISTOPHER	64	40	08/15/1995	08/15/1995	07/07/1993	Kern	No Action
LINDBERG	GUNNER	42	21	12/22/1997	12/12/1997	01/28/1996	Orange	Affirmed
LINTON	DANIEL	43	21	06/21/1999	06/17/1999	11/29/1994	Riverside	No Action
LIVADITIS	STEVEN	53	22	07/15/1987	07/08/1987	06/23/1986	Los Angeles	Affirmed
LIVINGSTON	DAVID	44	26	07/26/2000	07/20/2000	01/03/1999	Los Angeles	No Action
LIVINGSTON	WAYMON	34	24	05/02/2013	03/13/2013	05/07/2007	Los Angeles	No Action
LOKER	KEITH	46	21	02/22/1995	02/10/1995	11/23/1991	San Bernardino	Affirmed
LOMAX	DARREL	47	24	10/23/1996	10/16/1996	08/29/1994	Los Angeles	No Action
LOOT	KENDRICK	46	25	03/27/1997	02/23/2000	11/15/1995	Los Angeles	No Action
LOPEZ	BOBBY	52	25	11/19/1997	07/11/1997	11/01/1989	Santa Clara	No Action
LOPEZ	JUAN	45	24	09/23/1998	09/18/1998	04/12/1996	Los Angeles	No Action
LOPEZ	MICHAEL	58	40	07/23/2001	07/23/2001	06/24/1999	Alameda	No Action
LOPEZ	ELIAS	31	19	01/25/2017	01/13/2017	10/10/2004	Riverside	No Action
			19			10/26/2004	Riverside	No Action

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure) Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
LOPEZ	JOHNNY	37	34	01/25/2017	01/13/2017	11/09/2013	Riverside	No Action
LOY	ELOY	66	45	01/25/1999	01/14/1999	05/08/1996	Los Angeles	No Action
LUCAS	DAVID	62	24	10/05/1989	09/19/1989	05/04/1979	San Diego	No Action
LUCERO	PHILLIP	72	35	02/04/1982	01/26/1982	04/12/1980	San Bernardino	Affirmed
LUCKY	DARNELL	65	29	04/12/1982	04/07/1982	01/20/1981	Los Angeles	Affirmed
LUTHER	JOHNATHAN	36	22	05/03/2007	04/27/2007	01/02/2003	Riverside	No Action
LYNCH	FRANKLIN	62	32	04/28/1992	04/28/1992	06/24/1987	Alameda	No Action
MACIAS	ARMANDO	41	26	09/01/2011	09/01/2011	10/02/2002	Orange	No Action
MAGIEL	LUIS	48	26	05/18/1998	05/08/1998	04/22/1995	Los Angeles	No Action
MADISON	RICKY	57	47	08/05/2009	07/17/2009	12/05/2006	Los Angeles	No Action
MAGALLON	MIGUEL	34	21	10/26/2009	10/07/2009	08/10/2004	Los Angeles	No Action
MAGANA	BELINDA	32	24	05/08/2015	05/01/2015	05/11/2009	Riverside	No Action
MAI	HUNG	46	25	07/06/2000	06/23/2000	07/13/1996	Orange	No Action
MANIBUSAN	JOSEPH	39	20	01/26/2001	01/24/2001	02/01/1998	Monterey	No Action
MANRIQUEZ	ABELINO	61	33	03/07/1994	11/16/1993	01/22/1989	Los Angeles	Affirmed
MANZO	JESSE	30	21	08/12/2013	08/12/2013	05/02/2008	Riverside	No Action
MARENTES	DESI	39	28	01/30/2013	01/25/2013	04/05/2006	Los Angeles	No Action
MARKS	DELANEY	61	35	06/03/1994	06/03/1994	10/17/1990	Alameda	Affirmed
MARLOW	JAMES	61	31	05/11/1992	05/08/1992	11/12/1986	Orange	Affirmed
							San Bernardino	Affirmed
MARTIN	VALERIE	50	36	04/07/2010	03/26/2010	02/28/2003	Los Angeles	No Action
MARTIN	ROMAINE	42	36	05/27/2016	05/16/2016	05/27/2011	Riverside	No Action
MARTINEZ	TOMMY	39	19	09/29/1998	09/15/1998	11/15/1996	Santa Barbara	No Action
MARTINEZ	MICHAEL	51	25	08/29/1997	08/29/1997	12/22/1990	Alameda	No Action
MARTINEZ	OMAR	57	29	05/18/1993	05/10/1993	11/04/1988	Riverside	Affirmed
MARTINEZ	CARLOS	41	29	08/31/2009	08/18/2009	12/29/2004	Orange	No Action

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure)

Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
MARTINEZ	SANTIAGO	36	22	12/07/2009	11/30/2009	03/17/2003	Los Angeles	No Action
MARTINEZ	ALBERTO	39	24	08/17/2010	09/06/2010	10/02/2002	Orange	No Action
MASTERS	JARVIS	55	23	07/30/1990	07/30/1990	06/08/1985	Marin	No Action
MATAELE	TUPOUTOE	44	25	10/17/2005	10/07/2005	11/12/1997	Orange	No Action
MAURY	ROBERT	59	27	11/06/1989	10/27/1989	05/25/1985	Shasta	Affirmed
MCCLAIN	HERBERT	49	26	01/29/1997	01/21/1997	10/31/1993	Los Angeles	No Action
MCCURDY	GENE	57	37	04/25/1997	04/23/1997	03/27/1997	Kings	No Action
MCDANIEL	DONTE	38	25	03/30/2009	03/30/2009	04/06/2004	Los Angeles	No Action
						06/04/2003	Los Angeles	No Action
MCDERMOTT	MAUREEN	70	38	06/15/1990	06/08/1990	04/28/1985	Los Angeles	Affirmed
MCDOWELL	CHARLES	64	29	10/31/1984	10/23/1984	05/20/1982	Los Angeles	Reversed/a
MC GHEE	TIMOTHY	44	25	01/29/2009	01/09/2009	10/14/1997	Los Angeles	No Action
						11/09/2001	Los Angeles	No Action
						06/03/2000	Los Angeles	No Action
MCKINNON	GRANDALL	49	26	03/11/1999	03/05/1999	01/04/1994	Riverside	No Action
MCKINZIE	KENNETH	58	41	09/02/1999	08/26/1999	12/21/1999	Ventura	Affirmed
MCKNIGHT	ANTHONY	63	31	11/17/2008	11/17/2008	09/16/1985	Alameda	No Action
MCPETERS	RONALD	58	27	05/20/1986	05/07/1986	02/05/1986	Fresno	Affirmed
MCWHORTER	RICHARD	68	46	03/04/1998	02/26/1998	09/11/1995	Kern	No Action
MEJORADO	JOSE	38	26	09/08/2010	09/01/2010	04/24/2005	Los Angeles	No Action
MELENDEZ	ANGELO	59	43	08/18/2003	08/18/2003	12/13/2000	San Joaquin	No Action
MELTON	JAMES	65	30	03/30/1983	03/18/1983	10/10/1981	Orange	Affirmed
MEMRO	HAROLD	72	34	07/29/1987	07/17/1987	10/22/1978	Los Angeles	Affirmed
MELENDEZ	JULIAN	39	22	12/02/2004	11/14/2004	02/04/2000	Los Angeles	No Action
MENDOZA	MANUEL	53	22	01/11/1989	01/06/1989	02/07/1986	Los Angeles	Affirmed
MENDOZA	MARTIN	54	33	01/02/1998	12/23/1997	01/25/1996	Santa Barbara	Affirmed

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure) Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
MENDOZA	RONALD	43	22	10/29/1997	10/27/1997	05/11/1996	Los Angeles	No Action
MENDOZA	HUBER	53	38	06/09/2006	04/24/2006	12/12/2001	Stanislaus	No Action
MENDOZA	LUIS	41	24	09/19/2008	09/10/2008	07/09/2000	San Bernardino	No Action
MENDOZA	ANGEL	43	34	01/22/2014	01/17/2014	03/31/2008	Los Angeles	No Action
MERCADO	JOSEPH	33	26	02/03/2016	01/29/2016	05/06/2010	Los Angeles	No Action
MERRIMAN	JUSTIN	45	22	05/03/2001	05/01/2001	10/01/1994	Ventura	No Action
MEZA	HERACLIO	28	20	02/08/2017	02/02/2017	07/16/2009	Los Angeles	No Action
MICHAELS	KURT	51	22	08/03/1990	07/31/1990	10/22/1987	San Diego	Affirmed
MICHAUD	MICHELLE	58	39	09/26/2002	09/25/2002	11/03/1997	Alameda	No Action
MICKEL	ANDREW	38	24	04/28/2005	04/27/2005	11/19/2002	Colusa	No Action
MICKEY	DOUGLAS	68	31	09/29/1983	09/23/1983	09/28/1980	San Mateo	Affirmed
MICKLE	DENNY	62	28	04/17/1986	04/17/1986	02/24/1983	San Mateo	Affirmed
MILES	JOHNNY	29	25	02/18/2000	02/08/2000	02/04/1992	San Bernardino	No Action
MILLER	TYRONE	29	21	07/29/2013	07/19/2013	10/15/2008	Riverside	No Action
MILLS	JEFFERY	45	22	03/17/1997	03/10/1997	02/11/1994	Sacramento	No Action
MILLS	DAVID	46	34	11/02/2012	11/02/2012	05/10/2005	Alameda	No Action
MILLSAP	BRUCE	51	30	03/01/2000	02/23/2000	11/15/1995	Los Angeles	No Action
MILLWEE	DONALD	64	33	03/28/1990	03/21/1990	09/06/1986	Riverside	Affirmed
MINCEY	BRIAN	58	25	06/20/1985	06/14/1985	12/23/1983	San Bernardino	Affirmed
MIRACLE	JOSHUA	38	25	02/01/2006	01/24/2006	10/03/2004	Santa Barbara	No Action
MIRANDA-GUERRERO	VICTOR	38	21	08/11/2003	08/04/2003	11/27/1999	Orange	No Action
MITCHELL	LOUIS	47	35	10/13/2006	10/04/2006	08/08/2005	San Bernardino	No Action
MOLANO	CARL	61	39	02/29/2008	01/04/2008	06/16/1995	Alameda	No Action
MONTEROSO	CHRISTIAN	46	21	08/18/1993	08/12/1993	11/21/1991	Orange	Affirmed
MONTES	JOSEPH	43	20	03/20/1997	03/18/1997	08/27/1994	Riverside	No Action

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure) Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
MONTIEL	RICHARD	69	31	11/27/1979	11/20/1979	01/13/1979	Kern	Affirmed
MOON	RICHARD	50	23	05/15/1991	05/09/1991	06/15/1990	Los Angeles	Affirmed
MOORE	CHARLES	62	23	05/23/1984	05/16/1984	12/01/1977	Los Angeles	Affirmed
MOORE	RONALD	67	48	08/16/1999	08/16/1999	03/04/1998	Monterey	No Action
MOORE	RYAN	44	33	04/02/2012	03/23/2012	06/30/2006	Los Angeles	No Action
MORA	JOSEPH	42	22	06/09/1999	05/27/1999	08/24/1997	Los Angeles	No Action
MORALES	MICHAEL	57	21	06/30/1983	06/14/1983	01/08/1981	Ventura	Affirmed
MORALES	ALFONSO	38	23	08/29/2005	08/23/2005	07/12/2002	Los Angeles	No Action
MORALES	JOHNNY	43	27	09/15/2005	09/12/2005	06/09/2017	San Bernardino	No Action
MORELOS	VALDAMIR	57	33	02/26/1996	02/21/1996	10/19/1992	Santa Clara	No Action
MORGAN	EDWARD	52	29	07/29/1996	07/19/1996	05/20/1994	Orange	Affirmed
MORRISON	ALLEN	49	21	11/10/2008	10/30/1991	05/11/1989	Los Angeles	Affirmed
MOSLEY	BARRY	58	41	04/14/1997	10/30/2008	06/08/2000	Los Angeles	No Action
MUNGA	JOHNNY	66	37	04/14/1997	04/07/1997	04/12/1994	Riverside	Affirmed
MURTAZA	IFTEKHAR	33	23	03/13/2015	03/03/2015	05/21/2007	Orange	No Action
MYLES	JOHN	46	25	05/01/2001	04/23/2001	04/11/1996	San Bernardino	No Action
NADEY	GILES	51	30	04/12/2000	04/12/2000	01/18/1996	Alameda	No Action
NAKAHARA	EVAN	48	20	11/14/1990	11/06/1990	07/11/1989	Los Angeles	Affirmed
NARINE	NARESH	45	37	05/06/2015	05/01/2015	05/11/2009	Riverside	No Action
NASO	JOSEPH	83	43	11/26/2013	11/22/2013	01/11/1977	Marin	No Action
NAVARETTE	MARTIN	52	25	08/21/1991	08/14/1991	12/05/1989	Los Angeles	Affirmed
NAVARRO	ANTHONY	50	35	07/21/2008	07/11/2008	10/02/2002	Orange	No Action
NEALY	EDDIE	60	28	12/21/2015	12/04/2015	08/15/1985	Fresno	No Action
NELSON	BERNARD	48	26	01/19/2000	01/10/2000	04/05/1995	Los Angeles	No Action
NELSON	SERGIO	43	19	09/18/1995	09/09/1995	10/02/1993	Los Angeles	No Action
NELSON	TANYA	53	41	05/03/2010	03/26/2010	04/21/2005	Orange	No Action

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure) Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
NEWBORN	LORENZO	47	24	01/29/1997	01/21/1997	10/31/1993	Los Angeles	No Action
NG	CHARLES	56	23	06/30/1999	06/30/1999	07/25/1984	Orange	No Action
NGUYEN	LAM	42	20	02/03/1999	01/28/1999	02/05/1995	Orange	No Action
NIEVES	SANDI	53	34	10/17/2000	10/06/2000	07/01/1998	Los Angeles	No Action
NISSENSOHN	JOSEPH	66	38	06/20/2014	06/05/2014	08/09/1989	El Dorado	No Action
						06/25/1981	El Dorado	No Action
NOGUERA	WILLIAM	53	19	02/04/1988	01/29/1988	04/24/1983	Orange	Affirmed
NOWLIN	KENNETH	37	29	07/26/2013	07/22/2013	05/11/2009	Kern	No Action
NUNEZ	DANIEL	41	23	09/25/2000	09/19/2000	10/29/1998	Los Angeles	No Action
OMALLEY	JAMES	58	27	11/26/1991	11/21/1991	04/25/1986	Santa Clara	No Action
OCHOA	LESTER	56	26	03/29/1989	03/20/1989	06/18/1987	Los Angeles	Affirmed
OCHOA	SERGIO	49	22	08/12/1992	12/10/1992	01/03/1990	Los Angeles	Affirmed
ODLE	JAMES	68	34	08/12/1983	08/12/1983	05/03/1980	Contra Costa	Affirmed
OLIVER	ANTHONY	55	27	05/31/1993	05/21/1993	07/21/1989	Los Angeles	Affirmed
OROSCO	JOSE	39	27	05/14/2007	05/03/2007	06/24/2005	Los Angeles	No Action
OSBAND	LANCE	51	20	04/27/1988	04/08/1988	10/05/1985	Sacramento	Affirmed
OYLER	RAYMOND	47	36	06/11/2009	06/05/2009	05/16/2006	Riverside	No Action
PAN	SAMBRETH	41	19	03/20/2002	03/13/2002	07/27/1995	Los Angeles	No Action
PANAH	HOOMAN	46	23	03/20/1995	03/06/1995	11/20/1993	Los Angeles	Affirmed
PANIAGUA	RODRIGO	40	29	12/17/2010	12/16/2010	10/10/2005	Santa Clara	No Action
PARKER	CALVIN	48	31	03/04/2003	02/24/2003	08/12/2000	San Diego	No Action
PARKER	GERALD	62	24	01/28/1999	01/21/1999	12/01/1978	Orange	No Action
PASASOUK	KA	36	32	02/11/2016	02/05/2016	12/02/2012	Los Angeles	No Action
PAYTON	WILLIAM	63	26	03/10/1982	03/05/1982	05/26/1980	Orange	Affirmed
PEARSON	MICHAEL	59	37	12/27/1996	12/18/1996	04/25/1995	Contra Costa	Affirmed
PEARSON	KEVIN	47	29	12/01/2003	11/19/2003	12/29/1998	Los Angeles	Affirmed

*cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017*

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure) Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
PENSINGER	BRETT	55	19	09/28/1982	09/20/1982	08/04/1981	San Bernardino	Affirmed
PENUELAS	JESUS	34	20	08/18/2008	08/08/2008	08/15/2003	Riverside	No Action
PENUNURI	RICHARD	39	20	02/07/2001	02/01/2001	01/15/1998	Los Angeles	No Action
PEOPLES	LOUIS	55	36	08/04/2000	08/04/2000	10/29/1997	Alameda	No Action
PEREZ	JOSEPH	46	27	01/25/2002	01/25/2002	03/24/1998	Contra Costa	No Action
PEREZ	CHRISTIAN	30	19	05/08/2013	04/26/2013	11/16/2005	Los Angeles	No Action
PEREZ	JOHN	51	43	07/22/2013	07/17/2013	06/20/2009	Los Angeles	No Action
PERRY	CLETON	48	26	07/26/1996	07/26/1996	07/09/1995	Kings	Affirmed
PETERSON	SCOTT	44	30	03/17/2005	03/16/2005	12/24/2002	San Mateo	No Action
PHILLIPS	RICHARD	68	29	02/20/1980	02/20/1980	12/07/1977	Madera	Affirmed
PINEDA	SANTIAGO	36	21	02/28/2007	02/21/2007	03/07/2002	Los Angeles	No Action
			23			04/20/2004	Los Angeles	No Action
PINHOLSTER	SCOTT	58	23	06/13/1984	06/04/1984	01/09/1982	Los Angeles	Affirmed
PLATA	NOEL	42	21	08/26/2008	08/15/2008	11/09/1995	Orange	No Action
			33			09/16/2008	Orange	No Action
POLLOCK	MILTON	49	21	06/10/1994	06/10/1994	09/04/1989	Alameda	Affirmed
POORE	CHRISTOPHER	48	31	02/28/2002	02/20/2002	11/08/1999	Riverside	No Action
POPS	ASWAD	46	27	04/17/2000	04/07/2000	01/25/1998	Los Angeles	No Action
POTTS	THOMAS	69	49	07/29/1998	07/23/1998	08/04/1997	Kings	No Action
POWELL	CARL	44	20	11/29/1994	11/10/1994	01/19/1993	Sacramento	No Action
POWELL	TROY	49	33	10/05/2005	09/23/2005	11/12/2000	Los Angeles	No Action
PRICE	CURTIS	70	36	07/10/1986	07/10/1986	02/19/1983	Humboldt	Affirmed
PRINCE	CLEOPHUS	50	23	11/12/1993	11/05/1993	01/12/1990	San Diego	Affirmed
PROCTOR	WILLIAM	55	20	07/08/1983	06/28/1983	04/21/1982	Sacramento	Affirmed
RALEY	DAVID	55	23	05/24/1988	05/17/1988	02/02/1985	Santa Clara	Affirmed
RAMIREZ	JUAN	41	22	07/23/2001	07/20/2001	10/14/1997	Kern	No Action

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017



**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure) Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
RAMIREZ	RICHARD	58	25	08/15/1985	02/06/2015	11/21/1983	Orange	Resentence
RAMIREZ	IRVING	35	23	08/03/2007	08/03/2007	07/25/2005	Alameda	No Action
RAMOS	WILLIAM	65	39	01/11/1993	01/08/1993	03/07/1991	Contra Costa	Affirmed
RANGEL	RUBEN	42	22	06/09/1999	05/27/1999	08/24/1997	Los Angeles	No Action
RANGEL	PEDRO	60	39	02/17/1999	02/08/1999	10/07/1995	Madera	No Action
REDD	STEPHEN	72	49	03/10/1997	02/28/1997	03/13/1994	Orange	No Action
REED	ENNIS	44	23	10/13/1999	09/29/1999	09/24/1996	Los Angeles	No Action
REED	DAVID	57	44	11/16/2011	10/31/2011	03/09/2004	Riverside	No Action
REILLY	MARK	59	23	02/09/1984	02/01/1984	05/12/1981	Los Angeles	Affirmed
RHOADES	ROBERT	64	43	09/15/1999	09/10/1999	05/16/1996	Sacramento	No Action
RHOADES	CHERIE	47	44	04/20/2017	04/10/2017	02/20/2014	Modoc	No Action
RICES	JEAN	36	19	08/27/2009	08/21/2009	02/16/2000	San Diego	No Action
RICHARDSON	JASON	48	36	12/06/2011	11/30/2011	02/09/2007	Orange	No Action
RIEL	CHARLES	55	25	10/25/1988	10/14/1988	11/03/1986	Shasta	Affirmed
RIGGS	BILLY	70	43	11/15/1994	10/28/1994	04/16/1990	Riverside	Affirmed
RIVERA	CUITLATUAC	35	22	07/09/2007	06/21/2007	04/15/2004	Merced	No Action
RIVERA	SAMUEL	31	19	07/03/2009	06/18/2009	11/16/2004	Tulare	No Action
ROBBINS	MALCOLM	57	20	05/13/1983	05/12/1983	06/15/1980	Santa Barbara	Affirmed
ROBERTS	LARRY	64	18	05/27/1983	05/27/1983	07/07/1971	Solano	Affirmed
ROBINSON	JAMES	48	22	06/27/1994	06/17/1994	06/30/1991	Los Angeles	Affirmed
RODRIGUEZ	JERRY	44	21	03/01/1996	02/21/1996	05/14/1994	Fresno	No Action
RODRIGUEZ	ANGELINA	49	32	01/22/2004	01/12/2004	09/09/2000	Los Angeles	No Action
RODRIGUEZ	ANTONIO	36	24	09/13/2010	09/02/2010	11/12/2004	Los Angeles	No Action
RODRIGUEZ	LUIS	33	23	09/30/2015	09/21/2015	07/28/2007	Los Angeles	No Action
ROGERS	DAVID	70	40	05/04/1988	05/02/1988	02/08/1987	Kern	Affirmed

cited in Kirkpatrick v. Chappell, No. 14-29001 archived on October 4, 2017

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure) Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
ROGERS	GLEN	55	33	07/16/1999	07/16/1999	09/29/1995	Los Angeles	No Action
ROGERS	RAMON	57	36	09/17/1997	06/30/1997	02/17/1996	San Diego	No Action
ROLDAN	RICARDO	46	19	01/11/1993	12/29/1992	06/03/1990	Los Angeles	Affirmed
ROMERO	GERARDO	42	20	06/01/1998	05/22/1998	10/09/1994	Los Angeles	Affirmed
ROMERO	ORLANDO	46	22	09/04/1996	08/28/1996	10/12/1992	Riverside	No Action
RONQUILLO	GABRIEL	29	11	03/21/2012	03/15/2012	06/20/1999	Los Angeles	No Action
ROSS	CRAIG	58	22	12/20/1982	12/10/1982	12/27/1980	Los Angeles	Affirmed
ROTTIERS	BROOKE	37	26	10/27/2010	10/22/2010	08/28/2006	Riverside	No Action
ROUNTREE	CHARLES	45	22	08/14/1995	08/11/1995	12/09/1993	Kern	No Action
ROWLAND	GUY	55	24	06/29/1988	06/29/1988	03/17/1986	San Mateo	Affirmed
ROYBAL	RUDOLPH	61	33	10/29/1992	10/20/1992	06/10/1989	San Diego	Affirmed
RUIZ	RUDY	38	30	07/22/2013	07/17/2013	06/27/2009	Los Angeles	No Action
RUNDLE	DAVID	52	21	09/21/1989	09/21/1989	09/07/1986	Placer	Affirmed
SALAZAR	MAGDALENO	43	19	03/22/1999	02/12/1999	07/25/1993	Los Angeles	No Action
SALCIDO	RAMON	56	28	12/17/1990	12/17/1990	04/14/1989	San Mateo	Affirmed
SAMAYOA	RICHARD	64	33	07/02/1988	06/28/1988	12/18/1985	San Diego	Affirmed
SAMUELS	MARY	70	42	09/22/1994	09/16/1994	06/27/1989	Los Angeles	Affirmed
SAN NICOLAS	RODNEY	63	36	09/03/1992	08/31/1992	05/06/1990	Stanislaus	Affirmed
SANCHEZ	JUAN	53	33	04/11/2000	03/31/2000	08/04/1997	Tulare	No Action
SANCHEZ	TEDDY	54	24	11/07/1988	10/31/1988	02/02/1987	Kern	Affirmed
SANCHEZ	VINCENT	47	31	11/12/2003	11/04/2003	07/05/2001	Ventura	No Action
SANCHEZ-FUENTES	GILBERT	56	41	01/19/2017	12/28/2016	10/19/2001	San Bernardino	No Action
SANDERS	EDGARDO	47	22	03/15/1995	01/20/1995	12/31/1991	Los Angeles	No Action
SANDERS	RICARDO	62	26	12/13/1982	12/03/1982	12/14/1980	Los Angeles	Affirmed
SANDERS	RONALD	65	29	03/11/1982	03/03/1982	01/23/1981	Kern	Affirmed
SANDOVAL	RAMON	36	19	05/19/2003	05/09/2003	04/29/2000	Los Angeles	No Action

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure) Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
SAPP	JOHN	64	32	10/22/1991	06/21/1991	08/15/1985	Contra Costa	Affirmed
SARINANA	CATHY	41	30	07/09/2009	06/26/2009	12/26/2005	Riverside	No Action
SARINANA	RAUL	50	39	07/09/2009	07/02/2009	12/26/2005	Riverside	No Action
SATELE	WILLIAM	38	20	09/25/2000	09/14/2000	10/29/1998	Los Angeles	No Action
SATTEWHITE	CHRISTOPHER	48	23	04/28/1994	04/25/1994	01/05/1992	Ventura	No Action
SCHMECK	MARK	60	29	04/05/1990	04/05/1990	05/30/1986	Alameda	Affirmed
SCHULTZ	MICHAEL	48	24	04/01/2003	03/26/2003	08/04/1993	Ventura	No Action
SCOTT	DAVID	46	21	03/27/1998	03/19/1998	09/13/1992	Riverside	No Action
SCOTT	JAMES	54	23	05/24/1989	05/18/1989	04/22/1987	Los Angeles	Affirmed
SCOTT	ROYCE	59	39	09/25/1997	09/17/1997	07/10/1997	Riverside	No Action
SCULLY	ROBERT	59	37	06/13/1997	06/13/1997	07/11/1995	Sonoma	No Action
SELF	CHRISTOPHER	43	19	09/04/1996	08/28/1996	10/12/1992	Riverside	No Action
SERNA	HERMINIO	51	25	11/26/1997	11/21/1997	08/28/1991	Santa Clara	No Action
SEUMANU	ROPATI	44	23	12/12/2000	12/12/2000	05/17/1996	Alameda	No Action
SHELDON	JEFFREY	55	21	12/20/1985	12/19/1985	09/11/1983	Riverside	Affirmed
SHERMANTINE	WESLEY	51	33	05/18/2001	05/16/2001	11/14/1998	Santa Clara	No Action
SHORTS	DONALD	35	23	12/08/2010	08/09/2007	04/23/2005	Los Angeles	No Action
SHOVE III	THEODORE	75	59	03/24/2008	03/13/2008	09/19/2001	Los Angeles	No Action
SILVA	MAURICIO	57	24	08/22/1986	08/11/1986	05/22/1984	Los Angeles	Reversed/la
SILVERIA	DANIEL	47	27	06/19/1997	06/13/1997	01/28/1997	Santa Clara	No Action
SIMON	RICHARD	50	29	11/08/2001	11/02/2001	12/03/1995	Riverside	No Action
SIMS	MITCHELL	57	26	09/21/1987	09/11/1987	12/09/1985	Los Angeles	Affirmed
SIVONGXXAY	VAENE	53	33	05/07/1999	04/29/1999	12/14/1996	Fresno	No Action
SLAUGHTER	MICHAEL	47	20	12/05/1991	11/27/1991	01/24/1990	Stanislaus	Affirmed
SMITH	FLOYD	50	28	10/24/1997	12/14/1997	11/27/1994	San Bernardino	No Action
SMITH	GREGORY	49	22	04/09/1992	04/03/1992	03/23/1990	Ventura	Affirmed

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure) Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
SMITH <input type="checkbox"/>	DONALD <input type="checkbox"/>	59 <input type="checkbox"/>	30 <input type="checkbox"/>	10/30/1995 <input type="checkbox"/>	10/19/1995 <input type="checkbox"/>	08/28/1988 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
SMITH <input type="checkbox"/>	ROBERT <input type="checkbox"/>	47 <input type="checkbox"/>	21 <input type="checkbox"/>	09/30/1993 <input type="checkbox"/>	09/24/1993 <input type="checkbox"/>	09/30/1991 <input type="checkbox"/>	Contra Costa <input type="checkbox"/>	Affirmed <input type="checkbox"/>
SMITH <input type="checkbox"/>	GREGORY <input type="checkbox"/>	55 <input type="checkbox"/>	27 <input type="checkbox"/>	08/24/1992 <input type="checkbox"/>	08/14/1992 <input type="checkbox"/>	06/16/1989 <input type="checkbox"/>	Santa Clara <input type="checkbox"/>	Affirmed <input type="checkbox"/>
SMITH <input type="checkbox"/>	CHARLES <input type="checkbox"/>	48 <input type="checkbox"/>	37 <input type="checkbox"/>	09/06/2013 <input type="checkbox"/>	09/06/2013 <input type="checkbox"/>	06/30/2006 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
SNOW <input type="checkbox"/>	PRENTICE <input type="checkbox"/>	65 <input type="checkbox"/>	29 <input type="checkbox"/>	09/06/1982 <input type="checkbox"/>	08/31/1982 <input type="checkbox"/>	11/03/1980 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	Affirmed <input type="checkbox"/>
SNYDER <input type="checkbox"/>	JANEEN <input type="checkbox"/>	38 <input type="checkbox"/>	22 <input type="checkbox"/>	09/13/2006 <input type="checkbox"/>	09/07/2006 <input type="checkbox"/>	04/17/2001 <input type="checkbox"/>	Riverside <input type="checkbox"/>	No Action <input type="checkbox"/>
SOLIZ <input type="checkbox"/>	MICHAEL <input type="checkbox"/>	43 <input type="checkbox"/>	22 <input type="checkbox"/>	12/23/1998 <input type="checkbox"/>	12/18/1998 <input type="checkbox"/>	04/14/1996 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	No Action <input type="checkbox"/>
SOLOMON <input type="checkbox"/>	MORRIS <input type="checkbox"/>	73 <input type="checkbox"/>	43 <input type="checkbox"/>	09/23/1992 <input type="checkbox"/>	09/16/1992 <input type="checkbox"/>	12/29/1986 <input type="checkbox"/>	Sacramento <input type="checkbox"/>	No Action <input type="checkbox"/>
SOUZA <input type="checkbox"/>	MATTHEW <input type="checkbox"/>	42 <input type="checkbox"/>	19 <input type="checkbox"/>	02/19/1999 <input type="checkbox"/>	02/19/1999 <input type="checkbox"/>	12/18/1993 <input type="checkbox"/>	Alameda <input type="checkbox"/>	Affirmed <input type="checkbox"/>
SPENCER <input type="checkbox"/>	CHRISTOPHER <input type="checkbox"/>	48 <input type="checkbox"/>	22 <input type="checkbox"/>	11/08/1996 <input type="checkbox"/>	11/07/1996 <input type="checkbox"/>	01/28/1991 <input type="checkbox"/>	Santa Clara <input type="checkbox"/>	No Action <input type="checkbox"/>
STANKEWITZ <input type="checkbox"/>	DOUGLAS <input type="checkbox"/>	59 <input type="checkbox"/>	20 <input type="checkbox"/>	10/13/1978 <input type="checkbox"/>	10/12/1978 <input type="checkbox"/>	02/08/1978 <input type="checkbox"/>	Fresno <input type="checkbox"/>	Affirmed <input type="checkbox"/>
STANLEY <input type="checkbox"/>	DARREN <input type="checkbox"/>	50 <input type="checkbox"/>	22 <input type="checkbox"/>	02/08/1984 <input type="checkbox"/>	02/07/1984 <input type="checkbox"/>	08/11/1980 <input type="checkbox"/>	Butte <input type="checkbox"/>	Affirmed <input type="checkbox"/>
STANLEY <input type="checkbox"/>	GERALD <input type="checkbox"/>	72 <input type="checkbox"/>	35 <input type="checkbox"/>	01/22/1992 <input type="checkbox"/>	01/16/1992 <input type="checkbox"/>	10/12/1990 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	Affirmed <input type="checkbox"/>
STATEN <input type="checkbox"/>	DEONDRE <input type="checkbox"/>	56 <input type="checkbox"/>	38 <input type="checkbox"/>	12/12/2002 <input type="checkbox"/>	12/12/2002 <input type="checkbox"/>	02/15/1999 <input type="checkbox"/>	Santa Clara <input type="checkbox"/>	No Action <input type="checkbox"/>
STAYNER <input type="checkbox"/>	CARY <input type="checkbox"/>	56 <input type="checkbox"/>	35 <input type="checkbox"/>	02/11/2004 <input type="checkbox"/>	02/06/2004 <input type="checkbox"/>	06/12/1999 <input type="checkbox"/>	Orange <input type="checkbox"/>	No Action <input type="checkbox"/>
STESKAL <input type="checkbox"/>	MAURICE <input type="checkbox"/>	48 <input type="checkbox"/>	20 <input type="checkbox"/>	07/30/1993 <input type="checkbox"/>	07/30/1993 <input type="checkbox"/>	04/03/1989 <input type="checkbox"/>	Alameda <input type="checkbox"/>	Affirmed <input type="checkbox"/>
STEVENS <input type="checkbox"/>	CHARLES <input type="checkbox"/>	69 <input type="checkbox"/>	42 <input type="checkbox"/>	09/23/1992 <input type="checkbox"/>	09/14/1992 <input type="checkbox"/>	01/19/1990 <input type="checkbox"/>	Los Angeles <input type="checkbox"/>	Affirmed <input type="checkbox"/>
STITELY <input type="checkbox"/>	RICHARD <input type="checkbox"/>	58 <input type="checkbox"/>	38 <input type="checkbox"/>	04/09/1999 <input type="checkbox"/>	04/01/1999 <input type="checkbox"/>	04/27/1997 <input type="checkbox"/>	San Bernardino <input type="checkbox"/>	Affirmed <input type="checkbox"/>
STREETER <input type="checkbox"/>	HOWARD <input type="checkbox"/>	50 <input type="checkbox"/>	35 <input type="checkbox"/>	03/18/2002 <input type="checkbox"/>	03/08/2002 <input type="checkbox"/>	07/12/2002 <input type="checkbox"/>	Napa <input type="checkbox"/>	No Action <input type="checkbox"/>
SUAREZ <input type="checkbox"/>	ARTURO <input type="checkbox"/>	67 <input type="checkbox"/>	39 <input type="checkbox"/>	11/01/1995 <input type="checkbox"/>	10/26/1995 <input type="checkbox"/>	06/28/1989 <input type="checkbox"/>	Riverside <input type="checkbox"/>	No Action <input type="checkbox"/>
SULLY <input type="checkbox"/>	ANTHONY <input type="checkbox"/>	73 <input type="checkbox"/>	39 <input type="checkbox"/>	07/15/1986 <input type="checkbox"/>	07/15/1986 <input type="checkbox"/>	02/07/1983 <input type="checkbox"/>	San Mateo <input type="checkbox"/>	Affirmed <input type="checkbox"/>
SYKES <input type="checkbox"/>	KESAUN <input type="checkbox"/>	30 <input type="checkbox"/>	22 <input type="checkbox"/>	11/17/2014 <input type="checkbox"/>	11/07/2014 <input type="checkbox"/>	10/15/2008 <input type="checkbox"/>	Riverside <input type="checkbox"/>	No Action <input type="checkbox"/>
TAFOYA <input type="checkbox"/>	IGNACIO <input type="checkbox"/>	57 <input type="checkbox"/>	33 <input type="checkbox"/>	06/15/1995 <input type="checkbox"/>	06/06/1995 <input type="checkbox"/>	05/04/1993 <input type="checkbox"/>	Orange <input type="checkbox"/>	Affirmed <input type="checkbox"/>
TATE <input type="checkbox"/>	GREGORY <input type="checkbox"/>	50 <input type="checkbox"/>	21 <input type="checkbox"/>	03/05/1993 <input type="checkbox"/>	03/05/1993 <input type="checkbox"/>	04/19/1988 <input type="checkbox"/>	Alameda <input type="checkbox"/>	No Action <input type="checkbox"/>
TAYLOR <input type="checkbox"/>	BRANDON <input type="checkbox"/>	44 <input type="checkbox"/>	22 <input type="checkbox"/>	07/02/1997 <input type="checkbox"/>	11/13/1996 <input type="checkbox"/>	06/23/1995 <input type="checkbox"/>	San Diego <input type="checkbox"/>	No Action <input type="checkbox"/>

*cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017*

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure) Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
TAYLOR	FREDDIE	57	25	06/05/1986	05/30/1986	01/22/1985	Contra Costa	Affirmed
TAYLOR	KEITH	49	28	06/13/1996	06/05/1996	09/02/1996	San Bernardino	No Action
TAYLOR	ROBERT	63	34	02/04/1992	01/30/1992	07/10/1988	Orange	Affirmed
THOMAS	ALEX	55	35	12/07/2000	11/29/2000	05/16/1997	Sonoma	No Action
THOMAS	CORRELL	43	22	10/13/1999	10/07/1999	05/18/1996	San Diego	No Action
THOMAS	KEITH	44	20	01/16/1998	01/16/1998	12/08/1992	Alameda	Affirmed
THOMAS	REGIS	47	22	08/28/1995	08/15/1995	01/31/1992	Los Angeles	No Action
THOMAS	JUSTIN	45	20	03/08/2008	03/12/2008	09/15/1992	Riverside	No Action
THOMAS	HILBERT	46	38	06/20/2014	06/13/2014	02/22/2017	Orange	No Action
THOMAS	MICHAEL	52	46	10/05/2016	09/30/2016	08/13/2011	Los Angeles	No Action
THOMPSON	JAMES	66	39	06/18/1993	06/10/1993	06/14/1990	Los Angeles	No Action
THOMPSON	CATHERINE	69	43	04/17/2014	04/04/2014	07/31/2006	San Bernardino	No Action
THORNTON	JOHN	43	19	05/17/1995	05/15/1995	09/14/1993	Ventura	Affirmed
THORNTON	MARK	61	45	09/13/2006	09/07/2006	04/17/2001	Riverside	No Action
THREATS	DERLYN	36	24	08/26/2010	08/19/2010	09/01/2005	San Diego	No Action
TOBIN	CHRISTOPHER	55	26	04/25/1990	04/24/1990	03/01/1988	Tulare	No Action
TOPETE	MARCO	45	36	02/07/2012	02/07/2012	06/15/2008	Yolo	No Action
TOWNSEL	ANTHONY	49	21	09/13/1991	09/13/1991	09/23/1989	Madera	No Action
TRAN	RONALD	42	21	08/26/2008	08/15/2008	11/09/1995	Orange	No Action
TRAVIS	JOHN	47	21	06/19/1997	06/13/1997	01/28/1991	Santa Clara	No Action
TRINH	DUNG	61	43	04/21/2003	04/14/2003	09/14/1999	Orange	No Action
TRUJEUQUE	JAMES	65	39	11/26/1997	11/21/1997	11/20/1990	Santa Clara	No Action
TUCKER	JAMAR	36	24	12/08/2010	04/20/2007	04/23/2005	Los Angeles	No Action
TULLAIPA	PAUL	52	22	10/05/1987	09/25/1987	10/06/1986	Los Angeles	Affirmed

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure) Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
TULLY	RICHARD	58	27	12/04/1992	12/04/1992	07/24/1986	Alameda	Affirmed
TURNER	MELVIN	61	23	08/25/1980	08/20/1980	07/11/1979	Los Angeles	Affirmed
TURNER	RICHARD	59	21	04/16/1980	10/19/1988	03/08/1979	San Bernardino	Affirmed
TURNER	CHESTER	50	20	07/25/2007	07/10/2007	03/01/1987	Los Angeles	No Action
VALDEZ	ALFREDO	54	26	06/01/1992	05/22/1992	04/30/1989	Los Angeles	Affirmed
VALDEZ	RICHARD	43	21	06/18/1997	06/11/1997	04/22/1995	Los Angeles	No Action
VALENCIA	ALFREDO	56	33	01/29/1996	01/23/1996	12/15/1993	Orange	Affirmed
VALLE	PEDRO	45	32	11/10/2010	11/09/2010	06/19/2004	Kings	No Action
VANG	RONNIE	36	28	05/12/2014	04/25/2014	06/23/2004	Sacramento	No Action
VARGAS	EDUARDO	41	23	10/22/2001	10/04/2001	04/01/1999	Orange	No Action
VARNER	SCOTT	36	25	04/16/2010	04/13/2010	11/29/2005	Shasta	No Action
VEASLEY	CHAUNCEY	53	27	11/29/1992	01/21/1992	10/12/1990	Los Angeles	Affirmed
VERDUGO	NATHAN	45	23	11/29/1999	01/19/1999	10/23/1994	Los Angeles	No Action
VICTORIANNE	JAVIER	48	23	04/03/2008	03/28/2008	07/28/1999	Riverside	No Action
VIEIRA	RICHARD	42	21	04/02/1992	03/30/1992	05/20/1990	Stanislaus	Affirmed
VILLA	RICARDO	44	18	08/23/2011	08/16/2011	06/27/1993	Ventura	No Action
VINES	SEAN	52	24	11/20/1997	11/07/1997	09/28/1997	Sacramento	No Action
VIRGIL	LESTER	60	28	07/17/1995	06/29/1995	10/24/1992	Los Angeles	No Action
VISCIOTTI	JOHN	45	26	10/26/1983	10/21/1983	11/08/1982	Orange	Affirmed
VO	LOI	32	19	10/25/1995	10/18/1995	01/18/1991	Santa Clara	Affirmed
VOLARVICH	BRENDT	33	21	06/12/2008	05/06/2008	11/17/2005	Yolo	No Action
WADE	ANTHONY	49	26	11/19/2013	11/12/2013	01/10/2010	Orange	No Action
WADLA	TAURO	65	20	03/13/1991	03/08/1991	07/12/1988	Los Angeles	Affirmed
WALDON	BILLY	58	34	03/07/1992	02/28/1992	12/07/1985	San Diego	No Action
WALKER	MARYIN	49	20	09/08/1980	09/08/1980	08/06/1979	Santa Clara	Affirmed
WALL	RANDALL	24	24	02/06/1995	01/30/1995	03/01/1992	San Diego	No Action

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure) Printed Date: 10/03/2017

Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
WALLACE	KEONE	47	21	06/04/1993	05/20/1993	01/21/1991	Fresno	No Action
WALTERS	MICHAEL	42	36	06/25/2013	06/25/2013	10/24/2010	Kings	No Action
WARD	CARMEN	48	19	01/30/1991	01/28/1991	10/04/1987	Los Angeles	Affirmed
WASHINGTON	DARNELL	29	25	01/17/2017	01/13/2017	10/05/2012	Contra Costa	No Action
WATKINS	PAUL	49	22	05/20/1992	05/11/1992	07/17/1990	Los Angeles	No Action
WATSON	PAUL	51	23	12/18/1991	06/27/1991	04/02/1989	Los Angeles	Affirmed
WATTA	BENJAMIN	72	35	01/27/2009	01/20/2009	03/23/1980	Orange	No Action
WEATHERTON	FRED	68	50	05/08/2002	04/30/2002	11/01/1998	Riverside	No Action
WEAVER	LATWON	49	24	06/03/1993	05/28/1993	05/06/1992	San Diego	No Action
WEAVER	WARD	73	37	04/13/1985	04/04/1985	02/05/1981	Kern	Affirmed
WELCH	DAVID	59	29	07/25/1989	07/25/1989	12/07/1986	Alameda	Affirmed
WESSON	MARCUS	71	58	08/22/2005	07/27/2005	03/12/2004	Fresno	No Action
WEST	ERRAN	46	39	07/21/2014	07/18/2014	09/04/2010	Kern	No Action
WESTERFIELD	DAVID	50	50	01/09/2003	01/03/2003	02/02/2002	San Diego	No Action
WHALEN	DANIEL	69	46	07/02/1996	06/24/1996	03/21/1994	Stanislaus	No Action
WHEELER	LEROY	48	19	10/30/1995	10/19/1995	08/28/1988	Los Angeles	No Action
WHISENHUNT	MICHAEL	52	31	10/29/1996	10/21/1996	10/11/1995	San Luis Obispo	Affirmed
WHITESIDE	GREGORY	42	24	11/15/2010	11/05/2010	06/13/1999	San Bernardino	No Action
WILLIAMS	BARRY	55	20	07/21/1986	07/11/1986	03/25/1982	Los Angeles	Affirmed
WILLIAMS	COREY	41	19	11/15/2000	11/15/2000	08/16/1995	Contra Costa	Affirmed
WILLIAMS	DAVID	55	27	10/28/1992	10/20/1992	03/20/1989	Los Angeles	No Action
WILLIAMS	DEXTER	56	30	03/08/1996	02/28/1996	02/18/1991	Fresno	Affirmed
WILLIAMS	GEORGE	54	27	12/23/1992	12/21/1992	01/02/1990	Los Angeles	No Action
WILLIAMS	JACK	42	18	09/08/1998	08/24/1998	05/19/1993	Riverside	No Action
WILLIAMS	BOB	41	19	09/26/1996	09/20/1996	10/28/1994	Kern	Affirmed
WILLIAMS	ROBERTLEE	50	28	09/03/2003	08/29/2003	07/15/1995	Riverside	No Action

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate List (Secure)

Printed Date: 10/03/2017

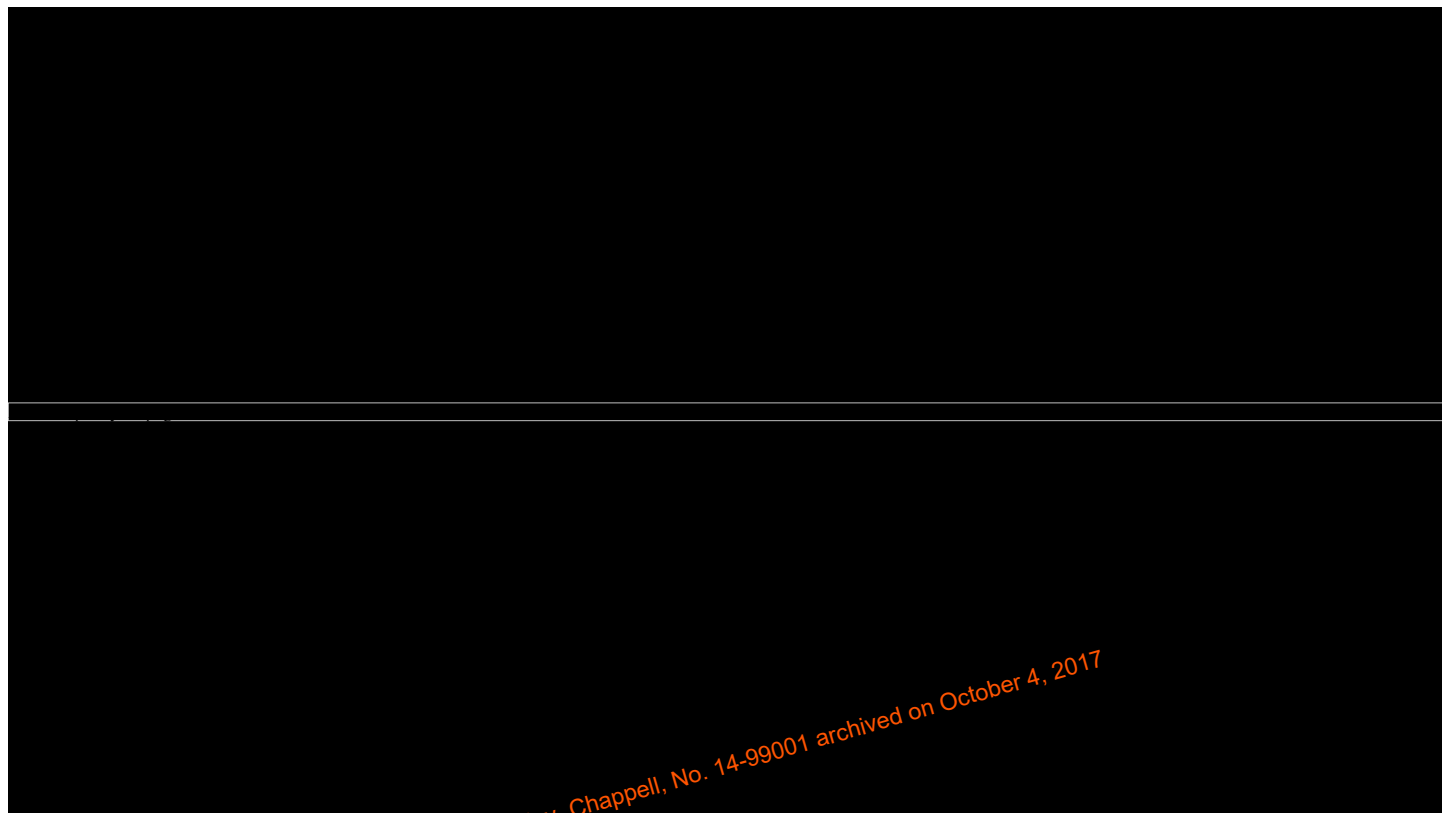
Last Name	First Name	Age	Age at Offense	Received Date	Sentence Date	Offense Date	Trial County	Court Action
WILLIAMS	GEORGE	62	31	03/03/2005	02/24/2005	04/10/1986	San Diego	No Action
WILLIAMS	MANLING	38	28	01/26/2012	01/29/2012	08/08/2007	Los Angeles	No Action
WILLIAMS	DARNELL	26	22	09/21/2016	09/21/2016	07/13/2013	Alameda	No Action
WILSON	ANDRE	46	25	05/11/1998	05/01/1998	07/25/1996	Los Angeles	Affirmed
WILSON	BYRON	40	21	04/17/2000	04/07/2000	01/25/1998	Los Angeles	No Action
WILSON	LESTER	51	31	07/05/2000	06/29/2000	06/08/1997	Riverside	No Action
WILSON	ROBERT	66	33	04/18/1994	04/08/1994	09/05/1984	Los Angeles	Affirmed
WILSON	JAVANCE	43	26	09/05/1993	08/27/2003	02/21/2000	San Bernardino	No Action
WINBUSH	GRAYLAND	40	19	07/11/2003	07/11/2003	12/22/1995	Alameda	No Action
WOODRUFF	STEVE	54	38	04/29/2003	04/17/2003	01/13/2001	Riverside	No Action
WOZNIAK	DANIEL	33	32	10/03/2016	09/23/2016	05/22/2016	Orange	No Action
						05/21/2016	Orange	No Action
WREST	THEODORE	52	22	05/24/1988	05/18/1988	03/06/1987	Santa Barbara	Affirmed
WRIGHT	WILLIAM	48	31	07/10/2002	06/14/2002	03/21/2000	Los Angeles	No Action
WYCOFF	EDWARD	48	37	12/18/2009	12/08/2009	01/31/2006	Contra Costa	No Action
YONKO	TONY	55	41	10/13/2009	09/24/2009	10/22/2002	Riverside	No Action
YOUNG	TIMOTHY	47	25	04/20/2006	04/19/2006	07/18/1995	Tulare	No Action
YOUNG	DONALD	48	26	04/20/2006	05/18/2006	07/18/1995	Tulare	No Action
YOUNG	JEFFREY	43	25	12/01/2006	11/28/2006	07/19/1999	San Diego	No Action
ZAMBRANO	ENRIQUE	73	44	09/08/1993	09/08/1993	01/31/1988	Alameda	Affirmed
ZAMUDIO	SAMUEL	53	32	10/07/1998	10/05/1998	02/11/1996	Los Angeles	Affirmed
ZANON	DAVID	48	38	12/21/2010	12/13/2010	07/31/2007	El Dorado	No Action
ZAPIEN	CONRAD	71	38	04/14/1987	03/23/1987	05/19/1984	Santa Barbara	Affirmed
ZAVALA	FRANCISCO	25	21	12/17/2015	12/04/2015	01/14/2013	Riverside	No Action

cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017

Total Records Printed = 746



# Will ending the death penalty save California more money than speeding up executions?



cited in *Kirkpatrick v. Chappell*, No. 14-99001 archived on October 4, 2017

Alan Toy joins an anti-death penalty protest outside the federal building in downtown Los Angeles in 2010. (Getty Images)

By **Jazmine Ulloa**

NOVEMBER 1, 2016, 10:00 AM | REPORTING FROM SACRAMENTO

**P**ast efforts to repeal the death penalty in California have centered on moral or ethical objections. This year, proponents of [Proposition 62](#), which would replace the punishment with life in prison without parole, are focusing on economics.

Prominent supporters of the measure [have repeatedly pointed out that the state's taxpayers](#) have spent \$5 billion on the executions of only 13 people in almost 40 years. Online ads have urged voters to end a costly system that “wastes” \$150 million a year.

“Sometimes, something is so broken it just can’t be fixed,” a voiceover [says in one commercial](#), as a blue-and-white china vase shatters to the ground.

“Let’s spend that money on programs that are proven to make us safer,” a [crime victim pleads](#) in another.

But as voters weigh two dueling death penalty measures on the Nov. 8 ballot — one to eliminate executions, another to speed them up — researchers are at odds over the actual costs and potential savings of each. Independent legislative analysts, meanwhile, believe Proposition 62 could save taxpayers millions, while concluding that the fiscal impact of [Proposition 66’s](#) attempt to expedite death sentences is unknown.

Death penalty cases are often the most expensive in the criminal justice system because the costs associated with capital punishment trials and the incarceration of death row offenders are vastly higher.

The expenses begin to accrue at the county level. Capital cases require two trials, one to decide the verdict and another the punishment. They require more attorneys, more investigators, more time and experts and a larger jury pool.

The costs grow as the state must pay to incarcerate inmates during a lengthy appeals process: The average cost of imprisoning an offender was

about \$47,000 per year in 2008-09, according to the nonpartisan State Legislative Analyst's office. But housing a death row inmate can lead to an additional \$50,000 to \$90,000 per year, studies have found.

Paula Mitchell, a professor at Loyola Law School who is against the death penalty and has advised the Yes on Prop. 62 campaign, puts the cost of the entire death penalty system since 1978 at about \$5 billion.

That figure, updated from data compiled in a 2011 report, includes 13 executions since the death penalty was reinstated through a 1978 ballot measure; it was suspended in 2006 because of legal challenges over injection protocols. The figure also includes the cost of trials, lengthy appeals and the housing of nearly 750 inmates on California's death row.

The initial study estimated taxpayers spent \$70 million per year on incarceration costs, \$775 million on federal legal challenges to convictions, known as habeas corpus petitions, and \$925 million on automatic appeals and initial legal challenges to death row cases.

Mitchell and other researchers said Proposition 62, which would retroactively apply life sentences to all death row defendants, would save the state most of that money.

"It is sort of a fantasy that this system is ever going to be cost efficient," said Mitchell, who has been named the university's executive director of the Project for the Innocent.

But proponents of Proposition 66 argue the system can be reformed. The ballot measure would designate trial courts to take on initial challenges to convictions and limit successive appeals to within five years of a death sentence. It also would require lawyers who don't take capital cases to represent death row inmates in an attempt to expand the pool of available lawyers.

In an analysis for its proponents, Michael Genest, a former budget director for Gov. Arnold Schwarzenegger, contends such changes would save taxpayers \$30 million annually in the long run. Proposition 62, in comparison, would cost taxpayers more than \$100 million due to this "lost opportunity" over a 10-year period.

But independent researchers with the legislative analyst's office found plenty of factors could increase or reduce the chances of either ballot measure saving taxpayers money.

Overall, they found Proposition 62 was likely to reduce net state and county costs by roughly \$150 million within a few years.

The actual number could be partially offset if, without the death penalty, offenders are less inclined to plead guilty in exchange for a lesser sentence in some murder cases. That could lead to more cases going to trial and higher court costs, according to the legislative analyst's office.

Yet over time, the state could see lower prison expenses, even with a larger and older prison population, since the costs of housing and supervising death row inmates is much higher than paying for their medical bills, analysts said.

"If Prop. 62 goes into effect, they can be housed like life-without-parole inmates, some in single and some double cells," legislative analyst Anita Lee said. "It would fall to [the California Department of Corrections and Rehabilitation] to do an evaluation of risks."

Calculating the fiscal impact of Proposition 66 is much more complicated, the office found, as the measure leaves more open questions on implementation, such as how the state would staff up with additional private attorneys.

### **Silicon Valley is pouring millions into repealing California's death penalty. Will it make a difference? »**

Legislative analysts said the costs in the short term were likely to be higher, as the state would have to process hundreds of pending legal challenges within the new time limits. Just how much is unknown, but the actual number could be in the tens of millions of dollars annually for many years.

Also unknown, analysts said, is the proposition's effect on the cost of each legal challenge. The limits on appeals and new deadlines could cut the expenses if they result in fewer, shorter legal filings that take less time and state resources to process.

But they could increase costs if additional layers of review are required for habeas corpus petitions, the initial legal challenges in criminal cases, and if more lawyers are needed.

Meanwhile, potential prison savings could reach tens of millions of dollars annually, depending on how the state changes the way it houses

condemned inmates. Transferring male inmates to other prisons rather than housing them in single cells at San Quentin could lead to lower costs. But how much depends on how many the state can move.

Mitchell said it was “pretty much delusional” to expect Proposition 66 to ever save the state money. For that to happen, she said, California would have to execute “one person every week, 52 people a year for the next 15 years, assuming they are all guilty.”

But Kent Scheidegger, author of the proposition and legal director of the Criminal Justice Legal Foundation, argued the legislative office’s numbers were skewed, while security costs for dangerous inmates would likely have to remain just as high.

“They don’t become any less dangerous if you change their sentence from death row to life without parole,” he said.

[jazmine.ulloa@latimes.com](mailto:jazmine.ulloa@latimes.com)

[@jazmineulloa](#)

**ALSO:**

[What happens if both death penalty measures are approved by voters on Nov. 8?](#)

[How 'MASH' actor Mike Farrell became a leading voice against the death penalty in California](#)

[In 'No on 62, Yes on 66' campaign ad, murder victim's mother urges California voters to keep the death penalty](#)

[Updates on California politics](#)

Copyright © 2017, Los Angeles Times

Support Quality Journalism  
 Subscribe for only 99¢

**START NOW >**

*cited in Kirkpatrick v. Chappell, No. 14-99001 archived on October 4, 2017*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

WILLIAM KIRKPATRICK, JR.,  
Petitioner,  
v.  
MIKE MARTEL, WARDEN,  
Respondent.

Case No. CV 96-351-WDK  
  
ORDER GRANTING IN PART AND  
DENYING IN PART RESPONDENT'S  
MOTION TO DISMISS  
  
Docket No. 355

**I. INTRODUCTION**

The matter is before the Court on Respondent's renewed motion to dismiss the Petition for writ of Habeas Corpus. The original motion was filed on January 31, 2002, and dismissed without prejudice by order dated March 31, 2004. When Petitioner chose to cease his efforts to accept his sentence and waiver further appeals, this Court entered an order on May 14, 2008, allowing Respondent to renew his motion to dismiss the Petition. Respondent, having filed a reply brief on April 8, 2002, then filed a supplemental brief renewing the motion to dismiss on May 30, 2008. Petitioner had filed an opposition to the original motion on March 11, 2002, and then filed a

1 supplement to that opposition on December 18, 2009. Consideration of the motion was  
2 repeatedly stayed while Petitioner sought a stay of all proceedings under *Rohan ex rel.*  
3 *Gates v. Woodford*, 334 F.3d 803 (9th Cir. 2003). That having been resolved, this Court  
4 informed the parties by order dated April 29, 2010, that the matter was fully briefed and  
5 would be decided following resolution of Petitioner’s interlocutory appeal, which was  
6 denied by the Ninth Circuit on January 11, 2011. This matter having been briefed and  
7 supplemented, the Court deems it appropriate for resolution without oral argument. *See*  
8 L.R. 7-15.

9 **II. BACKGROUND**

10 On June 24, 1998, Petitioner filed his Petition for federal habeas relief in this  
11 Court. On August 3, 1998, Respondent filed a motion to dismiss, alleging that the  
12 Petition should be dismissed because various claims had not been properly exhausted in  
13 state court. On August 31, 1998, this Court ordered Petitioner to withdraw the  
14 unexhausted claims, and stayed proceedings on the Petition pending consideration by the  
15 California Supreme Court of the unexhausted claims. Petitioner withdrew the  
16 unexhausted claims from his federal petition on September 3, 1998, and filed an  
17 exhaustion petition with the California Supreme Court on December 30, 1998.

18 On July 23, 2000, Petitioner sent a letter to the California Supreme Court which  
19 included a handwritten, signed declaration stating, “I do not wish to proceed with my  
20 petition for writ of habeas corpus review in this matter. I wish the sentence and  
21 judgement of execution in *People v. William Kirkpatrick Jr.* . . . to be carried out at this  
22 time.”

23 In response, on September 20, 2000, the Supreme Court of California appointed  
24 Judge Stephen Graham of the Marin County Superior Court “to sit as Referee” in order  
25 to “take evidence and make findings of fact” on whether Petitioner was competent to  
26 withdraw his petition under *Rees v. Payton*, 384 U.S. 312, 314 (1966), and whether  
27 Petitioner had made a knowing, intelligent, and voluntary waiver of his right to proceed.  
28

1 Judge Graham held a series of status conferences, all but one of which the  
2 Petitioner was present; ordered a psychiatric evaluation of Petitioner;<sup>1</sup> and held a four-  
3 day evidentiary hearing in March 2001. However, upon arrival on the first day of the  
4 evidentiary hearing, Petitioner caused a disturbance in the courtroom and had to be  
5 removed. While Judge Graham informed Petitioner that he could still participate in the  
6 proceedings if he behaved, Petitioner declined. Petitioner thereafter refused to attend all  
7 four days of the evidentiary hearing.

8 On July 6, 2001, Judge Graham issued his findings of fact, including a  
9 determination that “[a] preponderance of evidence shows that Mr. William D.  
10 Kirkpatrick, Jr. is not suffering from any mental disease, disorder or defect which may  
11 substantially affect his capacity to appreciate his position and to make a rational choice  
12 with respect to continuing or abandoning further litigation of the petition for writ of  
13 habeas corpus pending in the Supreme Court of California.” In addition, Judge Graham  
14 found that Petitioner’s “request to withdraw the pending petition was made voluntarily,”  
15 but stated that because Petitioner “has knowingly and voluntarily refused to engage in  
16 sufficient discussion with the Referee,” he was unable to determine whether the waiver  
17 was made knowingly and intelligently.<sup>2</sup>

18 In a two-sentence order on September 19, 2001, the Supreme Court of California  
19 adopted Judge Graham’s finding of fact that “petitioner is not suffering from any mental  
20 disease, disorder, or defect that might substantially affect his capacity to appreciate his

---

21 <sup>1</sup> Judge Graham appointed Dr. Diane McEwen, a psychiatrist practicing in  
22 Marin County, to examine Petitioner. Dr. McEwen examined Petitioner for approximately  
23 two and a half hours on November 30, 2000. She completed her report after reviewing a  
24 large number of related materials including Petitioner’s writings, various documents  
25 pertaining to Petitioner’s early history, and the reports of other psychiatrists regarding  
Petitioner.

26 <sup>2</sup> Specifically, Judge Graham concluded that “Mr. Kirkpatrick has knowingly  
27 and voluntarily refused to engage in sufficient discussion with the Referee to permit the  
28 Referee to determine whether his request to withdraw the pending habeas corpus petition  
is made knowingly and intelligently.”

1 position and to make a rational choice with respect to withdrawing the petition.” The  
2 Supreme Court further found specifically “that petitioner has made a knowing,  
3 intelligent, and voluntary waiver of his right to proceed on this petition,” and thus  
4 “grant[ed] petitioner’s request to withdraw this petition.”

5 On December 3, 2001, Petitioner filed an amended petition for federal habeas  
6 relief, which included claims Petitioner had waived before the California Supreme  
7 Court. Respondent filed the instant motion to dismiss in response thereto.

8  
9 **III. DISCUSSION**

10  
11 Respondent moves the Court to dismiss the claims that this Court previously  
12 deemed unexhausted in its August 31, 1998 order, and that Petitioner subsequently  
13 waived before the California Supreme Court. Mot. at 17. Respondent argues that these  
14 claims are unexhausted, because the California Supreme Court never considered their  
15 substantive merits. *Id.* at 16-17. Thus, Respondent contends that this Court is barred  
16 from any review of these claims.<sup>3</sup> *Id.*

17 Petitioner responds that the California Supreme Court erroneously determined that  
18 he had waived his claims set forth in the exhaustion petition, and Petitioner argues that

---

19  
20 <sup>3</sup> Respondent also moves the Court to dismiss claims that this Court had  
21 previously deemed exhausted in its August 31, 1998 order, because every claim in the  
22 amended petition includes a sentence stating that it “incorporates by reference each of the  
23 paragraphs set forth above.” Mot. at 7. Respondent argues that by doing so, Petitioner  
24 “attempts to incorporate within each claim all previous claims in the Amended Petition”  
25 and “thereby adds new legal and factual bases to claims Respondent would otherwise agree  
26 are exhausted.” Mot. at 7; Reply at 33. However, Respondent concedes in his reply that  
27 it “has no desire to relitigate the exhaustion of claims that were first presented to this Court  
28 in Petitioner’s first federal petition,” and further that it is “prepared to begin its response  
to those claims on the merits upon this Court’s order to do so,” if Petitioner proceeds with  
the claims that both parties agree are exhausted. *Id.* at 33-34. The Court **DENIES**  
Respondent’s request to dismiss the claims to the extent that it seeks to dismiss those that  
this Court previously held were exhausted.

1 this decision rendered the claims exhausted. Opp'n at 2. Specifically, Petitioner asserts  
2 that because he "never expressed a desire to waive his petition under oath in the  
3 proceeding before the Referee, there is no basis for the California Supreme Court's  
4 finding that [he] waived his right to proceed on the petition, much less that any such  
5 waiver was knowing, intelligent, and voluntary." *Id.* at 20. Moreover, Petitioner argues  
6 that "the California Supreme Court nowhere cited to any place in the record where the  
7 waiver purportedly occurred," and that the finding of waiver is contradicted by  
8 Petitioner's statements "both to the Court and to Dr. McEwen." *Id.* at 20-21. Petitioner  
9 urges this Court to undertake a *de novo* review to adjudicate the validity of his waiver of  
10 his exhaustion petition.

11 At the outset, the Court notes that the previously unexhausted status of the claims  
12 at issue here is an established fact, having been this Court's ruling of August 31, 1998.  
13 This is "law of the case" and is not subject to a motion for reconsideration or any motion  
14 by Petitioner to add them. Accordingly, lacking any exhaustion by a state court, the  
15 Court finds that these claims should be dismissed. *Rose v. Lundy*, 455 U.S. 509, 522  
16 (1982). Petitioner, however, argues that the claims are exhausted because the California  
17 Supreme Court improperly allowed Petitioner to waive his exhaustion petition.

18 Because the California Supreme Court did not explicitly set forth the reasoning for  
19 its "knowing and intelligent" finding of fact in its decision to grant Petitioner's waiver of  
20 his exhaustion petition, this Court has two choices when examining the Supreme Court's  
21 decision to grant Petitioner's request to waive his claims. First, as Petitioner argues, this  
22 Court could conclude that the California Supreme Court wrongly found waiver, because  
23 the California Supreme Court could not have made its determination that the waiver was  
24 made "knowingly and intelligently" from an independent review of the record. *In short,*  
25 *this Court would have to conclude that the California Supreme Court failed to do its job*  
26 *in making its findings of fact.* Comity and prudence argue against making such a  
27 finding, as do the limitations on this Court's powers under AEDPA.



1 Examining the totality of the circumstances in the record, this Court is compelled  
2 to make the opposite choice and defer to the decision of the California Supreme Court.  
3 Given the significance of the decision and because it took a further analytical step in  
4 addition to the findings of fact made by Judge Graham, this Court concludes that the  
5 California Supreme Court performed an independent review of the record and then came  
6 to its own analytical conclusions. Specifically, it appears that the California Supreme  
7 Court disagreed with Judge Graham’s findings of fact regarding “knowing and  
8 intelligent,” and then independently found a knowing and intelligent waiver in its own  
9 review of the record. The California Supreme Court is not bound by the findings of the  
10 referee it appointed, and may reach different or further conclusions based upon his work.  
11 *See In re Hardy*, 41 Cal. 4th 977, 993-994 (2007) (“Ultimately, the referee’s findings are  
12 not binding on us; it is for this court to make the findings on which the resolution of  
13 [petitioner’s] habeas corpus claim will turn.”) (internal citations omitted).

14 Two recent United States Supreme Court cases interpreting the Antiterrorism and  
15 Effective Death Penalty Act (“AEDPA”) are directly controlling here. First, *Harrington*  
16 *v. Richter*, 131 S.Ct. 770, 784 (2011) applies to Petitioner’s argument that the decision  
17 of the California Supreme Court is not entitled to deference because it was contained in a  
18 summary, “postcard” denial. In considering such denials, the Supreme Court first noted  
19 that “[w]here a state court’s decision is unaccompanied by an explanation, the habeas  
20 Petitioner’s burden still must be met by showing there was no reasonable basis for the  
21 state court to deny relief.” *Harrington*, 131 S.Ct. at 784.<sup>4</sup> This Court’s power to review  
22 the decision of the California Supreme Court is extremely limited: “It bears repeating  
23 that even a strong case for relief does not mean the state court’s contrary conclusion was

---

24  
25 <sup>4</sup> In *Harrington*, the Supreme Court reasoned that, “there is no merit to the assertion  
26 that compliance with § 2254(d) should be excused when state courts issue summary rulings  
27 because applying § 2254(d) in those cases will encourage state courts to withhold  
28 explanations for their decisions. Opinion-writing practices in state courts are influenced  
by considerations other than avoiding scrutiny by collateral attack in federal court.” *Id.*

1 unreasonable. . . . If this standard is difficult to meet, that is because it was meant to be.”  
2 *Harrington*, 131 S. Ct. at 786. The decision of the California Supreme Court cited the  
3 proper standard, that the decision to waive further appeals be “knowing, intelligent, and  
4 voluntary.” Petitioner argues that the failure to set forth specifics or discuss the reasons  
5 why it exceeded Judge Graham’s findings renders the decision arbitrary and unworthy of  
6 deference. Petitioner is mistaken. As stated in *Harrington*, “This Court now holds and  
7 reconfirms that § 2254(d) does not require a state court to give reasons before its  
8 decision can be deemed to have been ‘adjudicated on the merits.’”<sup>5</sup> 131 S.Ct. at 785.  
9 Under AEDPA, the decision of the California Supreme Court must be given deference,  
10 and cannot, as Petitioner wishes, be reviewed *de novo* by this court.

11 More recently, the Supreme Court in *Cullen v. Pinholster*, \_\_\_ S.Ct. \_\_\_, 2011 WL  
12 1225705 (April 4, 2011), reversed a Court in this District that granted relief following an  
13 evidentiary hearing it held to consider more mitigating evidence than had been before  
14 the state courts. The Supreme Court held that review of an adjudication by a state court  
15 had to be “highly deferential,” (slip op. at 7, quoting *Visciotti v. Woodford*, 537 U.S. 19,  
16 24 (2002) (per curiam)), and would be limited to the record before the state court. (slip  
17 op. at 7) The Court noted that Pinholster’s exhaustion petition had been denied by the  
18 California Supreme Court with the explanation that it was done “on the substantive  
19 ground that it is without merit,” and reaffirmed that AEDPA deference applies “even  
20 where there has been [such] a summary denial.” (slip op. at 10) Such deference applies  
21 here.

22 This Court finds no reason to disturb the decision of the state court. The  
23 California Supreme Court did not simply close the matter upon Petitioner’s request to

---

24  
25 <sup>5</sup> *Contra Musladin v. Lamarque*, 555 F.3d 830, 835 (9th Cir. 2009) (“Where the  
26 state court decided an issue on the merits but provided no reasoned decision, we conduct  
27 ‘an independent review of the record . . . to determine whether the state court [was  
28 objectively unreasonable] in its application of controlling federal law.’”) (quoting *Delgado*  
*v. Lewis*, 223 F.3d 976, 982 (9th Cir. 2000)).

1 drop his exhaustion petition. A referee was chosen, hearings were held, and a report was  
2 issued. The California Supreme Court reviewed that report, and, not limited to its  
3 findings, adopted its conclusions and reached others. Nothing in that process appears  
4 arbitrary or unreasonable, and the Court is comfortable with the decision. Nevertheless,  
5 the Court has conducted its own review of the proceedings underpinning the referee's  
6 report and the decision of the California Supreme Court to be certain that there has been  
7 no improper result.

8 In reviewing an adjudication by a state court, this Court cannot reverse that  
9 court's decision unless it "(1) resulted in a decision that was contrary to, or involved an  
10 unreasonable application of, clearly established federal law... or (2) resulted in a decision  
11 that was based on an unreasonable determination of the facts in light of the evidence  
12 presented in the state court proceeding." 28 U.S.C. §2254(d). Bearing this in mind,  
13 this Court has extensively reviewed the record, and concluded that there is evidence to  
14 support the conclusory findings of the California Supreme Court given the deferential  
15 standard of review required. The evidence supporting the California Supreme Court's  
16 findings would include, but is not limited to, the following statements made during  
17 status conferences and in the evidentiary hearing before Judge Graham:

18  
19 Court: "What is it you would like to accomplish at the  
20 bottom line in this process?"

21 Petitioner: "Competency and vacating of the appeal."  
22 10/16/00 Conf., at 18.

23  
24 Respondent: "If he is raising an issue in the state court that's not  
25 previously been exhausted, and you go to federal  
26 court and try to raise it, we can make a claim and  
27 the federal court buys that and says, 'You can't  
28

1 litigate that issue as good as you may think it is.’  
2 It might limit your possibilities of what you can  
3 raise in federal court.”

4 Petitioner: “I understand that my writ for exhaustion is already  
5 filed by the PD’s office.”

6 Respondent: “If you withdraw that, then it won’t have the  
7 impact of doing the exhaustion because it will be  
8 withdrawn. There is a potential that when we go  
9 back to Judge Keller’s courtroom and you  
10 withdraw it, you can’t raise it there again. There is  
11 a possibility he might do that.”

12 Petitioner: “I can appreciate that.”

13 Respondent: “So that means if you say, ‘Gee, I changed my  
14 mind,’ he may say, Mr. Kirkpatrick, sorry, you  
15 can’t raise it.”

16 Petitioner: “You are looking out there, Robert. Thanks.”

17 Respondent: “I am here to do justice. . . . [D]o you understand  
18 what I am trying to communicate?”

19 Petitioner: “Yeah, you are covering your ass.”

20 10/16/00 Conf., at 20-21.

21  
22 Court: “Mr. Kirkpatrick, I know it is only a preliminary  
23 observation, but I can tell you right now based  
24 upon what I have seen here today, I don’t see that  
25 you have any mental or emotional limitations that  
26 would get in the way of your being a perfectly  
27 rational and intelligent participant in the litigation  
28

1 process, and but for the circumstances in which we  
2 find ourselves its been a pleasure to talk to you.”

3 10/16/00 Conf., at 29.

4  
5 Dr. McEwen: “He made it quite plain that he knew why I was  
6 there.”

7 Court: “What did he say to you?”

8 Dr. McEwen: “He recognized that I was coming to talk to him  
9 about all these things that you see. We talked  
10 about coming in to this courtroom and talking to  
11 this Judge, and he talked about you and he talked  
12 about the Attorney General. So it was quite plain  
13 to me that he knew this was in response to some of  
14 his—it was in direct response to some of his  
15 requests in his case . . . .”

16 3/5/01 Evid. Hearing, at 53.

17  
18 Dr. McEwen: “There’s not a clear—it should be obvious that  
19 there’s not a clear step-by-step plan that is  
20 particularly realistic. In the back of my mind I  
21 thought this person may simply be trying to stymie  
22 everybody else’s efforts on his case. I had that  
23 impression from his written material and from  
24 seeing him in person.”

25 3/5/01 Evid. Hearing, at 64.

26  
27 Dr. McEwen: “[T]his is apparently a conscious, deliberate set of  
28

1 responses that provide him with a certain degree of  
2 pleasure. The reward being attention, slowing  
3 down of the process. His hope being that he has  
4 more and more control over his case. I want to  
5 have you understand that this is someone who has  
6 responded to being on death row in a very  
7 particular way. It is a combination of the  
8 environment he's in and his particular personality.  
9 I think he's conscious of what he's doing. . . . He  
10 knew exactly what he was doing with me.”

11 3/5/01 Evid. Hearing, at 74.

12  
13 Dr. McEwen: “He thinks that he is going to be found  
14 competent. He tells me—he says, “There’s  
15 nothing wrong with me.”

16 3/5/01 Evid. Hearing, at 86.

17  
18 Dr. McEwen: “[H]e certainly has some trends that are like a  
19 personality disorder, but these would not be the  
20 sorts of things that would interfere with the  
21 aforesaid decision-making abilities.”

22 3/5/01 Evid. Hearing, at 96.

23  
24 Dr. McEwen: “[B]ut I have to say I think that this man knows  
25 what he is doing, has an agenda, doesn’t have the  
26 slightest interest in being seen as mentally ill. . . .  
27 I think I feel pretty strongly that he has character

1 trends, argumentative, contrary character trends  
2 and a lot of energetic intelligence to keep himself  
3 very much occupied in this pursuit that he is  
4 involved in. It is a goal-directed pursuit, and I  
5 think that he is trying not just to frustrate people  
6 and make people upset, but he's also trying to feel  
7 a sense of being in control of his life."

8 3/5/01 Evid. Hearing, at 100.

9  
10 Respondent: "[W]hat is your answer to this question: Whether  
11 Mr. Kirkpatrick has the capacity to appreciate his  
12 position and make a rational choice with respect to  
13 continuing or abandoning further litigation?"

14 Dr. McEwen: "I believe he has the capacity to do that."

15 Respondent: "Secondly, whether Mr. Kirkpatrick is suffering  
16 from a mental disease, disorder or defect which  
17 may substantially affect his capacity to do those  
18 things?"

19 Dr. McEwen: "I believe he does not suffer from that type of  
20 condition."

21 . . . .

22 Respondent: "Assuming that he has made the decision to  
23 proceed on his own and represent himself, was that  
24 a knowing, intelligent, and voluntary decision of  
25 his?"

26 Dr. McEwen: "I would say yes."

27 3/5/01 Evid. Hearing, at 153.

28

1 In addition, psychiatric reports of Petitioner that were presented to Judge Graham  
2 support the California Supreme Court’s findings. In particular, the Court finds  
3 compelling the opinion of the only psychiatrist to conduct an in-person evaluation of  
4 Petitioner, Dr. McEwen, who also reviewed a plethora of additional materials in order to  
5 form her opinion. Dr. McEwen found Petitioner to be competent to make a knowing,  
6 intelligent, and voluntary decision pertaining to his legal choices. Excerpts of the  
7 psychiatric reports that support the California Supreme Court’s findings include, but are  
8 not limited to, the following:

9  
10 “Based upon my examination of Mr. Kirkpatrick and upon review of  
11 the documents noted above, it is my medical opinion that he shows no  
12 evidence of mental impairment which would diminish his capacity to  
13 make a knowing, intelligent and voluntary decision pertaining to his  
14 legal choices. He is not suffering from any mental condition or defect  
15 that could interfere with either his ability to comprehend his situation  
16 or his ability to make rational decisions regarding litigation.”

17 McEwen Report, at 3.

18  
19 “The clinical evidence suggests that he indeed made his decision to  
20 withdraw the petition in a conscious, goal-directed manner, free of any  
21 intervening mental illness.”

22 McEwen Report, at 4.

23  
24 “He is stimulated by and takes pleasure in confounding the ‘powers  
25 that be.’ Wanting control is a natural human reaction, and not  
26 necessarily maladaptive.”

27 McEwen Report, at 3.



1  
2 “It is conceivable, but by no means necessarily the case, that  
3 psychiatric impairment plays a role in this behavior. . . . It is just as  
4 possible that Kirkpatrick is using whatever delaying tactics he can  
5 muster to delay imposition of the death penalty.”

6 Yarvis Report, at 3.

7  
8 “Kirkpatrick is of average to better than average intellectual capacity.  
9 As such, I would conclude that he may well have the capacity to  
10 manipulate the criminal justice system to his own ends. Clearly, any  
11 behavior that can delay execution serves Kirkpatrick’s self-interest.  
12 This would include behavior that has an aberrant flavor.”

13 Yarvis Report, at 3.

14  
15 The Court agrees with the findings of the California Supreme Court. There has  
16 been no unreasonable determination of the facts or a decision contrary to, or involving  
17 an unreasonable application of, clearly established federal law. As a closing note, this  
18 Court is critical of the procedural approach taken by the Petitioner. In particular, being  
19 of the view that the decision of the California Supreme Court was substantially deficient,  
20 Petitioner had the option to file a motion for rehearing before the California Supreme  
21 Court in order to address the issue at hand. *See* Cal. R. Ct. 8.268(a)(1) Rehearing; *see*  
22 *also* Cal. R. Ct. 8.387(e) & 8.536(a). However, Petitioner chose, deliberately in the  
23 Court’s opinion, not to do so, when the matter could have been resolved clearly by the  
24 persons best situated to do so. His decision to accept the outcome there and attack it  
25 here was perhaps a strategic one, but, under AEDPA, it confers no advantage.

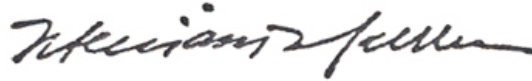
26  
27 **IV. CONCLUSION**

1 In accordance with the foregoing, this Court deems Petitioner's unexhausted  
2 claims waived. Therefore, Respondent's motion to dismiss is **GRANTED** to the extent  
3 that the Respondent seeks to dismiss the previously unexhausted claims waived by  
4 Petitioner before the California Supreme Court. The motion to dismiss is **DENIED** with  
5 respect to Petitioner's previously exhausted claims.

6 Based upon the foregoing order, the parties are to submit a litigation plan for  
7 further proceedings within fourteen days. In addition, Petitioner shall prepare and file  
8 with this Court a revised habeas petition that includes only his exhausted claims, in  
9 compliance with this Order.

10  
11 **IT IS SO ORDERED.**

12  
13 Dated: April 26, 2011



---

14 WILLIAM D. KELLER  
15 UNITED STATES DISTRICT JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SEP 19 2001

Frederick K. Ohlrich Clerk

DEPUTY

S075679

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

In re WILLIAM D. KIRKPATRICK on Habeas Corpus.

Petitioner having asked to withdraw this petition for a writ of habeas corpus, and this court having appointed the Honorable John Stephen Graham, Judge of the Marin Superior Court, to sit as a referee, and Judge Graham having taken evidence and made a finding of fact that petitioner is not suffering from any mental disease, disorder, or defect that might substantially affect his capacity to appreciate his position and to make a rational choice with respect to withdrawing the petition, this court now adopts that finding, further finds that petitioner has made a knowing, intelligent, and voluntary waiver of his right to proceed on this petition, and grants petitioner's request to withdraw this petition.

The petition for writ of habeas corpus is dismissed.

Chin, J., was absent and did not participate.

  
Chief Justice

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

SUPREME COURT  
**FILED**

JUL - 6 2001

Frederick K. Ohlrich Clerk

DEPUTY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN RE:

No.S075679

WILLIAM D. KIRKPATRICK, JR.,

FINDINGS OF REFEREE  
RE COMPETENCE OF

on Habeas Corpus

WILLIAM D. KIRKPATRICK, JR.

**FINDINGS**

Thanking the Supreme Court for this interesting appointment as Referee, the undersigned judge of the Marin County Superior Court finds as follows:

1. A preponderance of evidence shows that Mr. William D. Kirkpatrick, Jr. is not suffering from any mental disease, disorder or defect which may substantially affect his capacity to appreciate his position and to make a rational choice with respect to continuing or abandoning further litigation of the petition for writ of *habeas corpus* pending in the Supreme Court of California.

2. Mr. Kirkpatrick has knowingly and voluntarily refused to engage in sufficient discussion with the Referee to permit the Referee to determine whether his request to withdraw

FINDINGS OF REFEREE RE COMPETENCE OF WILLIAM D. KIRKPATRICK, JR

1 the pending *habeas corpus* petition is made knowingly and intelligently. The Referee does find  
2 that the request to withdraw the pending petition was made voluntarily but is not able to assess,  
3 with the limitations imposed by Mr. Kirkpatrick, whether the act is done in the context of  
4 sufficient information and understanding of present circumstances and potential consequences to  
5 be found to be knowing and intelligent.

### 6 7 **BASIS OF FINDINGS**

8 In making the Findings the Referee considers the following information and authority:

- 9 1. The September 20, 2000, order of the California Supreme Court appointing the  
10 Referee and authorities mentioned in that order;
- 11 2. The in-court appearance, conduct and statements of Mr. Kirkpatrick and his written  
12 communications to the Court and Referee;
- 13 3. The evaluation and opinions of Dr. Diane McEwen in writing and in testimony;
- 14 4. The opinions of Drs. Robert Weinstock, Xavier Amador and Roderick Pettis in writing  
15 and in testimony;
- 16 5. The exhibits offered by the Federal Public Defender and the Attorney General of the  
17 State of California;
- 18 6. The arguments and authorities presented by the Federal Public Defender and the  
19 Attorney General of the State of California.

### 20 21 22 **The Procedure Employed By the Referee**

23 The transcripts of the proceedings and the Referee's letters to Mr. Kirkpatrick  
24 demonstrate that throughout the proceedings the Referee, the Federal Public Defender and the  
25 Attorney General of California acknowledged and accommodated Mr. Kirkpatrick's right to be a  
26 full participant. Mr. Kirkpatrick was encouraged to have the assistance of independent counsel  
27 for these competence proceedings but he declined. He was given a court order for telephone calls  
28 for the purpose of investigating potential attorneys and potential mental health evaluators.

1 When a psychiatrist was chosen by the Referee it was only after Mr. Kirkpatrick had  
2 rejected several others and had agreed to meet with Dr. McEwen, the one finally chosen.

3 The Federal Public Defender and the Attorney General of California were invited to  
4 propose procedures. They were also invited to propose mental health experts and although the  
5 psychiatrists they proposed were rejected by Mr. Kirkpatrick, they were also invited to comment  
6 on possible evaluators proposed by the Court. Once Dr. McEwen was finally selected without  
7 objection from the Federal Public Defender, the Attorney General or Mr. Kirkpatrick, the Federal  
8 Public Defender and Attorney General were invited to supply factual materials for her  
9 consideration in completing the evaluation. They did so.

10 Dr. McEwen was given a copy of the September 20, 2000 order of the Supreme Court.  
11 She had an opportunity to review Mr. Kirkpatrick's California Department of Corrections files and  
12 documents provided by counsel. She interviewed Mr. Kirkpatrick. She submitted her letter  
13 report stating her opinion that Mr. Kirkpatrick is competent.

14 Evidentiary hearings, which Mr. Kirkpatrick chose not to attend, followed. Dr. McEwen  
15 was cross-examined by the Attorney General and the Federal Public Defender. The Federal  
16 Public Defender produced the testimony of two M.D. psychiatrists, Dr. Robert Weinstock and Dr.  
17 Roderick Pettis, and a Ph.D. psychologist, Dr. Xavier Amador. Then followed briefing and  
18 argument by the Federal Public Defender and the Attorney General.

19 Mr. Kirkpatrick had been warned repeatedly that his failure to appear to discuss his  
20 understanding of his legal circumstances and the possible consequences of his termination of the  
21 *habeas corpus* proceedings pending in the Supreme Court of California with the Referee might  
22 result in the Referee's inability to complete the necessary inquiry. He declined to appear for this  
23 discussion.

### 24 25 **The Evidence**

#### 26 27 **Observations in Court**

28 In Court, when he chose to attend, Mr. Kirkpatrick appeared intelligent and oriented. To  
29 the extent that any of his behavior and utterances were uncooperative and unresponsive this

1 appeared to be a matter of choice on his part. He not infrequently used accusation and obscenity  
2 in addressing counsel and the Referee in person and in writing. However this conduct did not  
3 seem to be the product of compulsion or disorientation but rather it appeared to be the result of  
4 frustration, contempt, a desire to manipulate or all three. The Referee observed anger, hostility,  
5 and failure to cooperate but nothing which seemed to be the product of mental disease, disorder  
6 or defect.

7  
8 **The Opinion of Dr. Diane McEwen**

9 Dr. McEwen is a forensic psychiatrist of thirty years' experience. She has been widely  
10 employed by counsel, both prosecution and defense, and the courts of Marin County and  
11 elsewhere for decades. Her thoughtful, practical and lucid evaluations in writing and in testimony  
12 have been of huge cumulative impact and value to the criminal justice system. She has been a  
13 leader and mentor in the forensic mental health community in Marin for years, giving freely of her  
14 time, wisdom and experience, to new members of that community. In the past few years she has  
15 begun to reduce her availability for forensic work in favor of her ongoing therapeutic practice.

16 Along with others, Dr. McEwen was early mentioned by the Referee to counsel and Mr.  
17 Kirkpatrick as a possible evaluator. It was, however, the Referee's preference to allow counsel  
18 and Mr. Kirkpatrick to make a mutually acceptable choice. After some weeks for investigation by  
19 counsel and Mr. Kirkpatrick, two psychiatrists acceptable to the Federal Public Defender and the  
20 Attorney General were suggested by stipulation. Mr. Kirkpatrick flatly refused to speak to either  
21 of them. He did not, however, propose his own choice. With the renewed mention of Dr.  
22 McEwen and one or two others, Mr. Kirkpatrick agreed to speak to Dr. McEwen and no other.  
23 Counsel were not opposed.

24 Dr. McEwen accepted the appointment. She reviewed a multitude of historical documents  
25 and reports obtained from the California Department of Corrections and counsel. She also  
26 succeeded in completing a two and one half hour interview with Mr. Kirkpatrick. He had  
27 apparently never before cooperated in any significant mental health interview and certainly not  
28 one of such duration.

1 Dr. McEwen's most important opinion expressed in writing and testimony, is that Mr.  
2 Kirkpatrick does not suffer from any mental disease, disorder or defect which might affect his  
3 capacity to understand his position and make a rational choice with respect to continuing or  
4 abandoning further litigation.

5  
6 **The Opinions of Drs. Weinstock, Pettis and Amador**

7 Drs. Weinstock, Pettis and Amador were employed by the Federal Public Defender to  
8 review records and Dr. McEwen's report and testimony. They came from Los Angeles, San  
9 Rafael and New York, respectively. Each testified that he was not in a position to express a  
10 diagnostic conclusion as to Mr. Kirkpatrick's competence. Each of them did, however, express  
11 doubt as to the value of Dr. McEwen's opinions. They criticized her failure to follow their  
12 methodologies. They criticized her failure to address issues they asserted were raised by her  
13 report and the universe of historical documentation of Mr. Kirkpatrick's conduct and utterances.  
14 One or more of them opined that the only acceptable method of assessing Mr. Kirkpatrick's  
15 competence would be to place him in a mental hospital for at least sixty days for observation. The  
16 implications of this novel suggestion alone are staggering.

17 The Referee finds that the collected opinions and suggestions of Drs. Weinstock, Pettis  
18 and Amador do not cast appreciable doubt upon the value of Dr. Diane McEwen's opinions which  
19 are based upon extraordinary qualifications of training and experience, careful review of the  
20 available history, and perhaps the only substantial mental health interview Mr. Kirkpatrick has  
21 ever allowed. Dr. McEwen's opinions are consistent with the Referee's observations in court.

22  
23 **The Record**

24 The Referee forwards for the Supreme Court's use:

- 25 1. Transcripts of all of the hearings conducted in this inquiry;  
26 2. A copy of Dr. Diane McEwen's letter report of her evaluation;  
27 3. Copies of all of the exhibits marked at any of the hearings;  
28 4. Copies of the Referee's letters to Mr. Kirkpatrick inviting and encouraging his  
29 attendance and advising him of hearing dates and progress;




1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

5. Memoranda and letters from San Quentin State Prison regarding Mr. Kirkpatrick's responses to the Referee's letters and his refusals to come to court;

6. Copies of the final briefs of the Federal Public Defender and Attorney General of California.

The Referee thanks Mr. Foreman, Deputy Federal Public Defender, and Mr. Schneider, Deputy Attorney General, and their offices for their courtesy, their hard work, and their thoughtful presentation of the issues and evidence.

Dated: July 6, 2001

  
\_\_\_\_\_  
JOHN STEPHEN GRAHAM  
Judge of the Superior Court, County of Marin;  
Referee by appointment of the California Supreme Court

Superior Court of California  
County of Marin

John Stephen Graham  
Judge



Hall of Justice  
P. O. Box 4988  
San Rafael, CA 94913-4988  
(415) 499-6263

June 18, 2001

Mr. William Kirkpatrick, Jr.  
C91406  
San Quentin State Prison  
San Quentin, California 94964

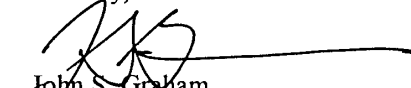
Re: Conclusion of Competence Determination

Dear Mr. Kirkpatrick:

On June 21, 2001, at 1:30 p.m. we expect to conclude the hearings ordered by the California Supreme Court concerning your competence to withdraw your pending petition for writ of *habeas corpus*. As you know, we have discussed the process with you in court on several occasions. We have also received reports and testimony from Dr. McEwen and two other psychiatrists and a psychologist. The testimony was taken in your absence since you declined to appear.

On June 21, we will have argument on the matter and shortly thereafter findings will be delivered to the California Supreme Court. You are, of course welcome to attend and participate on June 21. It has already been explained to you that it may be impossible to complete the inquiry ordered by the Supreme Court without further opportunity to speak with you. If it is actually your wish to withdraw the pending petition you may find it to your advantage to attend and participate on June 21. At the hearing I would need to discuss with you your understanding of the writ proceedings and the possible consequences of the withdrawal of the petition. Also you would, of course be free to present any pertinent argument, on the subject of the findings to be submitted to the Supreme Court.

Sincerely,

  
John S. Graham  
Judge of the Superior Court

Cc. Fed. Pub. Def.  
Calif. Atty. Gen.  
Warden, San Quentin  
Calif. Sup. Ct.

37

Superior Court of California  
County of Marin

John Stephen Graham  
Judge



Hall of Justice  
P. O. Box 4988  
San Rafael, CA 94913-4988  
(415) 499-6263

March 13, 2001

William Kirkpatrick, C91406  
C/o Legal Office  
San Quentin State Prison  
San Quentin, California 94964

Re: Further Hearing on Competence to withdraw *Habeas Corpus* Petition

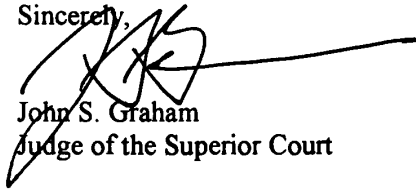
Dear Mr. Kirkpatrick:

You were informed in court on March 5, 2001, that if you declined to remain for the evidentiary hearing on your competence we would proceed without you. You declined to be seated in the courtroom. We are informed by the San Quentin Prison Legal Office that the subsequent message explaining that you could be brought back to the hearing any time at your request was conveyed to you. We did continue with the hearing in your absence on March 5, 6, and 7 and because of scheduling conflicts have continued the evidentiary hearing to March 19 at 10:00 a.m. Thus far we have heard testimony from Dr. McEwen, Dr. Weinstock from Los Angeles and Dr. Amador from New York.

We expect to conclude the evidentiary hearing on March 19, 2001, with the testimony of Dr. Pettis from San Rafael and your own answers to some questions concerning your understanding of your present legal circumstances and the possible consequences of your request to withdraw the petition for writ of *habeas corpus* pending in the California Supreme Court. Although we would prefer not to, we can receive the testimony of Dr. Pettis in your absence as we have received the testimony of the other doctors without you. However it may be impossible for us to conclude the inquiry requested by the Supreme Court without your further attendance in court for an hour or so. We cannot, of course, speak for the Supreme Court but based upon their request and our understanding of the law, we strongly suspect that if you will not answer some important questions concerning your knowledge of your legal status and the possible consequences of your pending request to withdraw the *habeas corpus* petition the Supreme Court will not further consider your request regardless of what we may find with respect to your basic competence.

If you do not attend court on March 19, 2001, for at least part of the afternoon, we will take that as your refusal to participate in the required discussion of your legal circumstances and the potential results of your legal choices and we will make what report we can to the Supreme Court without your further participation. If you actually wish to withdraw the *habeas corpus* petition, it seems critical that you attend court on March 19 for the reasons described above.

Sincerely,

A handwritten signature in black ink, appearing to be 'JSG', with a long horizontal line extending to the right.

John S. Graham  
Judge of the Superior Court

cc. Fed. Public Defender  
Calif. Atty. General  
Clerk of the Calif. Sup. Ct.  
Legal Dept. San Quentin

DEC. 13. 2000 4:22PM MAF COUNTY COURTS

NO. 347 P. 2

DIANE M. McEWEN, M.D.

12 OLD LANDING  
TIBURON, CALIFORNIA 94920  
(415) 435-1658

December 7, 2000

The Honorable John Stephen Graham  
Judge of the Marin County Superior Court  
Marin County Hall of Justice  
San Rafael California 94903

Re: William D. Kirkpatrick  
S 075979

Dear Judge Graham:

Pursuant to your request of November 16, 2000 I evaluated Mr. William Kirkpatrick on November 30, 2000 during a two and one-half hour psychiatric examination, held in a private contact conference room, at San Quentin Prison. This 40 year old man has been incarcerated at San Quentin since 1984. In July 2000 he wrote a request to the California Supreme Court to withdraw the Petition for Writ of Habeas Corpus which had been prepared by the Federal Public Defender 12/29/98.

I reviewed a selection of documents provided by you and by the Los Angeles offices of the Federal Public Defender and of the Attorney General which included:

1. California Supreme Court Order 9/20/00 pertaining to the competency examination which follows
2. Transcripts of Proceedings in your Court October 16, October 23, and October 3, 2000
3. Two-page letter addressed to "Mr. Wandruff", a half-page note headed "Waiver form" dated 7/23/00, and a six-page Petition for Writ of Habeas Corpus 7/24/00, all signed by the inmate
4. Four-page report by Richard M. Yarvis, M.D. dated 9/16/97 based on his review of written material in this case
5. Fourteen-page Declaration by Roderick W. Pettis, M.D. based on his review of
6. Various 20-Day Pre-Execution Reports and Seven-Day Pre-Execution Final Reports (1995, 1996)
7. Various documents pertaining to Mr. Kirkpatrick's early history, e.g., records from the Brooklyn Center for Psychotherapy 1974/75 and Declarations by his mother 1986, 1997.
8. San Quentin Prison Medical File and Central File.

Mental Status:

Mr. Kirkpatrick was brought into the examining room with all limbs in shackles, and was then chained to a chair across the table from the interviewer. The guards left the room. After exchanging a few introductory words with me, he decided to proceed with the interview, and maintained a cooperative and forthcoming demeanor throughout the ensuing two and one-half hours. The interview was ended by the return of the prison guards.

This is a light-complected 40 year old African-American man, in robust health, of medium build, wearing dark glasses. He was willing to remove them momentarily so I might see him full-face. He reports impaired vision in the injured left eye, acute light sensitivity in the right (which appears unfeigned), with resultant headaches and nausea. He has a wide range of affect and there is no evidence of depression. He states that his mood in general is pretty stable, and chooses "low spirits" from my list of possible moods. Does he ever feel hopeless? No, especially not since he received the police report about the murder weapon "that the police purchased from the perpetrator for twenty-five dollars." He proceeds to explain that this will result in a re-trial, his ultimate goal.

He is alert, articulate, oriented in all spheres, and intelligent, with an easy conversational style. There is no pressure of speech. Although polite to me throughout, he is imperious and impatient at times, and earnestly lectures me about details of his legal status with much determination. He makes frequent indignant mention of persons who have offended, betrayed, or mistreated him. These include prison guards, judges, and especially both defense and prosecution attorneys. He also has strong feelings about what he describes as being denied documents by certain of these attorneys. He waxes on about the office of the Federal Public Defender who he claims wants to keep the case. "That's why they intercepted Dr. Yarvis when he came here", he explains they made it look as though he refused the psychiatric evaluation. Early in the interview he made a single ethnic slur but did not repeat this behavior. He is not globally mistrustful of all lawyers; he is able to discriminate between specific persons. He recalls quite warmly an attorney, Mr. Enright, who was involved in his original trial who was replaced due to conflict. Nonetheless he makes it plain that he wants to run his own case, to be in charge of his own defense, to represent himself.

In the Adjustment Center, he has a cell of his own where he reads mystery novels and does calisthenics. He exercises outdoors three times weekly and eats and sleeps well. He reports becoming angry, "I raise holy hell" when staff withhold from him a privilege such as showers, but he can be pacified by other personnel. He does not seem personally attached to any staff or other inmates. When asked, "What if anything disturbs your daily life here," he swiftly replies, "Appellate attorneys." He reports that his memory is fine, in fact it seems to him to be clearer since the 1996 eye injury. He denies any history of hallucinations, visual or auditory, and does not appear to be responding to internal stimuli.

DEC. 13. 2000 4:22PM MAR. COUNTY COURTS

NO. 347 P. 4

Asked about any history of blows to the head, he wryly comments that his mother hit him mercilessly during his childhood. (He has never been unconscious or in a coma.) He evinces great anger towards his mother, "that drunken slut". "She used me as an example for my step-brother Tony" who was younger and not Patrick's intellectual equal. He recalls going to the Brooklyn Center for family evaluation where his sister Maria dominated the group. He mother soon quit going, and sent the children on their own, "so we spent the subway money instead." He talks of his wish to contact his father.

He gives one the clear impression that his wish to withdraw the Petition does not indicate that he wants to speed the process toward execution. In his 7/23/00 request, he wrote, "I wish the sentence and judgment of execution...to be carried out at this time." But he tells me that he has no intention of discontinuing litigation. He "expects that the State Public Defender will appeal" the finding of competence. "They would like me to be a passive a--hole but no way." He wants to represent himself, plans to "hire Black lawyers" who will go to the media and get a re-trial on the original conviction. "That's what I'm pushing for now. I don't want the sentence changed to life. Some condemned guys here, some Blacks and Chicanos, they tell you straight out they want to stay here, they feel they belong here. But I am innocent." As for the sentence of execution, he does not seem to take it seriously, and he is not at present in fear of his life. Asked if he is doing this in order to buy time, he enthusiastically replies, "No!" He wants a re-trial or execution, "whichever comes first."

Medical and Central Files: A thorough review of the inmate's prison dossier reveals that Mr. Kirkpatrick is considered a disciplinary problem and is thus assigned to the Adjustment Center. Records note a number of rules violations, possession of unauthorized materials, physical altercations, disobeying orders, and assaults on staff. There was no evidence that these episodes of resistant behavior and hostile acting-out were beyond his conscious control, or the product of a disordered mind. The inmate seemed to make reasonable, and sometimes successful, defenses during subsequent Rules Violation Hearings, according to remarks attributed to him by the Hearing personnel.

Medical records 9/21/96 note that Mr. Kirkpatrick sustained a traumatic laceration of the left eye (iris separation), reportedly from a ricochet from a guard's launcher. He has subsequently complained of painful light sensitivity and headaches. He is permitted to wear sunglasses to counter these symptoms. Records show that the inmate has never been diagnosed or treated for mental illness. Notations made by Prison psychiatric staff as recently as February 17, 1999 reveal "no major mental disorder" - Robert Flax, Ph.D.

Diagnostic Impressions:

Based upon my examination of Mr. Kirkpatrick and upon review of the documents noted above, it is my medical opinion that he shows no evidence of mental impairment which would diminish his capacity to make a knowing, intelligent and voluntary decision pertaining to his legal choices. He is not suffering from any mental condition or defect that

DEC. 13. 2000 4:23PM MAR COUNTY COURTS NO. 347 P. 5

could interfere with either his ability to comprehend his situation or his ability to make rational decisions regarding litigation.

He is intelligent, self-determined, oriented, consistent, deliberate and unwavering in his positions. Certainly his criminal history suggests a personality disorder, and he scores high on the Hare Psychopathy Checklist (PCL-R), but there are no psychotic symptoms (such as thought disorder) which might affect his mentation or his reality testing. Further I find by history no physical or environmental stressor in the recent past which could have precipitated the onset of any mental illness. Examination revealed no evidence of delusional thinking, neither is he depressed or suicidal. He was cooperative, coherent, logical and self-controlled.

He has refused to cooperate with various attorneys and procedures. Is he aware of what he is doing when he does so? Is this pending request the result of a well-considered decision, his own willing choice? Did he use available information and proceed step-by-step, with a specific goal in mind? The clinical evidence suggests that he indeed made his decision to withdraw the petition in a conscious, goal-directed manner, free of any intervening mental illness.

One functional definition of sanity is the ability to adapt to the environment at hand, in a rational and serviceable way, regardless of whether this adjustment may appear aberrant to those of us on the "outside". By history, Mr. Kirkpatrick can be aroused to anger, can be suspicious, argumentative, vehement, non-compliant, hostile, and prone at times to hate speech (as he accuses others of bigotry). None of this connotes the presence of mental illness. These are characterological and reactive trends.

I surmise that these trends, especially his non-compliance, constitute reaction to strong feelings of passive helplessness, and thus comprise the practical, therefore "sane", adaptation of a condemned inmate, especially one who is both intelligent and who possesses a pronounced wish for control. Condemned prisoners differ from other convicted persons. The world view of the death row inmate is transformed, contracted in time, space, and choices. For indigent inmates, estranged from family, and without social contacts, the legal system may become their paramount focus. For Mr. Kirkpatrick's quick mind and high energy, it is a real source for him; he gets a sense of control, of power, in an otherwise inactive, predictable, tedious life. He is stimulated by and takes pleasure in confounding the "powers that be". Wanting control is a natural human reaction, and not necessarily maladaptive.

His own particular experience of the attorney/client relation makes him feel dependent, subservient and subject to the whims of others. He cannot tolerate feeling passive. At present he seems determined to wrest control, however unlikely the outcome. From the perspective of the community at large he may appear "unrealistic", or having "poor judgment", but his preoccupation with his own legal status and his attempts to take charge are natural tendencies in a character that cannot tolerate feeling subordinate.



DEC. 13. 2000 4:23PM MAI COUNTY COURTS

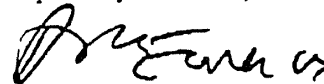
NO. 347 P. 6

With respect to his allegations of mistreatment by the system, his claims of innocence, and his possibly unrealistic hopes for this pending request, none are evidence of impaired reality testing *per se*, but are seen regularly in prison populations. Being unrealistic or impractical about the probable outcome of his request is not synonymous with delusional illness.

In my opinion his aggressive and combative conduct are not the product of psychosis but rather long-time character traits. With a small slight or misunderstanding, he is offended, humiliated, diminished. He may react with hostility, indignation, and stubborn refusal to cooperate. This is not necessarily self-destructive, but may actually be gratifying, both as affective release and winning the upper hand. His difficult, contrary behavior may have a self-serving agenda, that is, to win control, to nix the current lawyers, to trump the system. His name-calling and claims of victimhood, for example, the Deputy Attorney General "is trying to get the guards to kill me" (letter 7/23/00) are presented in a lucid and coherent manner. He fumes mightily about not receiving documents he has requested, and carries on in Court proceedings with hate speech (as he accuses others of bigotry). I conclude that this venting is not the result of uncontrollable impulses, but rather is egosyntonic, serves a purpose, and is within his conscious control.

If I may be of further assistance in this matter, please do not hesitate to call on me.

Respectfully submitted,



Diane M. McEwen, M.D.

California License A22641

ORIGINAL

S075679

1

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

--oOo--

HON. JOHN STEPHEN GRAHAM, JUDGE

DEPARTMENT NO. D

IN RE WILLIAM KIRKPATRICK, JR. ]

No. SC-116005A

\_\_\_\_\_ ]

STATUS REPORT

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, OCTOBER 16, 2000

--oOo--

SUPREME COURT  
FILED  
AUG 10 2001  
Frederick K. Ohlrich Clerk  
DEPUTY

REPORTED BY: MAUREEN STEGER, CSR. No. 5721

1 APPEARANCES:

2 For the Respondent: Office of the Attorney General  
3 State of California  
4 300 South Spring Street Ste. 500  
5 Los Angeles, Calif. 90013  
6 By: Robert C. Schneider  
7 Deputy Attorney General

8  
9 For the Petitioner: Office of the Federal Public Defender  
10 State of California  
11 321 East Second Street  
12 Los Angeles, Calif. 90012  
13 By: William Forman  
14 and  
15 Mark R. Drozdowski  
16 Deputy Federal Public Defenders  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Monday, October 16, 2000 1:50 O'Clock P.M.

2 --oOo--

3 THE COURT: Good afternoon everybody.

4 This is a fact-finding hearing concerning  
5 Mr. William Kirkpatrick, who is present in custody.

6 I have been requested by the Supreme Court to make  
7 some simple determinations concerning facts which they're  
8 not in a position to determine on their own because they  
9 aren't a fact finding body, per se.

10 Mr. Kirkpatrick, I believe Mr. Forman has probably  
11 told you that I was going to have this hearing today and  
12 passed some papers along to you, I hope.

13 Did you get a copy of the Supreme Court's order  
14 making me a Referee?

15 THE PETITIONER: Yes, I got a copy of that order.  
16 What I didn't get a copy of was that I would be arriving in  
17 court today. I am not prepared to do any kind of litigating  
18 at this time.

19 THE COURT: I am sorry that you weren't advised.  
20 I asked Mr. Forman to let you know.

21 MR. FORMAN: I did send a letter to  
22 Mr. Kirkpatrick letting him know if he requested, separate  
23 counsel could be appointed for him today.

24 THE PETITIONER: I want to know why you are asking  
25 Mr. Forman to notify me of my own court appearance.

26 I assumed I am the petitioner, am I correct?

27 THE COURT: The purpose of this hearing -- did you  
28 see the Supreme Court's order?

1 THE PETITIONER: Yes.

2 My petition was accepted by the Supreme Court.

3 THE COURT: They want me to determine because I am  
4 a fact finder for them, first, whether you are competent,  
5 and there is nobody saying you are not competent --

6 THE PETITIONER: I understand that. That's  
7 neither here nor there.

8 What I am asking is why didn't the Court notify  
9 that I was going to be coming to court today?

10 THE COURT: I apologize for that. I thought  
11 Mr. Forman's line of communication would be good enough for  
12 to you find that out.

13 THE PETITIONER: Mr. Forman is opposing counsel.  
14 The problem that's happening with the courts to begin with  
15 is I am not being notified with anything going on in my  
16 case. I am trying to be polite here.

17 THE COURT: From this point forward, I will make  
18 sure that I communicate with you directly. When I give  
19 notice of anything -- in fact we will try to do all of our  
20 date setting and everything else here in open court so that  
21 you hear and know what's going on.

22 Just for the record, we have Mr. Forman here.

23 Who is with you?

24 MR. FORMAN: This is co-counsel, Mark Drozdowski.

25 THE COURT: We have from the Attorney General's  
26 Office --

27 MR. SCHNEIDER: Robert C. Schneider, Deputy  
28 Attorney General.

1 THE COURT: Thanks a lot.

2 Mr. Kirkpatrick, I had an attorney lined up to  
3 come in today to introduce to you as somebody who might be  
4 able to assist you in your current endeavour, if you want  
5 that, and I would recommend that you seriously consider it.

6 Unfortunately, the attorney I had lined up turns  
7 out to be busy and can't come, but the advantage, of course,  
8 of having an attorney includes such things as legwork on the  
9 outside, if there is any to do, having access to office  
10 staff and other facilities which might be of use to you in  
11 responding to things that come up along the way.

12 The Supreme Court has referred me in particular to  
13 a federal case called Rees versus Payton. You may have read  
14 that by now already, but they seem to favor some process  
15 here, in order to get a good resolution, that includes the  
16 possibility that there might be something in the way of an  
17 adversary process between you and Mr. Forman in this  
18 context.

19 So if you want a lawyer to represent you, I can  
20 appoint one. I can even at this juncture, since I don't  
21 have one lined up, consider some attorney that you might  
22 like to name yourself at least as a possibility.

23 Would you like to have an attorney to help you?

24 THE PETITIONER: No, sir. I will be representing  
25 myself in this matter.

26 THE COURT: Well, you can do that if you want, but  
27 if you change your mind at any juncture, I would appreciate  
28 your letting me know. I might at some point ask an attorney

1 to come by and visit you just to see whether you and the  
2 attorney can find any common ground and any possibility of  
3 the attorney being of help to you.

4 THE PETITIONER: I don't want any counselors. I  
5 have had two decades of them. I have had more than enough  
6 of them.

7 I would appreciate your instructing Mr. Forman --  
8 actually the Federal Public Defender's Office to turn over  
9 every single document pertaining to my case. If I could  
10 have copies at the very least. I have been trying to get  
11 copies of my own case, but also my own investigators the  
12 last two decades, and I have gotten absolutely nowhere. One  
13 time I did get somewhere. That's part of the litigation for  
14 a later time, but it's just turned into quite a running  
15 joke.

16 THE COURT: Well, I am sort of in an odd position.  
17 Even though I am sitting here wearing the black robe --  
18 technically, I probably don't need to be because I am  
19 appointed as a Referee. I am not really here entirely as a  
20 judge. I don't have any jurisdiction to deal with your case  
21 other than the few factual questions that the Supreme Court  
22 has asked me to try to help them resolve.

23 THE PETITIONER: Well, to resolve it, I will make  
24 a presentation by myself.

25 I require the documents pertaining to my appeal.  
26 They won't leave me --

27 THE COURT: Well, they hear your request, and to  
28 the extent that it is important later in argument or at

1 times during our process here, I certainly will consider  
2 that request, but you see, what I have got to do is make a  
3 competence determination first.

4 As I say, nobody is suggesting that you are  
5 incompetent, but the Supreme Court doesn't want to be in a  
6 position of allowing you or anybody else effectually to say,  
7 "I am going to die" without determining that the person has  
8 their wits about them. That's what we are trying to figure  
9 out.

10 THE PETITIONER: Appreciate that.

11 THE COURT: This Rees versus Payton case that they  
12 have referred me to, I guess as an outline for a procedure  
13 that they find efficacious, involves the appointment by the  
14 Court of a psychiatrist or psychologist to conduct an  
15 interview and to make a recommendation and findings for the  
16 Court, or for the Referee. I hope that you can cooperate  
17 with that kind of an interview.

18 THE PETITIONER: Well, there was a problem at  
19 Federal District Court and Judge William D. Keller. He  
20 appointed a psychiatrist, an examiner, to come and see me at  
21 San Quentin. I received a direct order from him. I was  
22 prepared to do so. This is all documented. The date of the  
23 alleged examination arrived and no one came.

24 I called the person, who I later discovered was an  
25 appellate attorney, Cheryl Renee Manes. This is on record.  
26 It was a recorded conversation. She notified myself -- the  
27 Court doesn't know who called the Court up and said, "He  
28 refused to visit with the psychiatrist.



1 I never refused any visitor. I raised holy hell  
2 in San Quentin. All the brass and suits and they were  
3 upset. They shouted at me.

4 I believe the Federal Public Defender obstructed  
5 justice at that time to not allow me to see a psychiatrist.  
6 I was planning on cooperating with the Court, nothing but be  
7 polite to that Court, and they ended up bad rapping each  
8 other across the board.

9 The Federal Public Defender's Office has been  
10 using my best interest to violate my constitutional rights  
11 to due process.

12 THE COURT: First off, I am not familiar enough  
13 with the proceedings to know who appointed the Federal  
14 Public Defender to represent you, and that probably is the  
15 body that would deal with it.

16 As far as the Supreme Court hearings go, the  
17 Supreme Court is right now confronted with your apparent  
18 request to relieve counsel. As far as the Supreme Court  
19 proceedings go, it appears that if you and I conclude this  
20 process with a finding of competence and a finding that you  
21 are making a knowing, voluntary, and intelligent waiver of  
22 the right to counsel and they accept the findings, the  
23 Supreme Court then effectually would relieve counsel and you  
24 would be representing yourself, and I presume that they  
25 would go forward and honor your request to withdraw the  
26 petition, but that's all their business, not mine, but I  
27 think that's probably what would happen at least in the  
28 California Supreme Court context.

1 THE PETITIONER: I did -- I think I didn't  
2 communicate what I said correctly. What I am saying is we  
3 are going to go through this process. You are going to do  
4 what you have to do. I am going to cooperate with you. I  
5 am telling you here I am going to cooperate. I swear under  
6 the penalty of perjury I am going to cooperate with you.

7 The Federal Public Defender are going to do what  
8 they're going to do to stop this. You should be amazed what  
9 they have been pulling.

10 THE COURT: I haven't been involved with it, and I  
11 am sorry if that's your perception. It may be accurate. I  
12 have no way of evaluating it, but --

13 THE PETITIONER: That's what I am saying. I  
14 wasn't prepared. You would have received a document or  
15 declaration from me in advance notifying you of everything  
16 that obstructed my efforts in 1996 to pursue this  
17 self-representation.

18 For instance, they would come and tell me about  
19 one thing about Judge William D. Keller. It is a quote.  
20 "The Judge wants you fucking dead even more than Schneider  
21 does." This is word for word. So I get mad. I write to  
22 the judge. The judge gets upset with me. We walk into  
23 court. I got a transcript later on saying he doesn't want  
24 that Mr. Kirkpatrick here. We are doing everything we can.

25 I am going to cooperate with you. You are going  
26 to issue orders. Don't listen to a word you got to say. I  
27 am not disobeying the orders. In order to get this done,  
28 you come to me. You don't go to them.

1 THE COURT: Well, that's probably the way it is  
2 going to be.

3 However, have you had a chance to read this  
4 Rees versus Payton case?

5 THE PETITIONER: No.

6 THE COURT: I will give you a copy of it so you  
7 get a chance to read that and other pertinent authorities  
8 before we get back together, so you will understand that if  
9 I listen to the people you are saying you do not want to  
10 represent you in this proceeding, you will understand why I  
11 feel bound to listen to them.

12 Whether or not I accept what they have to say and  
13 whether I think that they're acting in your best interest, I  
14 still I believe I am required to hear from them. I may even  
15 be required to allow them to have a psychological or  
16 psychiatric expert interview you and make a determination,  
17 but we will see how that goes.

18 THE PETITIONER: I had -- last January, I had a  
19 psych examine and got a clean bill of health.

20 THE COURT: Who did --

21 THE PETITIONER: If you get -- if they come and  
22 tell you that I am not seeing the psychologist, or that I am  
23 not following your orders or your instructions, you let me  
24 know. You got to let me know.

25 This is what William D. Keller heard. I wasn't  
26 going to do -- I wasn't going to do that, and this is a lie.  
27 I was sitting here. They come and tell me that they pulled  
28 the --

1 THE COURT: You won't be out of loop. I will make  
2 sure that you get communications directly. If there are  
3 orders or other communications, or if I send them to the  
4 Attorney General's Office or to Mr. Forman, I will make sure  
5 that I send them to you and you primarily, but you will get  
6 whatever they get.

7 I have a pretty good relationship so far with the  
8 people at the legal office in San Quentin because I get  
9 cases from San Quentin all the time. So I think I can  
10 ensure that we won't have communication difficulties.

11 If at the time I have a psychologist or  
12 psychiatrist come and visit you, and you would like me to  
13 come with the person just to make sure that you and the  
14 person make contact, I am willing to do that. San Quentin  
15 is only a couple of miles from here. I am willing to  
16 accompany the person over there.

17 THE PETITIONER: That would be fine, but the point  
18 is, he has to get there. No one showed up. I would like to  
19 do a criminal investigation of that matter.

20 It's been four years since this matter went to the  
21 Federal Court. They kicked it back down. I got nowhere.  
22 This case is pretty much open and shut. I don't have that  
23 kind of -- why Schneider doesn't wish to respond to the  
24 appeal? Forman says he submitted the complete appeal on my  
25 behalf. Schneider refuses to respond to it.

26 MR. SCHNEIDER: I filed it.

27 THE PETITIONER: When?

28 MR. SCHNEIDER: Quite a while ago.

1 MR. FORMAN: June, I think.

2 At the time of our conversation, they had not yet  
3 responded.

4 THE PETITIONER: Tell me about it.

5 THE COURT: Since you have given me a pretty solid  
6 indication that you don't want to have another attorney  
7 involved, my inclination as of right now would be to do a  
8 couple of things.

9 One is to make sure that you get copies of the  
10 cases that the Supreme Court has given me as authority for  
11 the proceeding so that if you have any questions about what  
12 we are doing here, you don't get the impression that I am  
13 trying to structure this thing against you or in your other  
14 than best interest. So I would like you to know what those  
15 are and you get a chance to read them.

16 Then either now or soon, I would like to line up a  
17 psychologist or psychiatric professional to conduct an  
18 interview. I think I have some people in mind having made a  
19 few phone calls to see who would be willing. I have two  
20 people who are interesting, intelligent people. I think you  
21 would enjoy talking to them.

22 THE PETITIONER: Like I said, it's always good to  
23 cover that particular area so we get that out of the way. I  
24 was examined last January when I first arrived at San  
25 Quentin. So that's twice already. I think it was Pettis.

26 THE COURT: Did you actually have an examine in  
27 January?

28 THE PETITIONER: San Quentin psychiatrist, and

1 both this January -- last January I believe it was or maybe  
2 this January.

3 I am not prepared at this time. You know, I put  
4 this issue before the State Supreme Court before Mr. Forman  
5 submitted an inch-and-a-half thick document to the Court  
6 talking about how I refused the last visit. They sent  
7 letters that I wrote to my mother, that I wrote to other  
8 attorneys, to a psychiatrist to make a face evaluation, and  
9 naturally the bipolar schizophrenic thing comes up. If you  
10 want to represent yourself, you are bipolar schizophrenic.  
11 That's what he submitted to the State Court so I wouldn't be  
12 allowed to represent myself.

13 I didn't refuse any kind of psychiatric visits.  
14 We ended up at each other throats.

15 THE COURT: You are wearing dark glasses.

16 THE PETITIONER: That's another matter I am going  
17 to be presenting to the Court.

18 THE COURT: Is it a medical condition that  
19 requires --

20 THE PETITIONER: In 1996, Richard Alan Davis --  
21 you know, Polly Klaas -- was in the yard. The guards  
22 attempted to get me at San Quentin -- to get me to kill him.  
23 I refused to do so. In retaliation for refusal, I was shot  
24 in the face. I am permanently blind in one eye and  
25 photophobic in the other.

26 I am attempting to file charges. I contacted a  
27 Ms. Zucker(phonetic) and a Mr. Walsh at the Federal Bureau  
28 of Investigation. I haven't gotten nowhere.

1 I saw an eye doctor at San Quentin for a whole  
2 year. He is telling me I need a brand new eye. You are  
3 blind. Nothing can be fixed. That's why I have to wear  
4 dark glasses, but that's the best they can do right now. I  
5 got these from another attorney, but I do need medical  
6 treatment. I need optical prosthetics.

7 THE COURT: Has Mr. Kirkpatrick been supplied  
8 copies of the things that you folks sent me?

9 MR. SCHNEIDER: I sent a copy.

10 MR. FORMAN: We sent all our copies to  
11 Mr. Kirkpatrick as well.

12 THE PETITIONER: I didn't get anything from the  
13 Attorney General's Office.

14 THE COURT: There is a letter that came today that  
15 you might not have had time to receive.

16 Counsel, I would sure appreciate it if you would  
17 give me a little bit more lead time than sliding these  
18 things in by Federal Express.

19 MR. SCHNEIDER: That should have arrived last  
20 Friday. I faxed a copy as well last week.

21 THE COURT: I just got these things this morning.

22 MR. SCHNEIDER: That was faxed no later than  
23 Thursday, because I wasn't in the office on Friday.

24 THE COURT: Does somebody want to show this  
25 letter --

26 MR. SCHNEIDER: I got a copy. I can give it to  
27 him.

28 THE COURT: Make sure they understand its got a

1 paper clip in it. They have some security issues about  
2 metal.

3 MR. FORMAN: They were sent to Mr. Kirkpatrick,  
4 but here are copies as well.

5 THE COURT: There are some things that the PD has  
6 sent along.

7 Does anybody have an extra copy of Rees versus  
8 Payton that we could give to Mr. Kirkpatrick?

9 MR. SCHNEIDER: I do. It is a photocopy of the  
10 case.

11 THE COURT: Great.

12 About any other authorities?

13 I think the Rees case is most important for him to  
14 be aware of because it does tend to lay out apparently an  
15 approved order.

16 THE PETITIONER: So am I to understand, your  
17 jurisdiction begins and ends with determining my competency;  
18 is that correct?

19 THE COURT: Well, the competence, and then the  
20 additional question of whether you are making a knowing,  
21 voluntary, and intelligent waiver of the petition.

22 THE PETITIONER: They go hand and hand, don't  
23 they?

24 THE COURT: Sure. It is pretty close.

25 You say you have a copy of the Supreme Court  
26 order, but let me give you another one to make sure you have  
27 it in hand.

28 THE PETITIONER: They made a mistake.



1 THE COURT: I will give you a copy of the thing  
2 that the Supreme Court has given me, which appears to be  
3 your petition to them that started this whole inquiry, and  
4 then your letter to Judge Sutro.

5 I apologize about the delays. As soon as we had  
6 orders or requests from the Supreme Court, we have acted.  
7 It took a little while for them to accomplish the  
8 appointment, but as soon as the appointment was made, then I  
9 called the Attorney General and Federal Public Defender on  
10 the phone to set up proceedings. Now --

11 MR. FORMAN: As long as we are on the subject of  
12 materials to be provided to Mr. Kirkpatrick, I also suggest  
13 you read the Mason case, which is mentioned in the Supreme  
14 Court --

15 THE COURT: Do you have a copy?

16 MR. FORMAN: I don't have a copy.

17 The Comer case which we discuss in our papers is  
18 the most recent case interpreting --

19 THE COURT: Anybody have a copy?

20 MR. SCHNEIDER: I have a copy of Comer.

21 How about Whitmore on the knowing, intelligent  
22 voluntary --

23 THE COURT: If you want him to see it, great.

24 We are not exactly to that point, but there is no  
25 reason why he shouldn't see that.

26 MR. SCHNEIDER: It is not full text, but the--

27 THE COURT: If you can give him those. Thank you.

28 Now what I would like to do, Mr. Kirkpatrick, is

1 find out whether you would like me to have the psychologist  
2 or psychiatrist come and see you between now and our next  
3 hearing or --

4 THE PETITIONER: I would like to accomplish it as  
5 quickly as possible. This inquiry isn't going to affect any  
6 type of velocity with my on-going appeal or lack thereof in  
7 my opinion, but maybe it is going --

8 THE COURT: That's my speculation, although they  
9 haven't told me that. I think what they're doing is they  
10 are waiting before they do anything else to determine  
11 whether they should act on your petition to effectually  
12 cancel the petition for Writ of Habeas Corpus. So until we  
13 get this done, I suspect that there it is sort of held in  
14 abeyance.

15 MR. FORMAN: In light of this hearing, we had  
16 asked that our reply to Mr. Schneider's opposition be put  
17 off and the Supreme Court denied that request. We have a  
18 filing date of -- I believe it is November 30th, toward the  
19 end of November. That should complete the briefing of the  
20 pending petition in the State Supreme Court.

21 THE COURT: Well, I can't imagine that they would  
22 make any kind of decision while this process of fact finding  
23 is pending. I am sure they will wait for us to do this with  
24 all reasonable speed before they make any kind of  
25 determination on their petition.

26 THE PETITIONER: I was already evaluated twice.

27 THE COURT: I would expect that I could get  
28 someone to see you in two weeks.

1 THE PETITIONER: That would be good.

2 THE COURT: If you would prefer to have me  
3 accompany the person out there and make sure that there is  
4 no miscommunication, there is no hang up or hold up --

5 THE PETITIONER: I would appreciate that.

6 THE COURT: Mr. Forman and Mr. Schneider may have  
7 some things that they want to address to me. If you read  
8 that Rees case, you will see what standing they have in the  
9 process, and understand that I do need to listen to them and  
10 consider what they have to say.

11 THE PETITIONER: I appreciate you listening to  
12 them. Any kind of statement they make that pertains to me,  
13 I appreciate you verifying them. They go against any type  
14 of instructions, or anything that might seem detrimental of  
15 your position.

16 THE COURT: While you are here, you can hear what  
17 they have to say, and I will certainly listen to anything  
18 you say in response.

19 I have one other question for you. Just as a  
20 matter of context for me, and this, of course, helps me make  
21 an evaluation of all of the issues pending, but I am curious  
22 to know what it is you are trying to accomplish. I think  
23 your petition alluded to it.

24 What is it you would like to accomplish at the  
25 bottom line in this process?

26 THE PETITIONER: Competency and vacating of the  
27 appeal.

28 THE COURT: If that's done, what is it that you

1 are hoping will happen as a result?

2 THE PETITIONER: I am not going to litigate that,  
3 divulge that at this time.

4 THE COURT: It is not litigation. Anything I  
5 determine here wouldn't limit --

6 THE PETITIONER: I want to keep the strategy to  
7 myself.

8 THE COURT: I need to at least be aware along the  
9 way of what you think is likely -- a likely result of your  
10 prevailing in your efforts to withdraw the petition.

11 THE PETITIONER: I am not going to be divulging  
12 any kind of strategies I might be making at this time.

13 THE COURT: Well, you do understand that the  
14 petition for Writ of Habeas Corpus contains some  
15 possibility -- I am not going to speak on the probability --  
16 but some possibility of ultimately preventing your  
17 execution

18 Do you understand that?

19 THE PETITIONER: To vacate --

20 THE COURT: The writ that's pending in the Supreme  
21 Court, if it prevails and they were to issue a Writ of  
22 Habeas Corpus, it is quite possible that that could prevent  
23 you being put to death.

24 Do you understand that?

25 THE PETITIONER: My intention is to stay alive as  
26 long as possible, Judge.

27 THE COURT: The record should reflect that he is  
28 smiling as he says that.

1 MR. SCHNEIDER: Your Honor, may I ask the Court to  
2 direct one more question?

3 That he understands what happens in the State  
4 Court may have impact on the Federal Court proceedings. If  
5 the State Court were to dismiss it, that might have the  
6 impact of limiting what he could raise in Federal Court. He  
7 might think his best chance is in Federal Court. I don't  
8 know, but there will be consequences. If the petition were  
9 to be dismissed in State Court, that might limit what he can  
10 raise in Federal Court.

11 THE COURT: Can you give us a for instance?

12 MR. SCHNEIDER: If he is raising an issue in the  
13 State Court that's not previously been exhausted, and you go  
14 to Federal Court and try to raise it, we can make a claim  
15 and the Federal Court buys that and says, "You can't  
16 litigate that issue as good as you may think it is." It  
17 might limit your possibilities of what you can raise in  
18 Federal Court.

19 THE PETITIONER: I understand that my writ for  
20 exhaustion is already filed by the PD's office.

21 MR. SCHNEIDER: If you withdraw that, then it  
22 won't have the impact of doing the exhaustion because it  
23 will be withdrawn.

24 There is a potential that when we go back to Judge  
25 Keller's courtroom, and you withdraw it, you can't raise it  
26 there again. There is a possibility he might do that.

27 THE PETITIONER: I can appreciate that.

28 MR. SCHNEIDER: So that means if you say, "Gee, I

1 changed my mind," he may say, "Mr. Kirkpatrick, sorry, you  
2 can't raise it."

3 THE PETITIONER: You are looking out there,  
4 Robert. Thanks.

5 MR. SCHNEIDER: I am here to do justice. You are  
6 the only person that says my name correctly, but do you  
7 understand what I am trying to communicate?

8 THE PETITIONER: Yeah, you are covering your ass.

9 MR. SCHNEIDER: To the extent that the Judge is  
10 going to be reviewed by Federal Court, I am being reviewed  
11 by the Federal Court. I don't want to do it twice. I want  
12 to do it once. I want to do it right. Whatever it takes to  
13 do it right, I want to do it now and here.

14 If telling you all the possibilities makes me do  
15 it right once, I want to do it now. You might be giving up  
16 something. This isn't just strategy. The strategy may be  
17 you might lose, maybe not, but maybe.

18 THE PETITIONER: I am wondering why you don't  
19 investigate. I sent you interesting stuff.

20 MR. FORMAN: If I may.

21 I also think we are talking about a matter of  
22 waiving -- the possibility of waiving issues in the  
23 exhaustion petition, but that there is also a significant  
24 possibility or probability that the Attorney General will  
25 argue that the federal petition should be dismissed as well.  
26 That would leave you without any petition between you and an  
27 execution date.

28 THE PETITIONER: Thank you. I had no idea I was

1 on death row.

2 Is that about it for now?

3 THE COURT: Well, we are getting close.

4 Did counsel have any other things you want to  
5 raise at this time?

6 MR. FORMAN: I did.

7 The pleading that we submitted to the Court, the  
8 proposed agenda on conducting this hearing, we urge the need  
9 to conduct discovery in this matter. I would ask that we be  
10 able to conduct discovery before experts examine  
11 Mr. Kirkpatrick so that they have all the data from San  
12 Quentin that's necessary to come to their decisions.

13 I would suggest that we would put a discovery  
14 motion in front of this Court within ten days. Maybe we can  
15 meet with Mr. Schneider and be able to submit a joint  
16 stipulated discovery motion, but there are matters in the  
17 San Quentin files and elsewhere that we think could very  
18 well be germane to this proceeding. We ask for a chance to  
19 conduct some discovery first before the experts meet with  
20 Mr. Kirkpatrick.

21 THE PETITIONER: That's my private property. I  
22 don't want these people accessing to my medical regards.

23 THE COURT: I don't know what he is talking about,  
24 frankly, but I have talked with the San Quentin Legal Office  
25 and am assured that if there are psychological or  
26 psychiatric experts employed to examine Mr. Kirkpatrick  
27 because of this process we are in right now --

28 THE PETITIONER: They already done that.

1 THE COURT: -- that they will be allowed, if I so  
2 direct, to access your central file and your medical file to  
3 the extent that they need to look at those things.

4 THE PETITIONER: The psychiatrists?

5 THE COURT: Yes, sir.

6 THE PETITIONER: They already do. They have that  
7 already.

8 THE COURT: Well, if I appoint somebody to do an  
9 examination for the Court, or excuse me for the Referee,  
10 then I might mention to that person that there are those  
11 files and ask him or her to take a look at them.

12 THE PETITIONER: I already submitted them to the  
13 Court. I know your professionals. I am talking about your  
14 psychiatric appointee.

15 THE COURT: Okay.

16 THE PETITIONER: I have no problem with that.

17 THE COURT: I think if we have somebody appointed  
18 by the Court to do an examination first and then see what  
19 that turns up, what the opinion is and what the basis is for  
20 it, then I assume, to the extent that they're entitled to do  
21 it, Mr. Forman and Mr. Schneider will have an opportunity to  
22 look at that and tell us whether they think they want  
23 experts, and if so, what their justification is for having  
24 experts.

25 THE PETITIONER: Evaluation or the interview?

26 THE COURT: Both record evaluation and interview.

27 THE PETITIONER: I may have a problem with that.

28 THE COURT: I might, too. I am not guaranteeing



1 that it is going to happen, but if you read that Rees  
2 case --

3 THE PETITIONER: Their reviewed conclusions speaks  
4 for itself. I may have a problem with that actually. If  
5 somebody can be -- I guess we will cross that bridge when we  
6 come to it.

7 THE COURT: That's my view. If you remind me  
8 again of any concerns that you have about that kind of  
9 thing, I certainly will listen and maybe we can deal with  
10 it, but I would like to get one interview or one examination  
11 and evaluation done first.

12 THE PETITIONER: Just me and whoever is going to  
13 conduct this evaluation?

14 THE COURT: Right. Correct.

15 THE PETITIONER: There is a room in the visiting  
16 room. I don't have to sit there shackled up. It is a  
17 security room for attorneys to pass documents back and forth  
18 if necessary. That's not going to be a problem  
19 security-wise.

20 THE COURT: I see Mr. Forman standing.  
21 You have some other point to make?

22 MR. FORMAN: I do.

23 We believe under the case law that we have the  
24 right to have our experts try to evaluate Mr. Kirkpatrick as  
25 well, regardless of what the court-appointed experts  
26 discover, and submit evidence concerning his competency.

27 THE PETITIONER: Judge Graham, in Federal Court,  
28 Judge Keller came to a consensus with the Federal Public

1 Defender's Office and Attorney General's Office. All three  
2 parties agreed on one psychologist.

3 THE COURT: To do an examination?

4 THE PETITIONER: That was one that got blew off by  
5 somebody.

6 THE COURT: There is a point --

7 THE PETITIONER: They came to a consensus on it.  
8 That's kind of close to violating some constitutional  
9 rights.

10 THE COURT: There is a point and I think that's a  
11 very sensible point to make. When I first talked with  
12 Mr. Forman and Mr. Schneider on the telephone, I asked them  
13 whether they had people in mind they would like to  
14 recommend, asked them to consider looking into what experts  
15 in this area they might like to rely on, but --

16 THE PETITIONER: My understanding is the guy who  
17 was supposed to see me last time, Pettis --

18 MR. SCHNEIDER: Yarvis from UC Davis.

19 THE PETITIONER: Both agreed to him last time. It  
20 wasn't my fault.

21 THE COURT: Is he a psychiatrist?

22 MR. SCHNEIDER: Psychiatrist.

23 THE COURT: I have no experience with the person  
24 at all, but is it somebody that you ordinarily would respect  
25 and rely upon?

26 MR. SCHNEIDER: At that point, I believe it  
27 Victor Kenton was the attorney. We got together and agreed  
28 that he would be a person we could both rely upon. The

1 Federal Court appointed him.

2 THE COURT: Mr. Forman, what's your situation?

3 MR. FORMAN: This was before I was on the case.

4 We have retained two mental health experts now  
5 that we would like to have examine Mr. Kirkpatrick.

6 THE PETITIONER: Here we go.

7 THE COURT: If he won't cooperate, you might not  
8 be able to get him examined.

9 What people are you talking about?

10 MR. FORMAN: I am prepared to say the names of the  
11 experts that we have contacted who have agreed to work on  
12 this case. One is Dr. Pettis. The other is a psychologist  
13 whose name is Javier Amador, A-m-a-d-o-r.

14 THE PETITIONER: If you are satisfied with these  
15 two, I would have no problem. I want to get this thing  
16 moving.

17 THE COURT: Let me tell you the names of two  
18 people I have considered. I actually called several and  
19 some were not available or not willing to participate, but  
20 there is a Dr. Shawn Johnston, who is a PhD psychologist. I  
21 think his office is in Sacramento.

22 That's a very good suggestion. If we don't have  
23 to be having a battle of the experts and settle at least  
24 initially on somebody who might be acceptable -- Shawn  
25 Johnston is at 2601 Capitol Avenue, Sacramento, Number 105.  
26 I don't know what the zip is, but his office phone number is  
27 916, 442-5800.

28 I am sure if you ask the District Attorney's

1 Office and the Public Defender's Office here in Marin  
2 County, you will find that he is widely respected by  
3 everybody.

4 MR. SCHNEIDER: Your Honor, we have no problem  
5 with Dr. Johnston. We would accept him.

6 THE COURT: Thank you.

7 Then there is a PhD psychologist named R.K.  
8 McKinzey, and he is at 400 29th Street, Ste. 315. I think  
9 that's in Berkeley. It is either Berkeley or Oakland. His  
10 number is 510, 655-3903. Again, I think if you were to ask  
11 around about him, you would find him also widely respected  
12 here.

13 We have a complete list that we can give you if  
14 you want to be looking for others. Those happen to be two  
15 people from the list among the many I have called that I  
16 have actually gotten through to who were willing to provide  
17 this service.

18 I wonder if it's worth putting our hearing over a  
19 week to give Mr. Kirkpatrick an opportunity to read those  
20 materials he got today and to consider this business  
21 further, and to allow you all to look at the possibility of  
22 one of these people being used by consensus or agreement.

23 Are you in a position, Mr. Forman, whatever I do,  
24 you are not going to agree to a common --

25 MR. FORMAN: Not at all. I would like to check  
26 this out first.

27 THE COURT: Okay.

28 MR. SCHNEIDER: Our only position would be one of

1 the two people who see him should be a Board Certified  
2 psychiatrist and not just psychologist.

3 THE COURT: That's okay for me, too. I tried  
4 somebody from my list that turns out not to be available --  
5 two psychiatrists -- no, three on my list that I contacted,  
6 who are not available.

7 Do you know of other psychiatrists?

8 MR. SCHNEIDER: I would have to check my sources.  
9 A name doesn't mean too much to me until I have knocked it  
10 around with our people in the North Bay who have dealt with  
11 psychiatrists and I can consult with them.

12 THE COURT: Why don't, if you are aware of any  
13 within the next day, you exchange names back and forth and  
14 see if you can come up with anybody, and why don't we give  
15 it a week.

16 Is there any reason we can't get together next  
17 Monday and try to pick somebody?

18 I understand that even if we agree to somebody  
19 initially, that one side or the other might decide that they  
20 need some further analysis, but on the other hand,  
21 Mr. Kirkpatrick might not agree to be visited or interviewed  
22 and that's something only he can decide.

23 MR. FORMAN: Next Monday is fine with us.

24 Also, just to advise the Court, we will be filing  
25 a discovery motion that will set out clearly for the Court  
26 what it is we are seeking, so there is no confusion.

27 THE COURT: Sure. I will be interested to see  
28 what it is.

1 Anything else that we should be doing today?

2 If we get back together in a week, we are talking  
3 about next Monday, the 23rd. I would be available again at  
4 1:30. If you would rather do it late morning, that's all  
5 right with me, too.

6 MR. FORMAN: 1:30 probably works best.

7 MR. SCHNEIDER: That's acceptable.

8 THE COURT: Is that all right with the people at  
9 San Quentin?

10 THE PETITIONER: I will put my meetings on hold.

11 THE COURT: How about the prison?

12 THE GUARD: That will be okay.

13 THE COURT: Mr. Kirkpatrick, I know it is only a  
14 preliminary observation, but I can tell you right now based  
15 upon what I have seen here today, I don't see that you have  
16 any mental or emotional limitations that would get in the  
17 way of your being a perfectly rational and intelligent  
18 participant in the litigation process, and but for the  
19 circumstances in which we find ourselves, its been a  
20 pleasure to talk to you. You have behaved yourself as a  
21 gentleman. I sure appreciate it.

22 If I have anything sent out to anybody from this  
23 point forward, I will make sure I send it to you.

24 Should I send it through the legal office?

25 THE PETITIONER: Booking number is my address.

26 THE COURT: All right.

27 Thank you all very much. We will see you at 1:30  
28 on the 23rd to try to get going.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(Whereupon, the proceedings were concluded.)

1 STATE OF CALIFORNIA )  
 2 ) ss.  
 3 COUNTY OF MARIN )  
 4  
 5

6 I, MAUREEN A. STEGER, do hereby certify that I am  
 7 Certified Shorthand Reporter pursuant to the laws of the  
 8 State of California; Official Court Reporter of the Marin  
 9 County Courts of the State of California, thereof;

10 That acting as such reporter I took down in  
 11 stenotype the testimony given and proceedings had in the  
 12 within-entitled action fully, truly and correctly.

13 That I thereafter caused the foregoing proceedings  
 14 of said cause to be transcribed into typewriting, and that  
 15 the foregoing 30 pages constitute a true and correct  
 16 transcription of said notes.

17  
 18 DATED: San Rafael, California, this 2nd day of  
 19 November, 2000.

20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28

*Maureen A. Steger*  
 MAUREEN A. STEGER

CSR NO. 5721



ORIGINAL

S075679

1

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

--oOo--

HON. JOHN STEPHEN GRAHAM, JUDGE

DEPARTMENT NO. D

IN RE WILLIAM KIRKPATRICK, JR.

] SC116005A

]

]

STATUS REPORT

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, OCTOBER 23, 2000

--oOo--

SUPREME COURT  
FILED  
AUG 10 2001  
Frederick K. Ohlrich Clerk  
DEPUTY

REPORTED BY: MAUREEN STEGER, CSR. No. 5721

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

APPEARANCES:

For the Respondent: Office of the Attorney General  
State of California  
300 South Spring Street, Ste. 500  
Los Angeles, Calif. 90013  
By: Robert C. Schneider  
Deputy Attorney General

For the Petitioner: Office of the Federal Public Defender  
State of California  
321 East Second Street  
Los Angeles, Calif. 90012  
By: William Forman  
and  
Mark R. Drozdowski  
Deputy Federal Public Defenders

1 Monday, October 23, 2000 1:30 O'Clock P.M.

2 --oOo--

3 THE COURT: Good afternoon everybody.

4 The record will reflect that Mr. Kirkpatrick is  
5 here and Mr. Forman is here with --

6 MR. FORMAN: Mr. Drozdowski.

7 THE COURT: For the State we have back  
8 Mr. Schneider.

9 MR. SCHNEIDER: Yes.

10 THE COURT: Mr. Kirkpatrick, is it still your wish  
11 to be representing yourself and not have the assistance of  
12 an attorney in this process?

13 THE PETITIONER: Yes, it is.

14 THE COURT: I may ask you from time to time just  
15 to be sure and to remind you if you want another attorney, I  
16 can bring one in for you.

17 THE PETITIONER: You mentioned that before.

18 Your Honor, before we begin there are a couple of  
19 things I would like to get cleared up. I might have a  
20 Fourteenth Amendment violation you might want to look into  
21 here.

22 Beginning -- I don't understand why is the  
23 courtroom at this time -- is this courtroom closed at this  
24 time?

25 THE COURT: No.

26 THE PETITIONER: It was closed last time I arrived  
27 here.

28 THE COURT: I don't think so. It could be because

1 we are not really doing a court proceeding. In spite of the  
2 fact that I come out in the robe, I have been appointed as a  
3 Referee to do some fact finding for the Supreme Court. So I  
4 am not aware of any authority that requires this to be an  
5 open proceeding, but I prefer that it be open.

6 THE PETITIONER: Was it open the last time we were  
7 in the courtroom?

8 THE COURT: As far as I know.

9 THE PETITIONER: The man saying it was closed.

10 THE COURT: Who said it was closed?

11 MR. SCHNEIDER: There was a member of the press  
12 here last time.

13 THE PETITIONER: I am talking about general public  
14 in general.

15 Was there a hearing taking place prior last  
16 Monday?

17 THE COURT: There may have been. Probably not at  
18 1:30 but --

19 THE PETITIONER: I -- before me, my case, was  
20 there any hearings?

21 THE COURT: No. I didn't come out into the  
22 courtroom until you were all here last time, and the door  
23 was unlocked. I remember seeing people coming and going.

24 THE PETITIONER: I need verification because they  
25 put my -- with Judge William D. Keller, there were all kinds  
26 of hearings took place. By the time they got through with  
27 me, he was convinced that I was going to be come hunting for  
28 him.

1 THE COURT: I don't at the moment know why I  
2 should have any communication about this case with anybody  
3 out of your presence. As I explained to you, I had a  
4 telephone conversation with Mr. Schneider and Mr. Forman  
5 before we got together last time. That was a telephone  
6 conversation that we had among the three of us, which I  
7 asked Mr. Forman to advise you of, and from which I asked  
8 him please to take to you the information of our plan here,  
9 but that's the only communication I have had about the  
10 matter out of your presence except for maybe two telephone  
11 calls I have had with the secretary for the Supreme Court or  
12 research attorney who is responsible for organizing the  
13 appointment and so forth to get this done.

14 THE PETITIONER: All right.

15 Also, I would like the Court to consider  
16 entertaining a motion here pertaining to -- to be polite  
17 about it, Mr. Forman and whoever that is next to him, I  
18 don't believe that they belong here. It is inappropriate to  
19 have them present in the courtroom.

20 This is not an appellate issue. I contend it  
21 isn't an appellate issue. It is -- the State Supreme Court  
22 has presented the issue of competency from the direct  
23 appeal. As you stated, these are my attorneys of record in  
24 a direct appeal. This is not an appellate issue. It is a  
25 matter of competency.

26 You can determine anything from a child custody  
27 case to a civil action to a criminal proceeding, jury  
28 proceeding. It has nothing to do with the direct appeal.

1 I protest having them here.

2 THE COURT: Well, one of the reasons why I gave  
3 you a copy of the Rees versus Payton case the last time we  
4 were together was so you could read it and be assured that I  
5 am not inventing this out of whole cloth, that I am not  
6 taking sides with anybody in the matter.

7 If you look at that Rees versus Payton case, which  
8 the Supreme Court did refer me to in the appointment order,  
9 it does contemplate participation by the attorney who was  
10 appointed to represent you effectually as the next friend,  
11 almost as if he were kin, or had some other reason to be  
12 concerned with your status. I don't think I am in a  
13 position to tell him not to be here.

14 I can understand logically how you as owner of  
15 your life and your destiny would think that you shouldn't  
16 have people in here trying to tell you what's good for you  
17 and that you should be allowed to make these decisions for  
18 yourself. I am quite sympathetic to that theory, but it  
19 appears that the Supreme Court intends something different  
20 here.

21 I am going to let them remain, and I will  
22 certainly listen to anything you have to say in response to  
23 Mr. Forman's various requests for process or discovery or  
24 anything else, but I think based upon the law that I have  
25 been cited to, I am bound to let them remain at least for  
26 the time being.

27 THE PETITIONER: I believe it is in violation of  
28 my Fourteenth Amendment Right. It should be respondent and

1 petitioner in this matter. Mr. Forman and whoever that is  
2 with him has anything to say about it -- this Rees versus  
3 Payton --

4 THE COURT: Yes, sir.

5 THE PETITIONER: -- you said it has to do with my  
6 best friend, my counsel?

7 THE COURT: Next friend.

8 THE PETITIONER: See, I have a problem. See, they  
9 don't represent me. The Court is well aware of the friction  
10 between myself and the Federal Public Defender's Office, and  
11 at this time the representatives in this courtroom.

12 That's why I believe they used the specific  
13 wording "attorneys of record " in the direct appeal. They  
14 may represent the law and the appeal, but they don't  
15 represent me. I don't believe they should be here claiming  
16 to represent my best interest. My best interest -- this  
17 appeal would have been heard ten years ago.

18 THE COURT: That's not really for me to decide.  
19 Ultimately if we determine in this process that you are  
20 competent, that you are making a knowing, voluntary and  
21 intelligent waiver of rights, and then relay that  
22 information to the Supreme Court, the Supreme Court may well  
23 conclude that you are entirely correct and that Mr. Forman  
24 has no place here, but that's their decision and not mine.  
25 It is not my issue here.

26 My issue is to look at the question of competence  
27 and the question of knowing, voluntary and intelligent  
28 waiver, and once I make findings in that regard, I am out of

1 the loop.

2 THE PETITIONER: I believe that's what the Supreme  
3 Court intends. The State Supreme Court and U.S. Supreme  
4 Court in the last few years intends -- especially  
5 pertaining to the cruel and unusual punishment this process  
6 is taking upon me and inflicting upon me.

7 I believe it is the Court's intent to -- contrary  
8 to what Mr. Forman wrote you in the petition -- did you read  
9 that thing?

10 THE COURT: Which one?

11 I have read a couple of things. He sent me a  
12 brief concerning this procedure. He sent me some papers  
13 concerning what's on file with the Supreme Court.

14 THE PETITIONER: Well, contrary to what he put in  
15 one of those pieces of something -- contrary to what he put  
16 in those things, I don't think the Court is gravely  
17 concerned about my competence at all.

18 THE COURT: Based upon anything I have seen here,  
19 I don't think they're gravely concerned either. I think as  
20 a matter of what they consider to be due process, they want  
21 to be sure that before they allow you to effectually relieve  
22 your attorney, who is currently appointed and in place, they  
23 want to be sure that you are competent and that you  
24 understand what's going on.

25 THE PETITIONER: I believe it is the Court's  
26 intent to give me full control of my case. Every time I  
27 have done this in the past, first words out of attorney of  
28 record's mouth is "competence, competence."



1 I believe when I get that out of the way and I can  
2 get the case away from them -- I think if they're fair and  
3 honest, they will agree with me that I am entitled to my day  
4 in court. Lawyers are dragging and dragging. Sooner or  
5 later somebody got to snap.

6 But the State Court and the U.S. Supreme Court --  
7 I believe it is their intention to give me that control of  
8 the case.

9 THE COURT: That would be my suspicion. If we end  
10 up concluding and they're satisfied with the factual  
11 conclusion that you are competent and that you understand  
12 what's going on and that you are making a knowing and  
13 voluntary waiver, then I suspect that they probably will  
14 give you your wish and relieve counsel and let you go on  
15 your way.

16 THE PETITIONER: Federal District Judge William D.  
17 Keller attempted to go through this competency thing in the  
18 past and it was bamboozled, as I was. Coming and telling me  
19 lies, and put each other at each other's throats.

20 I urge you again most emphatically not to buy into  
21 that. It is driving me crazy. I would like you to do so  
22 and judge me by the letters I have written to them -- the  
23 later letters when they pissed me off, not the early ones.  
24 I urge you keep an eye on them. These are some dirty guys  
25 here.

26 THE COURT: You have been courteous and rational  
27 and professional in your behavior here in the courtroom so  
28 far, and you can expect that I will treat you with respect

1 and I will not be doing things that I won't tell you I am  
2 going to do. I will keep you fully informed, and I won't be  
3 making decisions out of your presence.

4 I will listen to what you have to say, and the  
5 arguments presented by Mr. Schneider or Mr. Forman. I will  
6 certainly listen to what you have to say before I make any  
7 decision on the process.

8 THE PETITIONER: Finally, pertaining to this  
9 selection of the examining psychiatrist or psychologist --

10 THE COURT: Well, I am inclined to feel that a  
11 psychiatrist if we are only going to have one would be the  
12 appropriate person rather than a PhD psychologist.

13 THE PETITIONER: The objection pertains to  
14 Mr. Forman's two cents in this matter. I believe it is the  
15 Court's own judgment which dominates here.

16 THE COURT: I think you are right.

17 THE PETITIONER: I don't think neither the  
18 respondent, Mr. Schneider, or Mr. Forman or even myself have  
19 any objection to make, unless we question your selection, or  
20 in fact if it is a relative of mine or relative of  
21 Mr. Forman's or Mr. Schneider's. We can object, but I am  
22 perfectly happy with you making the selection.

23 THE COURT: Thank you. I intend to make the  
24 selection, but I would prefer to do it with input from you  
25 and Mr. Schneider and Mr. Forman, if there is any to be had.

26 One of things you told us last week was that you  
27 were not going to cooperate with an evaluation by more than  
28 one psychologist or psychiatrist, and for that particular

1 reason, it seems most preferable to me to try to find a  
2 person or a psychiatrist who is acceptable to everybody who  
3 is standing here, and the Supreme Court tells me by  
4 referring to that Rees versus Payton case, that Mr. Forman  
5 and Mr. Schneider have standing here as well as yourself to  
6 be considered. So I would like to hear what they have to  
7 say. If we can find a professional who is acceptable to  
8 everybody we may be taking a big step toward getting this  
9 matter resolved quickly.

10 Now it appears also based upon the Rees case that  
11 even if Mr. Forman agrees with the initial selection of the  
12 psychiatrist, he would still be allowed in this process to  
13 bring in other evidence, including other opinions from other  
14 professionals. So we are not going to cut that off  
15 altogether just by getting an agreement here in advance, but  
16 maybe we can take a step toward simplifying the thing if we  
17 make the decision together.

18 THE PETITIONER: Mr. Forman is deliberately  
19 delaying justice here. This is a criminal act. His intent  
20 was malicious and racially motivated, very bitter and petty  
21 about my not kissing their asses.

22 Mr. Forman, I explained to you who I am. I am a  
23 40-year-old pissed off man. This man has nothing to say in  
24 my life. He is attorney of record until he turns different  
25 colors.

26 I want the psychiatrist -- no one is going to  
27 question my competence, nobody in their right mind. Just  
28 because a man wants to represent himself -- that's the

1 bottom line here -- he is automatically incompetent. A  
2 white man that can do such a thing to me is offensive. I  
3 want him off my back. I want the psychiatrist selected.

4 THE COURT: Me, too.

5 The record should reflect that although he says he  
6 is -- I think his term was pissed off -- Mr. Kirkpatrick has  
7 not raised his voice, is perfectly calm and rational in this  
8 process.

9 THE PETITIONER: I am going to kick the shit out  
10 of him if you take off the shackles.

11 THE COURT: He is now smiling and laughing. He is  
12 substantially chained with waist chains and ankle chains.

13 Let me find out from Mr. Schneider and Mr. Forman  
14 whether they have anybody to propose, and let's find out who  
15 he is.

16 THE PETITIONER: They selected -- we were  
17 perfectly content with who they had in front of  
18 Judge Keller's Court.

19 THE COURT: The person from Berkeley?

20 THE PETITIONER: Whoever that was that was conned  
21 out of not coming to see me.

22 MR. FORMAN: We would have agreed to him again,  
23 but Dr. Yarvis is unavailable.

24 MR. SCHNEIDER: He got back to me at 10:30. It  
25 turns out the psychiatric forensic community was in  
26 Vancouver last week at a conference, so it was hard to find  
27 people.

28 Dr. Yarvis, who we had agreed to previously, got

1 back to me at 10:30 this morning. It turns out he was  
2 interested, but his schedule prohibited him being involved.  
3 He could not be involved.

4 THE PETITIONER: Did Mr. Schneider -- did you  
5 explain to him what occurred last time?

6 MR. SCHNEIDER: No. It was a voice mail. We  
7 couldn't get any details.

8 There is another name that I would propose to  
9 Mr. Forman, a doctor from Stanford, James Missett. We are  
10 going to try to work on somebody who will be agreeable to  
11 both of us and who we can propose to the court.

12 MR. FORMAN: I have also given the name of  
13 Dr. Armador, who is a psychologist on the faculty of  
14 Columbia Med School.

15 THE PETITIONER: I thought you wanted a  
16 psychiatrist.

17 THE COURT: Well, there was a statement of  
18 preference for a psychiatrist if there were to be only one,  
19 but we might have --

20 MR. SCHNEIDER: I prefer a psychiatrist if there  
21 is only one. If it is going to be two, then we work out an  
22 agreeable psychologist.

23 THE COURT: Were you able to consider the couple  
24 of names that I gave you, McKinzey and Johnston?

25 MR. SCHNEIDER: I am satisfied with Johnston.

26 Mr. Forman: I would say that I wasn't satisfied  
27 with Johnston, but was okay with McKinzey.

28 I think what Mr. Schneider and I talked about is

1 we would like to approach this as retaining two experts who  
2 are perceived throughout the entire profession as neutrals,  
3 as academics, as people who are going to approach this in a  
4 way that we all will be very comfortable with.

5 Mr. Schneider and I think we can work that out. We have  
6 asked the Court to have a week to come up with that.

7 THE COURT: Let me give you two other names of  
8 people who said that they would do it. I haven't spoken to  
9 them recently.

10 He had some unhappy personal circumstance, but  
11 there is a Martin Blinder here in Marin County, who is very  
12 well known. He's taught at law schools and has practiced in  
13 these courts and elsewhere for years. He has an office in  
14 San Anselmo. He is an MD psychiatrist.

15 There is also a Diane McEwen, M-c-E-w-e-n, who is  
16 an MD psychiatrist here in Marin County. Her office, I  
17 think, is in Tiburon.

18 The Clerk has telephone numbers for you. If you  
19 are curious to get resumes -- I don't think I have one on  
20 hand, but I have had a chance to speak with both of them,  
21 and they both have said that they would be willing to do  
22 evaluations for us.

23 MR. FORMAN: Mr. Schneider and I will work hard  
24 next week to come to an agreement.

25 THE PETITIONER: If they can't come up with  
26 something like a deadline -- this is like two little kids in  
27 a tug of war. If you can't come up with a deadline, you can  
28 make a selection, and if you don't like it, they can

1 question your competence.

2 THE COURT: Well, I would like to get on with it,  
3 and I would prefer not to take longer than another week. I  
4 don't want to keep getting together, but I think what I  
5 probably ought to do right now is, given the cooperation  
6 from the people of San Quentin, put this over until next  
7 Monday at 1:30 and see if we can come up with a name.

8 I think our first effort should be to get an  
9 evaluation done by somebody who seems to be agreeable to  
10 everybody.

11 Unless somebody has some good reason why not, I  
12 will say next Monday at 1:30. We will try to finish this  
13 phase of it up.

14 THE PETITIONER: Was it you that asked the court  
15 to delay ruling on the petition and response by the Attorney  
16 General?

17 THE COURT: No. I haven't asked them to do  
18 anything like that. If you had an appointed lawyer, he  
19 might be able to do that for you.

20 I get the impression that's what they're doing  
21 pending our resolution of the questions that are presented  
22 here, but I don't know for sure. If you had an appointed  
23 attorney in this process, I presume that attorney could make  
24 such a request of the Supreme Court.

25 THE PETITIONER: Somebody mentioned last week that  
26 it was in abeyance.

27 THE COURT: I think it would be, but Mr. Forman  
28 indicated that there was something happening. There is a

1 briefing schedule in progress, so they're still taking  
2 briefs, but apparently they're not on the verge of making  
3 any kind of a decision.

4 THE PETITIONER: Well, I am going to be filing a  
5 petition to -- I don't want Mr. Forman offering any  
6 supplements. I might be -- I would ask the Court not to  
7 accept --

8 THE COURT: I can't do that. My role here is very  
9 narrowly defined, but if you want me to get you an attorney,  
10 I will do that.

11 THE PETITIONER: Enough attorneys. I am choking  
12 on attorneys. No more attorneys.

13 THE COURT: Thank you. We will see you next  
14 Monday at 1:30. Thanks for your cooperation.

15 THE PETITIONER: Have a good one.

16 (Whereupon, the proceedings were concluded.)  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF MARIN )

I, MAUREEN A. STEGER, do hereby certify that I am Certified Shorthand Reporter pursuant to the laws of the State of California; Official Court Reporter of the Marin County Courts of the State of California, thereof;

That acting as such reporter I took down in stenotype the testimony given and proceedings had in the within-entitled action fully, truly and correctly.

That I thereafter caused the foregoing proceedings of said cause to be transcribed into typewriting, and that the foregoing 18 pages constitute a true and correct transcription of said notes.

DATED: San Rafael, California, this 7 day of November, 2000.

*Maureen A. Steger*  
MAUREEN A. STEGER

CSR NO. 5721

ORIGINAL

S075679

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

--oOo--

HON. JOHN STEPHEN GRAHAM, JUDGE

DEPARTMENT NO. D

IN RE WILLIAM KIRKPATRICK, JR. ]

] NO. SC-116005A

]

STATUS REPORT

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Monday, October 30, 2000

--oOo--

SUPREME COURT  
FILED  
AUG 10 2001  
Frederick K. Ohlrich Clerk  
DEPUTY

REPORTED BY: MAUREEN STEGER, CSR. No. 5721

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

APPEARANCES:

For the Respondent: Office of the Attorney General  
State of California  
300 South Spring Street, Ste. 500  
Los Angeles, California 90013  
By: Robert C. Schneider  
Deputy Attorney General

For the Petitioner: Office of the Federal Public Defender  
State of California  
321 East Second Street  
Los Angeles, California 90012  
By: William Forman  
and  
Mark R. Drozodowski  
Deputy Federal Public Defenders

1 Monday, October 30, 2000 1:30 O'Clock P.M.

2 --oOo--

3 THE COURT: Good afternoon, Mr. Kirkpatrick. Good  
4 afternoon, Counsel.

5 Have you got a recommendation for me?

6 MR. SCHNEIDER: We have two names, your Honor. We  
7 have agreed that either of them -- well, both of them would  
8 be acceptable.

9 THE COURT: Okay. They are?

10 MR. SCHNEIDER: Robert Weinstock, who is Director  
11 of the Forensic Psychiatry Program at UCLA Medical School,  
12 and Dr. Michael Krelstein, who is a Fellow at the University  
13 of California San Francisco in the psychiatry-law program.

14 THE COURT: That's UCSF?

15 MR. SCHNEIDER: Yes.

16 THE COURT: I take it they both have substantial  
17 prior forensic experience.

18 MR. SCHNEIDER: Both are certified psychiatrists.

19 Dr. Weinstock is Board Certified in forensic  
20 psychiatry.

21 Dr. Krelstein is Board Certified in adult  
22 psychiatry and is in the psychiatry and law program right  
23 now on a Fellowship studying forensics, and I have talked  
24 with the program director -- I guess the teacher or  
25 professor, and he is impressed, that he is a bright, very  
26 thorough candidate.

27 THE COURT: Okay.

28 Mr. Kirkpatrick, do you know anything about either

1 one of those or have a preference?

2 THE PETITIONER: No I don't.

3 First thing though is I would like to know if I  
4 could have these restraints removed.

5 THE COURT: Well, I need to talk to the people  
6 from San Quentin about their concerns that result in  
7 restraints being in place.

8 Are you talking about all of them?

9 THE PETITIONER: No, my hands. We are going to  
10 get into another issue in a little bit. If I have to write,  
11 go through my files -- we are going to talk about them in a  
12 little bit -- I am going to have my hands loose.

13 THE COURT: Are you right handed or left handed?

14 THE PETITIONER: Left handed.

15 THE COURT: Are you folks from San Quentin in a  
16 position to give him the use of one or both of his hands?

17 If not, can you explain to me why not?

18 THE GUARD: Perhaps. We would be strongly against  
19 that.

20 THE COURT: One of things that we could do, if it  
21 were important to you, is we could free both of his hands or  
22 a hand, and he could be chained to the chair. That chair is  
23 fixed to the floor and it would take awhile I imagine to  
24 muster the chain, but that would give him his hands or hand.

25 THE PETITIONER: It is going to have to be hands.  
26 We are going to right now -- I would like to have them  
27 loose.

28 THE COURT: Are you willing to give him his left

1 hand to use here now?

2 THE GUARD: Yes.

3 THE COURT: Please do that.

4 THE PETITIONER: I am right handed.

5 THE COURT: I thought you said you were left.

6 THE PETITIONER: I don't need it right now, but I  
7 will need both my hands when the time comes.

8 Also, I have been reviewing the order from the  
9 Supreme Court very carefully, and I believe they have --  
10 it's been determined they want the burden of -- proving  
11 myself competent is basically my burden.

12 Do you agree with that?

13 THE COURT: I am not sure there is any burden at  
14 all. The Supreme Court wants me to make an assessment as to  
15 whether you are competent.

16 THE PETITIONER: I need clarification.

17 They are assuming that I am competent?

18 THE COURT: I think that they just want to find  
19 out, and I probably think that they have no basis for doing  
20 so since they are not a fact-finding body.

21 THE PETITIONER: A case I read -- it is where you  
22 without solid grounds already presented to the court, any  
23 defendant-petitioner has to be automatically assumed  
24 competent.

25 THE COURT: Generally speaking, that's the way we  
26 operate.

27 THE PETITIONER: I just want to clarify. I was  
28 reading someone's response to this Court.

1 THE COURT: I have already made the remark that  
2 from what I have seen so far, I don't have any doubt of your  
3 competence at the present time, but as I mentioned to you at  
4 the last hearing and the one before, the case that the  
5 Supreme Court cites me to from the Ninth District, the Rees  
6 case, seems to suggest that it is prudent to have an  
7 examination, and I thank you for your courtesy in  
8 cooperating.

9 THE PETITIONER: Like I said before, I have  
10 already had two evaluations at San Quentin very recently as  
11 per William D. Keller's order.

12 THE COURT: When did that evaluation occur?

13 THE PETITIONER: The one with Yarvis, no. I  
14 believe it was Dr. Flavin(phonetic) at San Quentin.

15 THE COURT: How long ago?

16 THE PETITIONER: A year ago last January.

17 Everything is fine. When I first initially  
18 entered San Quentin, everything was hunky-dory.

19 So as pertaining to asshole one and asshole two  
20 over here, I told you before that they conned Yarvis, Keller  
21 and myself into never getting that evaluation done.

22 Now unless I am mistaken, that's in violation of  
23 my right -- my constitutional right to seek  
24 self-representation.

25 Do I have that constitutional right?

26 THE COURT: You certainly have the right under the  
27 Constitution to represent yourself.

28 THE PETITIONER: But I do have the constitutional

1 right to seek self-representation in the appellate process,  
2 do I not?

3 THE COURT: I believe the Supreme Court is asking  
4 me to make findings because they acknowledge that you have a  
5 right to make important decisions.

6 THE PETITIONER: I am going in another direction.  
7 I am saying I have a constitutional right to seek  
8 self-representation in any legal matter?

9 THE COURT: We are consuming time here,  
10 Mr. Kirkpatrick, doing things that is your business and the  
11 Supreme Court's business, but not really mine.

12 THE PETITIONER: I look at it like this. If these  
13 individuals -- his office, the Federal Public Defender  
14 Office, have wrongfully denied me my -- obstructed my  
15 constitutional right to seek self-representation, then they  
16 should not -- they should not be in control of my case.  
17 That means it is not a legal proceeding.

18 THE COURT: You can address that to the Supreme  
19 Court if you want to, but it is not my choice.

20 THE PETITIONER: You are going to accept them.

21 THE COURT: The Supreme Court tells me so. They  
22 haven't dealt with any concern in that regard as far as I  
23 know. That's their issue, not mine.

24 My only purpose here, as I understand the order,  
25 is to find for them whether, first off, you are competent;  
26 and second, you are making a knowing, voluntary and  
27 intelligent choice in seeking to withdraw the petition.

28 THE PETITIONER: I was reading it last night. You



1 also have -- these people have entered a discovery motion.  
2 I don't want them having any more information on myself,  
3 looking for medical records. I don't want to have them do  
4 anything further until the Supreme Court verifies that what  
5 the Federal Public Defender did was wrong, was illegal. I  
6 don't want them to have any more information on me until  
7 that is determined.

8 THE COURT: Well, I hear that, but that's not my  
9 issue here today either. What I am trying to do today is to  
10 get an expert appointed who will come and interview you and  
11 get --

12 THE PETITIONER: I am allowed to participate in  
13 this selection.

14 THE COURT: Absolutely.

15 THE PETITIONER: I require use of a telephone, to  
16 seek a legal advisor, or a psychiatrist of my own with  
17 assistance of the --

18 THE COURT: Do you have any access to a telephone  
19 at the prison?

20 THE PETITIONER: They can swing it, but I require  
21 an order. The Adjustment Center is a disciplinary unit. I  
22 can receive calls two ways, via court order for a situation  
23 like this, and if I already have counsel, counsel has to  
24 make an appointment through my counselor. They call me and  
25 make an appointment first, then they will allow me to call.  
26 Other than that for purposes like this, it would require a  
27 court order. It's been done before.

28 THE COURT: Well, on the subject of

1 representation, I have previously offered to appoint you an  
2 attorney in these proceedings if you want that. I can still  
3 do that.

4 Is there somebody that you would like to have  
5 appointed?

6 THE PETITIONER: I would determine that based on  
7 conversation with people who have represented me in the past  
8 and by someone I know and trust and can rely on.

9 Judge William D. Keller did say if I wished to  
10 represent myself -- if I wished to have other counsel  
11 appointed, that it would be appointed by the court.

12 THE COURT: Sure.

13 THE PETITIONER: But I do require a phone.

14 Also, you know, when you asked me about my dark  
15 glasses the last time, I explained to you about that Richard  
16 Alan Davis thing. I got shot. I am photophobic.

17 They have been getting back at me pretty good. I  
18 haven't had a shower in two weeks. They haven't fed me in  
19 two days, and I haven't showered or shaved. They don't want  
20 to shower or shave me. I am entitled to shower and shave  
21 before I come to court. They want to see that on paper.

22 I can't even get my legal documents. I want  
23 Officer Stewart to verify I tried the last two weeks to get  
24 my legal documents. They refuse to give it to me, playing a  
25 little hokey-pokey game. I would like Officer Stewart to  
26 verify that he did last week -- just on getting cuffed up,  
27 the property guard bring down two boxes with Officer  
28 Stewart's assistance. I tried to get my legal documents.

1 They don't want to give them to me. I am entitled to them.

2 I would like to verify with my escorting officer,  
3 please, for the record.

4 THE COURT: I am not here to do that now,  
5 Mr. Kirkpatrick.

6 My charge is a very simple one, and I understand  
7 what you are saying about wanting to speak about who the  
8 psychiatrist should be and wanting to resist a discovery  
9 motion. I can understand those things.

10 If you have papers on the subject of the discovery  
11 motion, I guess that might be something that I should deal  
12 with, but generally your legal papers as far as this  
13 proceeding goes probably don't have a lot of importance.

14 THE PETITIONER: Those are the documents I am  
15 talking about. They're in those boxes, what Judge Keller  
16 said, as well as transcriptions saying crap about somebody  
17 he doesn't know who called up and said that I refused a  
18 visit -- the psychological visit. I don't want that  
19 happening again.

20 THE COURT: You are talking about things that are  
21 outside of my realm. My realm was a very limited one.  
22 Probably the Supreme Court could have appointed an attorney  
23 to do what I have been charged with doing here, so this  
24 isn't really a judicial proceeding, per se, except as it is  
25 ancillary to the Supreme Court's own proceeding, and they  
26 have just asked me to make a simple determination on those  
27 two points that we have mentioned over and over.

28 THE PETITIONER: So we are back to square one. I

1 have a right to have a say on who the evaluators are to be,  
2 the psychiatrists.

3 THE COURT: That's why I have had you here and,  
4 that's why I mentioned the names in your presence, to see if  
5 you had any response. Now we have a mention of somebody.

6 My inclination, barring some reason why not from  
7 you or anybody else, would be to select the person from the  
8 University of California at San Francisco because, first  
9 off, it sounds like the person has some qualifications  
10 relating to what we are trying to do, and second, it seems  
11 like it would be a matter of substantial economy for the  
12 Supreme Court to have this local person come and visit you  
13 and review whatever records are necessary for review for  
14 entering an opinion. So that seems like the practical way  
15 to handle it.

16 I take it, you were not advised of either of these  
17 names before we got here today?

18 THE PETITIONER: No.

19 Why should they have? How could they have?

20 THE COURT: Presumably one of the attorneys could  
21 have sent you a letter saying, "We have talked about these  
22 two names."

23 THE PETITIONER: I haven't got anything from  
24 Mr. Schneider. That's the only person I accept any mail  
25 from.

26 THE COURT: I never heard of the names before.

27 THE PETITIONER: The Respondent and friend of the  
28 court over here should be the only one having any say in the

1 matter. I don't believe it is due process.

2 THE COURT: It was never my intention to do it  
3 that way. It was always my intention that you should have  
4 input, that I should hear what you have to say.

5 THE PETITIONER: Are you going to require a court  
6 order for the phone?

7 THE COURT: Are the people from San Quentin able  
8 to tell me anything about phone use, or how that works?

9 THE GUARD: It would indeed require a court order.

10 THE PETITIONER: This type of thing -- if I have  
11 an attorney, which I don't, that attorney would be able to  
12 call up, make an appointment with the counselor. A specific  
13 date and time would be set for me to call him, make contact  
14 with him.

15 In this situation, an order is required.

16 THE COURT: What do you mean "counselor"?

17 Is there one on the unit?

18 THE PETITIONER: Like a guidance counselor. He  
19 does stuff like that. He is like a liaison, assists you.

20 THE COURT: How would we design telephone use in  
21 such away that the prison --

22 THE PETITIONER: It is already designed.

23 THE COURT: -- could be assured that the privilege  
24 is not being used for something other than our purposes?

25 THE PETITIONER: Well, like I told you, phone call  
26 situation on each floor -- there is security cage that they  
27 place you in. You give them the number and the number is in  
28 the log book and there is a --

1 THE COURT: They call the number and confirm?

2 THE PETITIONER: They dial and confirm. They hand  
3 you the phone through the little port.

4 When it comes to legal calls, usually you are  
5 allowed a confidential call, but most of time it is not that  
6 big of a deal.

7 THE COURT: How long do you think you need to  
8 check this out, and how many calls?

9 THE PETITIONER: Well, depending on the  
10 psychiatrist -- I will be calling a legal aid organization  
11 that have names and numbers pertaining to counsel. I might  
12 accept counsel actually that are worth a dam, not trying to  
13 fuck me.

14 THE COURT: Well, I wouldn't appoint somebody who  
15 wasn't worth a dam. I am not interested in throwing public  
16 money away any more than you are. I have some ideas.

17 THE PETITIONER: I should have made this motion  
18 before when I first entered a few weeks ago.

19 THE COURT: Well, it is okay. None of us were  
20 quite sure what was going on when we first got together.

21 So you want to have some time to check out these  
22 two names?

23 THE PETITIONER: I got to.

24 I am not allowed to use the law library.

25 THE COURT: We will write them down and give them  
26 to you.

27 Then you also want to make some calls looking at  
28 the possibility of finding an attorney?

1 THE PETITIONER: Yes.

2 THE COURT: I can't guarantee that I will accept  
3 whatever attorney you come up with.

4 THE PETITIONER: I'll make sure that he is  
5 acceptable to the Court.

6 THE COURT: I suspect I could find one that would  
7 be acceptable to you, if you don't succeed, but how much  
8 time do you think it is going to take?

9 THE PETITIONER: It depends on how often I can use  
10 the phone. If I use it on a daily basis until I hit pay  
11 dirt -- it is important that I also require a phone book, my  
12 own private resources. The Prison Law Office will assist  
13 me. I can contact them as well.

14 One or two weeks.

15 THE COURT: What does anyone else think about  
16 that?

17 THE PETITIONER: Mr. Schneider, you have Yarvis'  
18 number.

19 MR. SCHNEIDER: He is not available.

20 THE PETITIONER: I want to speak with him.

21 MR. SCHNEIDER: He probably won't speak to you.

22 THE PETITIONER: Number and address. If you could  
23 mail it to me, I would appreciate it.

24 MR. SCHNEIDER: I have it at the office,  
25 obviously.

26 THE COURT: Could you send it to me, the address  
27 and number?

28 MR. SCHNEIDER: Sure.

1 THE COURT: Send me a copy of anything that you  
2 send to Mr. Kirkpatrick.

3 THE PETITIONER: Will you be entertaining any  
4 discovery motion on the part of Federal Public Defender's  
5 Office between now and then?

6 THE COURT: No.

7 Basically what I want to do is get somebody in  
8 place, make an initial evaluation, and let us know what they  
9 think before we start getting into other things.

10 I have had assurance, as I said before, from the  
11 Prison Legal Office that whoever makes the evaluation will  
12 be allowed to examine your central file and your medical  
13 file, to the extent that that's important in making the  
14 evaluation. The person should have all the resources he or  
15 she needs.

16 THE PETITIONER: Judge William D. Keller after  
17 several letters to me agreed that no one -- absolutely no  
18 one will see the contents of files, or the details of the  
19 examination itself, just the result that the Court is  
20 interested in.

21 You will be giving me that guarantee as well. If  
22 I go to a proctologist, I don't want anybody looking at a  
23 picture of the inside of my asshole. This is essentially  
24 what they're doing here.

25 THE COURT: If we hire a psychiatrist to make an  
26 evaluation, it is my expectation that the psychiatrist will  
27 probably give a list of the things that he or she has read  
28 and reviewed.



1 THE PETITIONER: My response is this is not going  
2 to be public record.

3 THE COURT: My guess is they will give us a list  
4 of things that they have read and reviewed, and they may  
5 just refer to the central file generally. I suspect that in  
6 making an analysis, the psychiatrist will generate what he  
7 or she considers to be a pertinent life history, and that  
8 may include some of the details from the files because  
9 that's part of the way they do their analysis.

10 That's the kind of thing I usually receive as part  
11 of the explanation for the conclusion. I don't expect to  
12 get a one-word response. Sometimes it runs many pages  
13 discussing in detail the evaluation and the basis for it.

14 So there would be some disclosure in that regard  
15 for purposes of these proceedings. Now whether that ever  
16 gets published by the Supreme Court, I don't know, but  
17 Mr. Schneider and the Federal Public Defender's Office will  
18 certainly know what the result is.

19 THE PETITIONER: The result is fine. The content  
20 I am concerned about.

21 THE COURT: They will see the whole report.

22 THE PETITIONER: The report as far as the  
23 interview itself?

24 THE COURT: I don't anticipate that the interview  
25 itself would be made available to anybody. That would be a  
26 private matter between you and the psychiatrist.

27 THE PETITIONER: Right.

28 THE COURT: Except that the psychiatrist will

1 probably summarize many of the things that you and the  
2 psychiatrist talk about.

3 THE PETITIONER: That's what we will discuss when  
4 I interview them.

5 You will be mailing me those names?

6 THE COURT: No. We will give them to the guard to  
7 take back with you, and then Mr. Schneider is apparently  
8 going to send you a phone number.

9 THE PETITIONER: For Yarvis?

10 THE COURT: He will send them to you again in case  
11 they get lost along the way. Before you leave the building  
12 today, we will put in your hand the name and address of each  
13 of these folks that the two sides, other than yourself so  
14 far, agreed to.

15 THE PETITIONER: Can I use the phone?

16 THE COURT: We have to get a little more detail  
17 about how that will happen. I can imagine it might make  
18 sense for me to order as many as, say, ten telephone calls  
19 on three successive days between now and the next meeting,  
20 and on business days and calls of a duration not to exceed  
21 seven or eight minutes because I know the prison can't --

22 THE PETITIONER: They have nobody using the phone  
23 on a daily basis.

24 THE COURT: Is there some reason why it would take  
25 more than?

26 THE PETITIONER: To interview a psychiatrist or  
27 legal counsel?

28 THE COURT: Frankly, Mr. Kirkpatrick, I am a

1 little confused as to what it is you are going to do, but I  
2 am willing to give you some calls --

3 THE PETITIONER: I want to make a selection of my  
4 own.

5 THE COURT: -- to check out these people.

6 Ultimately, the decision will be mine as to who it  
7 is going to be. If we can't get an agreement among you and  
8 the Attorney General and the Federal Public Defender, then I  
9 will just choose somebody who is appropriate, whether it  
10 happens to be somebody that's been mentioned by the rest of  
11 you or not.

12 THE PETITIONER: Is this courtroom closed today?

13 THE COURT: Closed?

14 THE PETITIONER: Yes.

15 THE COURT: Not as far as I know.

16 THE PETITIONER: You still say you don't know that  
17 the courtroom was closed on the 16th?

18 THE COURT: I don't believe it's been closed any  
19 time. It wouldn't bother me if it were because it is not  
20 really a judicial proceeding.

21 THE PETITIONER: All right.

22 When are we going to be returning here?

23 THE COURT: We haven't finished our discussion of  
24 the telephone calls.

25 Can you think of any reason why you should have  
26 more than eight or ten telephone calls with a duration no  
27 more than seven minutes each on three days between now and  
28 the next time we get together next Monday, maybe?

1 THE PETITIONER: I don't know. It would depend on  
2 who I am speaking to. Legal counsel is going to have to  
3 come down.

4 As far as the psychiatrists, I am going to be  
5 looking at everything from religious beliefs to ethnicity,  
6 which is my right.

7 THE COURT: I have asked you for your input. How  
8 you choose to make your evaluation is up to you. Whether I  
9 end up agreeing that somebody you propose is appropriate, or  
10 somebody some of the other folks propose is appropriate  
11 remains to be seen. Ultimately, I will choose whoever it  
12 is.

13 I am primarily interested in knowing whether the  
14 person is competent, and whether perhaps he or she has any  
15 experience doing the kind of thing we need done here.

16 So that's what I will do. I will make an order  
17 that during business hours on three days, if he needs that  
18 many --

19 THE PETITIONER: I am having --

20 THE COURT: Give me a second here.

21 Between now and Friday this week --

22 THE PETITIONER: Friday?

23 THE COURT: We are going to get together next  
24 Monday. I would like to get on with this.

25 Between now and Friday this week, Mr. Kirkpatrick  
26 is to have ten telephone calls with a duration not to exceed  
27 seven minutes unless it is convenient for the prison to give  
28 him longer. That's seven minutes each, and this is for the

1 purposes of trying to find an attorney and trying to make an  
2 evaluation of these psychiatrists who are being offered, and  
3 perhaps for finding a psychiatrist that he would like to  
4 propose.

5 You said Robert Weinstock of UCLA.

6 What's his proper address?

7 MR. SCHNEIDER: I have his CV here. The address  
8 1626 Westwood Boulevard, Suite 105. That's Los Angeles.

9 THE COURT: Before we go further, would you folks  
10 have any problems giving Mr. Kirkpatrick the CV, or do you  
11 think it is inappropriate?

12 MR. SCHNEIDER: I don't know if it would be  
13 inappropriate. There is no home phone numbers -- well there  
14 is a social security number, which I would not give out.  
15 Well, there is a home number. I would want to remove those.

16 THE COURT: Would you look it over and see if you  
17 can send to him overnight some redacted version of the CV  
18 which you are willing to supply him for his use on each of  
19 those?

20 MR. SCHNEIDER: Sure.

21 THE COURT: In the meantime, it is  
22 Robert Weinstock and he is an MD psychiatrist?

23 MR. SCHNEIDER: Right.

24 THE PETITIONER: That's what you will settle for,  
25 a psychiatrist, not a psychologist?

26 THE COURT: It seems like it would be okay, but if  
27 you come up -- I proposed the names of a couple of  
28 psychologists initially. The Attorney General and the

1 Federal Public Defender have stated a preference for a  
2 psychiatrist and that may carry --

3 THE PETITIONER: See, what their preference is --

4 THE COURT: If you come up with a really good  
5 psychologist who meets the criteria that I have mentioned, I  
6 will go with that person. We will see.

7 The address 16 --

8 MR. SCHNEIDER: 1626 Westwood Boulevard, Suite  
9 105. Unfortunately, it looks like I don't have a zip.

10 THE COURT: That's good enough.

11 THE COURT: You said Michael Krelstein.

12 MR. SCHNEIDER: I don't have a current -- because  
13 he was working at a hospital and now he got his fellowship  
14 at UCSF, the work address is probably no longer any good.  
15 He left his hospital assignment and is now working at the  
16 UCSF psychiatry and law program at the Langley Psychiatric  
17 Institute.

18 THE COURT: Okay. In order to avoid this same  
19 waste of time again, I would suggest that what we do is  
20 without everybody coming up here have Mr. Kirkpatrick convey  
21 any of his preferences to the Prison Law Office by close of  
22 business on Friday.

23 Then I will, no later than close of business next  
24 Monday, communicate that information to you folks so you  
25 have an opportunity, as Mr. Kirkpatrick wants to have, to  
26 check out what it is he is offering, and then get together  
27 Monday two weeks from now. I don't want to subsidize the  
28 commuter runs between here and LA.

1 I think the surest way of communicating with you  
2 is if I pick up the phone and call somebody at the Prison  
3 Law Office.

4 THE PETITIONER: Denise Dull.

5 THE COURT: I will call Denise Dull sometime on  
6 Friday and find out from her whether you have given her  
7 names. You need to give names and address so we know who  
8 they are and then I will convey those to --

9 THE PETITIONER: If I have a selection for either  
10 psychiatrist or counsel or both, I will notify my counselor.  
11 His name is Brau, B-r-a-u. He will notify Denise Dull.

12 THE COURT: If you can give us that information  
13 sooner rather than later, that would be helpful, but I  
14 will --

15 THE PETITIONER: Don't worry about it.

16 I would also like to know if the response to the  
17 appeal currently sitting in the Supreme Court doing nothing  
18 has been filed.

19 MR. SCHNEIDER: It's been responded to.

20 THE PETITIONER: I need a copy of that thing. You  
21 never gave me a copy.

22 MR. SCHNEIDER: At this point I am sending it to  
23 your Counsel.

24 THE PETITIONER: I have no counsel.

25 THE COURT: That's not yet been established,  
26 Mr. Kirkpatrick. The longer we fiddle with this process,  
27 the longer it is going to be in doubt.

28 THE PETITIONER: I would like a copy of my appeal

1 and response.

2 THE COURT: If he chooses to send it to you,  
3 that's his business and the Supreme Court's business and  
4 your business, but it is not my business. So I am not  
5 going --

6 THE PETITIONER: Can you see that I get a shower  
7 and a shave prior to entering the courtroom?

8 THE COURT: Is there some kind of restriction?  
9 Can he have the ability to bathe the night before or the  
10 morning before coming into court?

11 THE GUARD: There has been some security concerns  
12 in the unit that he is housed in. That may be the reason  
13 why he hasn't had a shower, if in fact he has not received a  
14 shower.

15 THE PETITIONER: It occurred only on Friday. This  
16 has been going on for two weeks now.

17 That question you asked me about my glasses --

18 THE COURT: You look mighty clean for someone that  
19 hasn't had a bath for two weeks.

20 THE PETITIONER: I got to using the water from a  
21 push-button security sink. I have a sink in my cell. My  
22 clothes are dirty. This outfit is something you wear  
23 special when you come to court. Over in San Quentin, you  
24 get blue jeans and blue shirt. They will give you this when  
25 you come here.

26 THE COURT: Okay.

27 Now I have written that information down and maybe  
28 we can get this photocopied, and give it to Mr. Kirkpatrick



1 before he goes.

2 What I am talking about, folks, is getting back  
3 together here Monday the 13th at 1:30.

4 Is that okay with everybody?

5 MR. SCHNEIDER: Yes.

6 MR. FORMAN: Yes.

7 THE COURT: Sorry that we have been so  
8 unproductive today, but I think Mr. Kirkpatrick does have a  
9 right to be considered.

10 THE PETITIONER: They're going to give the calls  
11 to me whenever they feel like it.

12 If I am waiting for mail from an outside source,  
13 names and numbers --

14 THE COURT: What I have ordered is eight or ten  
15 calls -- I don't remember what I said -- on three different  
16 days during business hours between now and Friday this week  
17 to give you an opportunity to contact folks you want to  
18 confer with. Hopefully that will work.

19 THE PETITIONER: Well, if not, I will come back  
20 here and bitch to you about it.

21 THE COURT: Anything else?

22 MR. FORMAN: I just have a couple small matters.

23 We have prepared a discovery motion to file and  
24 serve today. We would like to serve it on Mr. Kirkpatrick.  
25 We understand if you would like to put the date over for the  
26 hearing of it.

27 THE COURT: Sure you can file and serve anything  
28 you want. I am not going to schedule a hearing at the

1 moment, but you can certainly file and serve it.

2 MR. FORMAN: We also ask that both psychiatrists  
3 be considered to be appointed to evaluate Mr. Kirkpatrick to  
4 enhance the reliability of the evaluations.

5 THE COURT: I understand the request, but so far  
6 Mr. Kirkpatrick said he is not going to be cooperative with  
7 more than one, and unless he changes his view, I am not  
8 going to, at least initially, be appointing more than one.  
9 So let's see how it goes.

10 THE PETITIONER: I told Yarvis that day -- you  
11 covered up for them, Schneider. I am only half black.

12 THE COURT: Mr. Kirkpatrick, if you find that you  
13 have discovered somebody you like for counsel or for an  
14 evaluator before Friday, let Ms. Dull know. The sooner we  
15 get the information to them, the less likely it is we are  
16 going to be wasting time with another appearance. So as  
17 soon as you get that information to Ms. Dull --

18 THE PETITIONER: You can't do anything about the  
19 showers and food. I haven't eaten in two days. Five  
20 minutes before he came to get me, they gave me an apple with  
21 two packages of Graham Crackers.

22 Are you going to order that they give me these  
23 things?

24 THE COURT: I will have them give it to the  
25 guards. If you don't want it, you don't have to have it.  
26 Nobody can make you read it. It is served.

27 Thank you.

28 (Whereupon, the proceedings were concluded.)

1 STATE OF CALIFORNIA )  
 2 ) ss.  
 3 COUNTY OF MARIN )  
 4  
 5

6 I, MAUREEN A. STEGER, do hereby certify that I am  
 7 Certified Shorthand Reporter pursuant to the laws of the  
 8 State of California; Official Court Reporter of the Marin  
 9 County Courts of the State of California, thereof;

10 That acting as such reporter I took down in  
 11 stenotype the testimony given and proceedings had in the  
 12 within-entitled action fully, truly and correctly.

13 That I thereafter caused the foregoing proceedings  
 14 of said cause to be transcribed into typewriting, and that  
 15 the foregoing 25 pages constitute a true and correct  
 16 transcription of said notes.

17  
 18 DATED: San Rafael, California, this 10th day of  
 19 November, 2000.

20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28

*Maureen A. Steger*  
 MAUREEN A. STEGER

CSR NO. 5721

ORIGINAL

S075679

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

--oOo--

HON. JOHN STEPHEN GRAHAM, JUDGE

DEPARTMENT NO. D

IN RE WILLIAM KIRKPATRICK, JR. ]

] No. SC-116005A

\_\_\_\_\_ ]

STATUS REPORT

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, NOVEMBER 13, 2000

--oOo--

**SUPREME COURT  
FILED  
AUG 10 2001  
Frederick K. Ohlrich Clerk  
DEPUTY**

REPORTED BY: MAUREEN A. STEGER, CSR NO. 5721

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

APPEARANCES:

For the Respondent: Office of the Attorney General  
State of California  
300 South Spring Street, Ste. 500  
Los Angeles, California 90013  
By: Robert C. Schneider  
Deputy Attorney General

For the Petitioner: Office of the Federal Public Defender  
State of California  
321 East Second Street  
Los Angeles, California 90012  
By: William Forman  
Deputy Federal Public Defender

1 Monday, November 13, 2000 2:00 O'Clock P.M.

2 --oOo--

3 THE PETITIONER: Are you going to get these  
4 shackles off me or what?

5 THE COURT: Well, we won't do anything if you  
6 don't come in and sit down.

7 THE PETITIONER: Take me back to San Quentin.

8 THE COURT: Okay.

9 (Whereupon, the Petitioner exits the courtroom.)

10 THE COURT: Bring him back out here. I was  
11 kidding. If he doesn't want to sit, he can stand. Bring  
12 him over to the table.

13 We had some discussion the last time about the  
14 possibility of his being chained to the chair and having his  
15 hands released so that he would be able to use at least one  
16 of his hands, maybe both. Last time I talked to the folks  
17 from San Quentin about it, they didn't seem to think that  
18 would be a particular problem.

19 Is that something we can do?

20 THE GUARD: That's nothing that was told to us.  
21 No one brought that to our attention.

22 THE PETITIONER: I am not -- you brought me in --  
23 I am in San Quentin custody.

24 THE COURT: Give me just a second,  
25 Mr. Kirkpatrick. I am waiting to hear from these fellows.

26 THE GUARD: It is our policy that when we bring an  
27 inmate in, we keep him in restraints. That's our --

28 THE COURT: What I am wondering is, can you chain

1 him to the chair? That chair is equipped with holes. Can  
2 he be chained to that so he can have a free hand to write  
3 with?

4 THE PETITIONER: I need both my hands. These  
5 shackles are too tight. My shoelaces are untied. I am in  
6 miserable shambles.

7 THE COURT: I am not talking to you right now.

8 THE PETITIONER: I can't understand -- you ordered  
9 me here.

10 THE COURT: You are interfering with the  
11 conversation that I am having with these folks to find out  
12 whether we can do something to accommodate you.

13 THE PETITIONER: Remove the restraints.

14 THE COURT: If you will be quiet for a minute, I  
15 will see if I can work it out with them.

16 THE GUARD: We didn't bring anything in particular  
17 to --

18 THE COURT: The bailiff has waist chains here, and  
19 maybe I can ask them to bring a set and let you inspect  
20 them, see whether there is a way --

21 THE GUARD: I trust what the deputy has.

22 THE COURT: For the moment, one hand would be  
23 perfectly adequate, but let's see what it is about.

24 THE BAILIFF: I am going to go get the chains.

25 THE COURT: Mr. Kirkpatrick is here, and we got  
26 Mr. Forman and Mr. Schneider here.

27 The first thing I need to find out today,  
28 Mr. Kirkpatrick, is did you find a lawyer that you want to

1 represent you in the proceeding?

2 THE PETITIONER: I wasn't looking for a lawyer. I  
3 was looking for a black psychiatrist.

4 Before we do all that, there is something we ought  
5 to do. Did you issue an order to this lame fuck from the  
6 lame FPD to come with some psychiatrist or whoever --  
7 somebody came last week. His name -- somebody named  
8 Dr. Murdock. They tried to get me out of my cell under  
9 Judge Graham's order for a mandatory visit. They was forced  
10 to get me out of there.

11 MR. FORMAN: May I speak for a moment?

12 It did not happen. If I could explain. Nobody  
13 came to see Mr. Kirkpatrick last week. When the hearing  
14 began, we took the liberty of reserving the psych  
15 examination room at San Quentin for the first available date  
16 because you often have to reserve months ahead of time.

17 We had reserved it for November 2nd through the  
18 4th. We cancelled our appointment with our psychologist  
19 over a month ago when it appeared Mr. Kirkpatrick would not  
20 cooperate. However, the room was still reserved in our  
21 name.

22 I think that San Quentin saw the room was reserved  
23 in our name, and went to him and said, "You have a visit."  
24 We were then contacted by Denise Dull, who knew who we were,  
25 and said, "What's going?" "It is a mistake. We are not  
26 coming up."

27 THE PETITIONER: My understanding from the officer  
28 in charge of visiting instructs the officer to come and



1 retrieve me. My understanding was somebody was there.

2 Also, there was an envelope forced upon me from  
3 the last time we were here. This guy's partner. I don't  
4 know who it was. For the record, I didn't receive it. I  
5 didn't care what they did with it.

6 THE COURT: I think it was the discovery motion.

7 MR. FORMAN: It was the discovery motion.

8 THE PETITIONER: I don't know what happened to it.  
9 I am not receiving any communication from these people.  
10 Don't start playing post office again.

11 THE COURT: Well, Mr. Kirkpatrick, I just want to  
12 make sure that you have every opportunity to participate in  
13 this process, if you want to. In my view that was part of  
14 ensuring that, but if you choose not to look at the papers  
15 that are given you, that's fine. That's okay. I am not  
16 going to try to make you read anything.

17 Now one of things we had discussed last week is  
18 you might --

19 THE PETITIONER: I didn't get any calls.

20 THE COURT: -- find an attorney. I guess you  
21 haven't come up with an attorney.

22 THE PETITIONER: I wasn't considering legal  
23 counsel. I am specifically looking for a black  
24 psychiatrist.

25 I am not getting any phone calls. A call to the  
26 California Appellate Project to get the Prison Law Office's  
27 number, that's pretty much it; and I called that fool over  
28 here at the FPD's office because they didn't have any

1 addresses to go with any phone numbers or to go with those  
2 names you gave me for those two quacks.

3 THE COURT: I have a letter here in the file from  
4 the San Quentin Legal Office. I just want to read it so you  
5 are aware of it in case you haven't seen it.

6 It says, "Inmate Kirkpatrick was given the  
7 opportunity to place telephone calls to psychiatrists last  
8 Wednesday, Thursday and Friday. He declined on Wednesday  
9 and Thursday, but spent approximately two hours on the phone  
10 on Friday."

11 That's referring to the week of, I guess, the 30th  
12 of October through the 3rd of November, which I think is the  
13 week that I said you should have calls in.

14 Then it says, "He declined on Wednesday and  
15 Thursday, but spent approximately two hours on the phone on  
16 Friday. Afterwards, he did not give a preferred name to his  
17 correctional counselor. This morning at 0740 hours, his  
18 tier officer asked him if he had a name. He stated he did  
19 not, that he needed to make more phone calls. The log  
20 maintained by the Adjustment Center indicates that he placed  
21 nine calls on November 3rd, 2000. Three of the nine numbers  
22 he called twice.

23 "Since we have complied with your order, even if  
24 Inmate Kirkpatrick chose not to place calls on Wednesday and  
25 Thursday, we do not intend to make the telephone available  
26 to him again."

27 It is a letter from Ms. Dull, Litigation  
28 Coordinator, dated November the 7th, and I put that in the

1 file.

2 So she is telling me that they offered you the  
3 calls on two days when you weren't ready.

4 THE PETITIONER: I didn't on Friday. The only  
5 time I got the phone, I called these fools and I called the  
6 California Appellate Project. I called Prison Law Office.

7 Those calls are all recorded. They know damn well  
8 I only got through to those other -- I had to call them  
9 because they didn't put the phone numbers. Those two  
10 names -- there was no numbers to them, so I had to call them  
11 to get those numbers. They did that deliberately.

12 I had to call the Prison Law Office. I had to  
13 call the California Appellate Project because they wouldn't  
14 let me get my number from my cell. So I had to call the  
15 California Appellate Project to call the Prison Law Office.

16 We were discussing a whole bunch of other things  
17 aside from contacts he might have and the phone went dead.

18 THE COURT: Do you at the present time have the  
19 name of any psychiatrist you would like me to consider?

20 THE PETITIONER: No. I am not going to consider  
21 anything. These fools think --

22 THE COURT: We need to get on with this at some  
23 point, and it is my inclination at the present time to see  
24 if, as I suggested earlier, Dr. Krelstein can do it, and if  
25 not him, then Dr. Weinstock. Those are the two that were  
26 agreed to by the Attorney General and the Federal PD. I  
27 understand that's not the whole consideration.

28 THE PETITIONER: These two selected -- I select my

1 own. If they got a problem with that, they can appeal it.  
2 The whole idea is for me to prove to this Court my  
3 competence, not for these two pussies to -- who the hell are  
4 they?

5 THE COURT: Well I have tried, Mr. Kirkpatrick, to  
6 include you in the process, and I have made a fairly  
7 extensive order requiring phone access for you to get  
8 information that you might need.

9 THE PETITIONER: That's ridiculous. That order --  
10 I called Yarvis. The recording on that phone is a San  
11 Quentin non-secured line. They don't let it ring long  
12 enough. A recording comes on, your call isn't answered and  
13 it disconnects. So I don't know whether anybody was there  
14 or not.

15 On top of that petition, I am entitled to a  
16 confidential call. Any call I make is legal. I am calling  
17 an attorney. They're not supposed to be recording. My call  
18 is on a confidential line.

19 You put that seven-minute restriction because you  
20 knew that they had a non-secured line in there. You were  
21 accommodating them. You weren't trying to accommodate me.

22 THE COURT: I didn't know anything about a  
23 non-secured line. I certainly didn't include a seven-minute  
24 restriction to hamper you in any fashion.

25 THE PETITIONER: You signed the order.

26 THE COURT: I said it in Court. I saw it on the  
27 order and I signed it, but that was stated initially in your  
28 presence, and if you had a problem with it, you could have

1 told me. I just didn't want to put the prison in a position  
2 where they were committed to giving you ten telephone calls  
3 of an undefined length on three days which could have  
4 resulted conceivably in 30 hours of telephone --

5 THE PETITIONER: Five days you said. They only  
6 gave it to me on Friday.

7 THE COURT: You can say that, Mr. Kirkpatrick, but  
8 I am not here to be your jailhouse lawyer for the rest of  
9 this hearing, so at this point I find it necessary to make  
10 an appointment and get on with this process. If you refuse  
11 to speak to whoever comes to talk to you on my order, then  
12 whoever it is will have to make an evaluation on the basis  
13 of the best information he or she can get, which might  
14 include only the records and perhaps reports of others.

15 THE PETITIONER: I got two things. You are not  
16 going to send any Jew. You are not going to. It's that  
17 simple. I am not going to talk to anybody who they choose.  
18 It is that simple, Judge Graham.

19 THE COURT: I have mentioned those two names, and  
20 I had mentioned also a Dr. McEwen and a Dr. Blinder who are  
21 both in Marin County. I am happy to have any input --

22 THE PETITIONER: Have you used them before?

23 THE COURT: Yes, I have. I have worked with both  
24 of them several times each, and I find them both intelligent  
25 non-adversarial in the sense that they're scientists and  
26 they don't have an agenda or an ax to grind.

27 I had mentioned Dr. Johnston, whom I find to be  
28 the same, but he isn't a psychiatrist. He is a

1 psychologist, and there is a stated preference here for a  
2 psychiatrist. I can understand that. That's okay with me  
3 but --

4 THE PETITIONER: How long is this evaluation  
5 contact with -- is it McEwen?

6 THE COURT: McEwen. It's Diane McEwen. She  
7 practices in Marin County. She is a very bright woman. She  
8 has been to the prison before to interview and to evaluate  
9 people.

10 THE PETITIONER: Caucasian?

11 THE COURT: She happens to be.

12 THE PETITIONER: Everybody involved in my goddamn  
13 universe is a cracker.

14 THE COURT: I am doing the best I can,  
15 Mr. Kirkpatrick. I have tried to include you, but we got to  
16 get on with this at some point.

17 THE PETITIONER: We are not here because of me.  
18 We are here because of the kike Jew over there and because  
19 of this asshole over here.

20 THE COURT: Right. Now we are here because the  
21 Supreme Court has asked me to do some fact finding. They  
22 seem to --

23 THE PETITIONER: He --

24 THE COURT: I think the Supreme Court --

25 THE PETITIONER: I got Judge Keller's order. He  
26 was ready. Like I said, they were lying for a whole year,  
27 these lawyers from the FPD. They would come over there and  
28 see me in prison. "He want you dead."

1                   Fuck you. The hell with you.

2                   Then they go back to him and say, "He doesn't want  
3 to cooperate."

4                   This guy -- he is nothing. Tell him one thing and  
5 they come tell me another. I want to represent myself. The  
6 Judge said, "Fine."

7                   These assholes over here -- they are the  
8 cockroaches in this matter. Stupid over there -- he's just  
9 doing his job. You know, he is trying to murder me. These  
10 assholes here, on the other hand, there is no excuse for  
11 them.

12                   Seventeen years I haven't seen a black face  
13 involved in my case, just kikes and crackers and my one  
14 black face. How do you explain that? In California they  
15 can't find a black lawyer, not even the secretary. There is  
16 something going on here. That's bigotry. They can say what  
17 the hell they want. It is bigotry.

18                   Before these assholes come along,  
19 Edward J. Horowitz, a State appointed attorney, comes to see  
20 me and says he handpicked my case. He doesn't care about  
21 the facts of the matter. As far as he is concerned, my case  
22 doesn't have any merit. He wants to find out why I don't  
23 like Jews. Goddam petition.

24                   Just like the bullet. Actually, cleaned it up.  
25 Bullshit. Some Aryan Brotherhood testified to -- he made it  
26 look legitimate. This is what I have been facing.

27                   Let me tell you -- listen to me carefully. I just  
28 came into possession of documentation. Nobody giving me my

1 paperwork. I just get this Goddam paper.

2 The police report -- a report at my trial. He  
3 gets up and tells the jury, "Why are all these people going  
4 to lie? Why are all these Chicanos and cops going to lie?"  
5 I just got into my possession this paper that says the cops  
6 testified they found the murder weapon on me. I get a  
7 Burbank police report. They put the murder weapon -- the  
8 Mexican Mafia -- it was \$25 bucks. Is that an appeal? You  
9 are going to have a problem with those --

10 MR. SCHNEIDER: Those aren't the facts.

11 THE PETITIONER: I was sitting there. Those are  
12 the facts.

13 THE COURT: Are you still, both of you,  
14 recommending Krelstein and Weinstock as --

15 THE PETITIONER: I'm not.

16 THE COURT: -- examiners?

17 MR. SCHNEIDER: That would be our preference.

18 MR. FORMAN: We are still willing to stipulate to  
19 them.

20 THE COURT: Okay.

21 What I will do is I will take them in order and  
22 see if they can do it. I propose to talk to them briefly by  
23 telephone just to find out what it is they think they can  
24 accomplish, if anything, without an interview in case he  
25 refuses to grant an interview, and if it turns out that they  
26 can't do a full or meaningful evaluation without an  
27 interview -- would you talk to Dr. McEwen if I sent her to  
28 visit you?



1 THE PETITIONER: When are you going to send her?

2 THE COURT: If it happened, it could happen very  
3 quickly. I would think within the next week or so.

4 THE PETITIONER: I want advance warning. I  
5 might -- I am going to back up what I say with  
6 documentation, so I want to be prepared. I want advance  
7 notice.

8 THE COURT: I would be getting ready if I were you  
9 because it is going to happen fairly quickly, we hope, and I  
10 will basically have a brief conversation with each of these  
11 people to find out what the prospects are of a meaningful  
12 evaluation in the circumstances.

13 THE PETITIONER: They don't decide this. The  
14 Court --

15 THE COURT: I am deciding.

16 THE PETITIONER: They don't have any say in the  
17 matter.

18 THE COURT: It is not entirely --

19 THE PETITIONER: They don't pick. They don't  
20 decide who comes to evaluate you.

21 THE COURT: You are right.

22 THE PETITIONER: You got that McEwen person coming  
23 on down, I will be waiting.

24 THE COURT: I think you would find her pleasant to  
25 talk to.

26 THE PETITIONER: I am looking for somebody just to  
27 prove what I have been saying. These guys here say, "Send  
28 him to Vacaville. He is paranoid, delusional. There are

1 these conspiracies. We are all trying to help him."

2 They are full of shit. They're trying to help me.  
3 Fucking appeal for 17 years. Who has an appeal 17 years?  
4 It's enough.

5 MR. SCHNEIDER: Your Honor, may I?

6 THE COURT: Mr. Schneider.

7 MR. SCHNEIDER: It might help if Mr. Kirkpatrick  
8 understands that the two names we came up -- I have spoken  
9 to those gentlemen once for a very short minute. We  
10 intentionally chose people who are not in the normal arena  
11 of testifying for the defense or prosecution. These two  
12 people come from colleges. They are really the most  
13 untouched people you will find in this field as far as  
14 having a bias.

15 THE PETITIONER: The people in the field are kikes  
16 and crackers, not one black face in 17 Goddamn years.

17 THE COURT: I don't think that's entirely correct.  
18 I think Mr. Forman actually had an association with an MD  
19 psychiatrist who --

20 MR. FORMAN: Dr. Pettis.

21 THE COURT: An African --

22 MR. FORMAN: Retained by us and available to  
23 interview Mr. Kirkpatrick. He is African-American.

24 THE COURT: He could talk to you. There is no  
25 reason in the world why, if you wanted to be evaluated by  
26 him, he --

27 THE PETITIONER: Because I tried to see him. You  
28 are not paying attention to what I am telling you. I was

1 waiting for him. I filed a criminal complaint against the  
2 committee. It is called UCC Committee at San Quentin. They  
3 conspired to deny me his visit. They were mad as well.  
4 They were standing there yelling at each other. Nobody came  
5 down. We didn't deny anything from him. Somebody at San  
6 Quentin called the judge and said that I refused the visit.

7 THE COURT: I am not here and I am sure the  
8 Supreme Court is not here to interfere with any contact that  
9 you want to have with any psychiatric professional of your  
10 choice.

11 THE PETITIONER: The lawyers lied to the Court.  
12 Then they came and lied to me. San Quentin got caught in  
13 the middle. I was told I had a psych visit. They lied.  
14 The lawyers did that.

15 THE COURT: If you would like to talk to  
16 Dr. Pettis, I am sure there will be no impediment to that.  
17 I don't know whether I am prepared at this time to decide  
18 that he should make the evaluation for the Court in view of  
19 his relationship with Mr. Forman, but on the other hand, if  
20 you want to talk to him and participate in an evaluation  
21 conducted by him, there is nothing to stop that.

22 THE PETITIONER: Are you prepared right now to  
23 send over this McEwen person?

24 THE COURT: Yes.

25 THE PETITIONER: Send over that McEwen person.

26 THE COURT: Well, I will make a decision on the  
27 basis that I said I would, and I might send Krelstein and  
28 Weinstock first but --

1 THE PETITIONER: I am not going to speak to them.

2 THE COURT: I hear you saying that and that might  
3 be important in the selection because if whoever it is  
4 doesn't have a chance to speak with you, it probably makes  
5 the process rather difficult and perhaps meaningless in some  
6 ways. So probably we are talking about Dr. McEwen.

7 Thanks for your cooperation.

8 I need to set another date. My guess is we  
9 probably need a month for evaluation in view of the volume  
10 of documents that probably have to be reviewed.

11 MR. SCHNEIDER: Mr. Forman is correct. The  
12 psych-evaluation room does book-up very early. Speed is of  
13 the essence, but they do jam things up.

14 THE COURT: I appreciate your advice, but I  
15 suspect if I call San Quentin --

16 MR. SCHNEIDER: You have more power than I do.

17 THE COURT: I don't think they want to continue to  
18 spend money sending four people and Mr. Kirkpatrick over  
19 here any more times than necessary.

20 MR. FORMAN: If I may add something?

21 The Court -- I already served Mr. Schneider. We  
22 are filing it today. We are noticing it to be heard on  
23 November 28th, I believe. I don't know that any of the  
24 issues in the motion need to be resolved before the first  
25 examination is performed, except that we are asking that any  
26 evaluations be videotaped. If an evaluation is going to  
27 take place before November 28th, I would like to be notified  
28 so we can make a motion shortening time as to whether

1 evaluations would be videotaped.

2 THE PETITIONER: There is going -- they want to  
3 give you overall -- she -- McEwen want to give an overall  
4 conclusion based on our interview, fine, but as far as  
5 videotaping what's essentially a confident doctor-patient  
6 privilege, no, it is not going to happen.

7 THE COURT: Well, actually this is not exactly a  
8 doctor-patient interview. I could understand evaluators or  
9 some psychiatrists might find a videotape to be an  
10 impediment to the process, but nevertheless, it is not  
11 exactly a doctor-patient interview.

12 THE PETITIONER: She is going to evaluate what  
13 they have already submitted to the Court. Based on what  
14 they submitted to that guy, Pettis, he made a determination  
15 on sanity.

16 So it is going to be a medical evaluation because  
17 she got to counter that?

18 THE COURT: It will be medical, but it is not  
19 being done by a person who has a therapist relationship with  
20 you. In that sense, it is not confidential. Probably  
21 anything you discussed at the interview could be discussed  
22 in Court in the process of giving testimony by the doctor,  
23 but nevertheless, I can understand that she might not like  
24 the videotape. The doctor might not even like the  
25 videotape.

26 So I am not going to make an order for a videotape  
27 if you won't cooperate with that. That's okay with me.

28 THE PETITIONER: I got a order from Keller -- ten

1 different levels of stupid over here having this guy,  
2 Pettis, come down to see me. He had -- he was specifically  
3 stating none of this is going to be on public record or be  
4 released to the public. Specifically stated that nothing in  
5 that interview is going to be released to the public or made  
6 a public record of that evaluation. He specifically stated  
7 that they couldn't do that.

8 THE COURT: Well, I am not prepared to do that  
9 here because for one thing, I am not a judge in this  
10 process. I am a referee. This isn't my hearing.

11 I will turn whatever I have over to the Supreme  
12 Court ultimately, and it may be that they will agree with  
13 you that it shouldn't be made public. I don't know if they  
14 want to do that, so I can't guarantee what will happen with  
15 it other than it will be considered carefully, and that we  
16 will do everything we can to make sure that reasonable  
17 opportunity is given for the evaluation to be complete and  
18 thoughtful.

19 So I can do that part of it. As to what becomes  
20 of it ultimately, I can't make any guarantees.

21 Is there some paper or authority or other thing  
22 that you wanted me to consider, Mr. Forman, before  
23 concluding our discussion of that videotape question?

24 MR. FORMAN: I have the motions here to file. I  
25 would like the Court to read the motions and consider them.  
26 I think there are other issues that have been touched on  
27 here today. I would like to serve Mr. Kirkpatrick with a  
28 copy of the motion.

1 THE COURT: The guard will take it if he wants to  
2 look at it.

3 THE PETITIONER: Give it to me.

4 THE GUARD: Not right now.

5 THE COURT: It is just a motion. There is nothing  
6 confidential.

7 THE PETITIONER: You can't keep telling them to  
8 give me my mail. He can send it to regular mail. I get a  
9 chrono. Now whatever they do with it -- when we get to San  
10 Quentin, they are going to try to shove it in my property.  
11 I am going to have a hissy fit.

12 THE COURT: You folks will make it available to  
13 him if he wants it.

14 THE GUARD: After we look through it, make sure  
15 there is nothing in there.

16 THE COURT: You can read it. It is not a  
17 confidential document. It is just that Mr. Forman is going  
18 to file --

19 THE GUARD: He will have access to it.

20 THE PETITIONER: If I was sitting here uncuffed  
21 and we were still discussing this and he handed it to me, I  
22 am not going to be allowed to read it while I am sitting  
23 here. I want to tear it up and throw it away.

24 Is that suppose to come to me?

25 Instruct this fool to give it to me.

26 THE COURT: Yes. I have instructed him to do  
27 that. He will give it to you by the end of the day and he  
28 can look at it. Anybody at the prison can read pit.

1           There is nothing about the content that I can  
2 imagine that is confidential. Go ahead and read it, but  
3 make sure he has it by the end of the day.

4           If he won't take it, just log the fact that he  
5 won't take it and we will leave it at that.

6           THE PETITIONER: I get a chrono. It is a document  
7 showing disposition of refused mail. It is all legal for  
8 me. I need that chrono.

9           What are they going to do with it after I refuse  
10 it?

11          THE COURT: I frankly don't care. They can throw  
12 it in the trash if you refuse it.

13          THE PETITIONER: They won't do that. This legal  
14 mail -- give it to me now. They can't do that. They say  
15 they have to hand it to me. I don't want to touch it. If  
16 they want to send it --

17          THE COURT: I have the assurance of the people at  
18 San Quentin that they will give it to you by the end of the  
19 day having taken out the paper clips or whatever else they  
20 have to do with it. If you want them to bring it to you by  
21 the end of the day, that's fine. Go ahead.

22          THE PETITIONER: If I don't --

23          THE COURT: You don't have to.

24          THE PETITIONER: What will they do with it? They  
25 won't throw it away.

26          THE COURT: I don't care.

27          THE PETITIONER: They cannot throw it away.

28 Judge, listen to me. They can't throw it away. What



1 they're going to do is stick it in my hot property. You are  
2 ordering them to put that in my possession. By doing  
3 this -- by doing this, you are ordering them to put it in my  
4 possession whether I want it or not.

5 I can't have in my cell what's called hot  
6 property. If I refuse it, what they are going to do is  
7 stick it in my hot property because you have given them a  
8 court order to put it in my possession.

9 If it was coming through regular mail, I wouldn't  
10 have to touch it. I would look at it and say, "I refuse."  
11 They take it back and send it to mail for disposition. They  
12 give me a little chrono that goes in my files. Doing  
13 this -- ordering them to shove it into my property, they  
14 cannot throw it away themselves. I don't want to touch it.

15 THE COURT: For my purposes here today,  
16 Mr. Kirkpatrick you are talking about a difference without a  
17 distinction.

18 THE PETITIONER: San Quentin rules.

19 THE COURT: What they do with it, I don't care, as  
20 long as they give you an opportunity to have it and read it,  
21 if you choose.

22 THE PETITIONER: You are ordering them to put it  
23 in my property.

24 THE COURT: Fine.

25 THE PETITIONER: I don't want it in my property.

26 THE COURT: Anything else, Mr. Forman, today?

27 I will look over your request for videotaping  
28 before concluding any appointment of a psychiatrist. My

1 suspicion is I probably will not order it, because frankly I  
2 don't want to do things that would offend Mr. Kirkpatrick to  
3 the point that he won't participate in the process. My  
4 guess is our most important objective here is to have a  
5 competent, reliable, neutral person evaluate  
6 Mr. Kirkpatrick, and as part of doing that, the psychiatrist  
7 is going to have an interview in order to do it well.

8 MR. FORMAN: That is our position as well. We are  
9 seeking this motion to videotape and we are asking that more  
10 than one person be appointed, but it is all briefed for the  
11 Court. It is certainly nothing that needs to be determined  
12 right here and now.

13 THE COURT: Well, he's indicated before -- I don't  
14 know whether it's currently his position -- he won't talk to  
15 more than one. We will use one and see what we get. If it  
16 turns out that Mr. Kirkpatrick and/or you folks think that  
17 something further is appropriate, we can talk about that  
18 when we get to it, but for the moment, I would like to just  
19 go forward and get one interview and evaluation if we can.

20 MR. FORMAN: On a somewhat different matter, I  
21 believe our motion for discovery is noticed for tomorrow.

22 Are we going to have a hearing on that, or are you  
23 going to take it under submission?

24 THE COURT: I will consider it with any input  
25 Mr. Kirkpatrick wants to give me on our next date. I want  
26 to see this evaluation first before we get into the business  
27 of worrying about how many more evaluations, who is going to  
28 do them and how and so forth.

1 MR. SCHNEIDER: We just received that motion in  
2 the hallway this afternoon. I have not had a chance to  
3 respond to it.

4 THE COURT: The videotape?

5 MR. SCHNEIDER: They're also asking for a forced  
6 interview, if necessary. If he's going to cooperate with  
7 Dr. McEwen, then a lot of this becomes kind of irrelevant,  
8 but we would like to reserve the right to respond to this  
9 before anything final is ruled on the motion filed today.

10 THE COURT: Okay.

11 MR. SCHNEIDER: That will take a little while to  
12 obviously get it back up to you.

13 THE COURT: Well, I suspect that in preparation  
14 for any interview or interviews that Mr. Kirkpatrick and a  
15 psychiatrist might have, that there will be -- have to be  
16 some document review first. So I would suspect if you get  
17 back to me with responses to any of Mr. Forman's papers by  
18 the end of the week, that will be fine. Make sure you send  
19 your responses to Mr. Kirkpatrick so he can receive or  
20 reject them as he sees fit, and you can go ahead and file  
21 your things today, Mr. Forman.

22 MR. FORMAN: Thank you.

23 THE COURT: Make sure -- are there copies of  
24 everything that you are going to file today in that envelope  
25 so that Mr. Kirkpatrick can have it if he wants it?

26 MR. FORMAN: Yes.

27 THE PETITIONER: Give them back so he can stick  
28 them up his ass.

1 THE COURT: What do we want for the next date? My  
2 best assessment is we should allow a month, maybe even a  
3 little bit more because of the volume of the prior  
4 professional opinions and the volume of records accumulated  
5 over the past many years that might have to be reviewed.  
6 That would carry us out to the 13th.

7 We could do it in week of the 18th of December  
8 just about any day of the week, I would think, and probably  
9 the later the better. Hopefully we will have a report in  
10 hand or maybe we should go a little further. The 18th of  
11 December is probably okay with me or any day that week.

12 MR. SCHNEIDER: Is that a Monday?

13 THE COURT: Do you want to do it the 18th?

14 Is that far enough away?

15 Let's try for that and see what we can get. If  
16 there is a reason to advance it in the meantime, I will do  
17 that. If you choose to call and try to get an advanced  
18 date, make sure you advise Mr. Kirkpatrick somehow of any  
19 intention to do that, so if he chooses to respond to such a  
20 suggestion through the legal office, he can do that.

21 Whoever is ultimately appointed among the three  
22 that we have discussed, I guess I will do what I can to  
23 facilitate the access here by contacting the Legal Office  
24 and working out the access issues in terms of getting a  
25 chance to review documents and getting a chance to interview  
26 Mr. Kirkpatrick.

27 Once I have obtained agreement from one of these  
28 people to do the evaluation, I will let you know who it is

1 so that if you have materials that you think ought to be  
2 considered and you want to forward them to the evaluator,  
3 you can do that. Mr. Kirkpatrick also can do the same thing  
4 either orally when he contacts whoever it is, or in advance  
5 in writing through the : 1 Office or through the Legal  
6 Office to me and then to the psychiatrist.

7 Thanks for your cooperation, Mr. Kirkpatrick. We  
8 will see you on the 18th of December.

9 THE PETITIONER: What time is that?

10 THE COURT: That will be 1:30 again. Actually, we  
11 will make it 1:45 on the 18th of December. Thank you very  
12 much.

13 (Whereupon, the proceedings were concluded.)  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 STATE OF CALIFORNIA )  
 2 ) ss.  
 3 COUNTY OF MARIN )  
 4  
 5

6 I, MAUREEN A. STEGER, do hereby certify that I am  
 7 Certified Shorthand Reporter pursuant to the laws of the  
 8 State of California; Official Court Reporter of the Marin  
 9 County Courts of the State of California, thereof;

10 That acting as such reporter I took down in  
 11 stenotype the testimony given and proceedings had in the  
 12 within-entitled action fully, truly and correctly.

13 That I thereafter caused the foregoing proceedings  
 14 of said cause to be transcribed into typewriting, and that  
 15 the foregoing 26 pages constitute a true and correct  
 16 transcription of said notes.

17  
 18 DATED: San Rafael, California, this 3rd day of  
 19 December, 2000.

20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28

*Maureen A. Steger*  
 MAUREEN A. STEGER

CSR NO. 5721

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

--oOo--

**S075679**

HON. JOHN STEPHEN GRAHAM, JUDGE

DEPARTMENT NO. D

IN RE WILLIAM KIRKPATRICK, JR. ]

] No. SC-116005A

\_\_\_\_\_ ]

STATUS REPORT

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, DECEMBER 18, 2000

--oOo--

**SUPREME COURT  
FILED  
AUG 10 2001  
Frederick K. Ohlrich Clerk  
DEPUTY**

REPORTED BY: MAUREEN STEGER, CSR. No. 5721

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

APPEARANCES:

For the Respondent: Office of the Attorney General  
State of California  
300 South Spring Street, Suite 500  
Los Angeles, CA 90013  
By: Robert C. Schneider  
Deputy District Attorney

For the Petitioner: Office of the Deputy Public Defender  
State of California  
321 East Second Street  
Los Angeles, CA 90012  
By: William Forman  
Deputy Federal Public Defender



1 Monday, December 18, 2000 1:30 O'Clock P.M.

2 --oOo--

3 THE COURT: Okay. The record will reflect that  
4 Mr. Schneider is here. Mr. Forman is here, and  
5 Mr. Kirkpatrick is not.

6 There was some kind of a mix-up at San Quentin  
7 about Mr. Kirkpatrick's transportation. Sergeant Lewis at  
8 the prison speculates that the crew who brought  
9 Mr. Kirkpatrick over here the last time and received the  
10 information that he was due back this afternoon wasn't part  
11 of the regular transportation team for some reason and may  
12 have forgotten to post the appearance today on the  
13 transportation board.

14 We have already heard Mr. Kirkpatrick discuss his  
15 disinclination to cooperate with what he perceives to be  
16 last-minute movements or arrangements, and he may have  
17 forgotten today's date. I don't know.

18 I guess I will call the prison back and ask them  
19 to write a short report of what transpired today and what,  
20 if anything, Mr. Kirkpatrick said.

21 With Mr. Forman and Mr. Schneider sitting here, I  
22 relayed the information through the prison-uniformed people  
23 to Mr. Kirkpatrick that we were probably going to be setting  
24 some dates today. I wouldn't make any important decisions,  
25 but we would like to have him here and he is certainly  
26 entitled to be here. He's apparently declined to leave his  
27 cell even with that information.

28 You have got the report from Dr. McEwen. That's a

1 start. I am happy to receive your suggestions as to what  
2 you would like to do next in the form of examining  
3 Dr. McEwen, if that's something you want to do, and perhaps  
4 bringing in other people who will talk professionally about  
5 Mr. Kirkpatrick's competence and, if appropriate,  
6 Dr. McEwen's analysis.

7 Do you have a concept of how that should work?

8 I am willing to give you a month and-a-half, if  
9 that's appropriate.

10 MR. FORMAN: I have a couple of concepts.

11 THE COURT: Sure.

12 MR. FORMAN: We would like the opportunity to  
13 examine Dr. McEwen on her report. We would also like to  
14 present our own expert opinion on Mr. Kirkpatrick and  
15 possibly Dr. McEwen's report.

16 I take it, we are not going to have the  
17 opportunity ourselves to examine Mr. Kirkpatrick?

18 THE COURT: I will do everything I can to  
19 facilitate that. I have done what I thought I could to  
20 convince him that it would be helpful and expeditious for  
21 everybody if he would cooperate in talking with folks.

22 He's been fairly adamant on the record so far that  
23 he didn't want to talk to other people who have been  
24 proposed, and he didn't want to talk to more than one  
25 psychiatric professional, but if you can think of a way to  
26 communicate with him and try to convince him that it would  
27 be a good idea for him to talk to others, that's fine.

28 It was certainly my intention, if he had been here

1 today, to continue my crusade to get him to cooperate with  
2 whoever you want to come in to meet with him. If I can do  
3 anything for you at the prison or elsewhere to facilitate  
4 things, I would like to do that.

5 MR. FORMAN: Other than my suggestion on having  
6 our experts examine Mr. Kirkpatrick, I don't think I have  
7 anything to add to those suggestions at this time.

8 THE COURT: You had that request in the motion to  
9 videotape the interview with Dr. McEwen, but I recall  
10 discussing that with Mr. Kirkpatrick in court the last time  
11 he was here, and he was adamant that he wasn't going to do  
12 that. I am not sure that it would have been professionally  
13 efficacious anyway because it created some sort of a barrier  
14 between him and the evaluator. So I certainly wasn't going  
15 to order that it happen over his objection.

16 In any event, do you think a month and-a-half is  
17 enough?

18 We can set a date and notify Dr. McEwen to be here  
19 and give you an opportunity to file anything you want in the  
20 meantime in terms of professional opinions or assistance and  
21 bring in whoever you might like to bring in as of that next  
22 date.

23 MR. FORMAN: I think it would be sufficient,  
24 assuming we can have -- I think we still have a pending  
25 discovery request out there. I don't believe that's been  
26 ruled on.

27 THE COURT: Well, I am prepared to do whatever  
28 necessary to give whatever experts you want to be involved

1 access to the prison files that Dr. McEwen had access to.  
2 My recollection is that the primary thing that you are  
3 concerned about is post '94 material.

4 MR. FORMAN: Post '96 materials, and there is a  
5 question of other documents from San Quentin reflecting the  
6 terms of Mr. Kirkpatrick's confinement, which I don't know  
7 that Dr. McEwen saw since she reports reviewing the C file.  
8 It doesn't refer to any other files.

9 Any of the other experts would also need, of  
10 course, Dr. McEwen's notes and any raw data from tests she  
11 administered to Mr. Kirkpatrick during the interview.

12 THE COURT: I can't imagine that she would have a  
13 problem giving up raw data. I don't know what she thinks  
14 about her notes. I think notes probably end up in the  
15 report.

16 MR. FORMAN: I also suggest -- this is something I  
17 was just thinking about on the plane today. Certainly  
18 reserving our right to bring in our own experts, but I also  
19 suggest perhaps in addition to -- that this report itself be  
20 evaluated by the experts that the parties stipulated to  
21 earlier, which would not entail an evaluation of  
22 Mr. Kirkpatrick by those experts, nor would they be asked in  
23 essence to make an evaluation, but essentially to give their  
24 professional opinion as to this report itself. Also, give  
25 them the opportunity to review the materials that Dr. McEwen  
26 reviewed. I think Dr. Weinstock and Krelstein --

27 THE COURT: You can retain whoever you want,  
28 obviously, to work with you. If it turns out those are the

1 folks, fine. Go right ahead, but basically the Court has  
2 employed a person I think is a responsible and capable  
3 professional based upon years of observation, and so I am  
4 not going to hire anybody to be second-guessing that report  
5 at this time.

6 Of course, if you want to have either of those  
7 folks or any of the other people you have dealt with go over  
8 it and go over the source materials, I have no problem with  
9 that, and we will hear from them hopefully in one concerted  
10 hearing if it can within reason be done the next time we get  
11 together.

12 Now as for specific materials from the prison, I  
13 don't know what they could do for you in terms of  
14 description and arrangements of confinement, but it seems  
15 logical to me that might make a difference to somebody. I  
16 would suggest what you do is contact Ms. Dull at the Legal  
17 Office and tell her that you need something like that and  
18 make arrangements for whatever folks you want to go in there  
19 and look at the records.

20 MR. FORMAN: May we have an order to copy the  
21 records so we can get them to our experts if they're  
22 unavailable to go by the prison themselves to examine the  
23 records?

24 THE COURT: That might be the reasonable,  
25 economical thing to do, and I am not sure I can think of a  
26 reason why not, allowing of course that they would be  
27 subject to a protective order.

28 MR. FORMAN: Of course.

1 THE COURT: Not to be used other than in the  
2 context of these proceedings and not to be disclosed beyond  
3 the limits of that.

4 MR. SCHNEIDER: I have spoken to Ms. Dull. That's  
5 possible. If the Court orders the records to be  
6 photocopied, they can be, but the manpower arrangements in  
7 San Quentin basically means she would do it during times  
8 she's available and she said to me it would be some matter  
9 of weeks to photocopy.

10 THE COURT: Can you get somebody in there to do  
11 it?

12 MR. FORMAN: We regularly copy people's records  
13 all the time when we have their consent. In this case we  
14 don't. We usually send in a copying service. It doesn't  
15 require San Quentin manpower.

16 MR. SCHNEIDER: You have done it?

17 MR. FORMAN: Yes.

18 MR. SCHNEIDER: That's the only thing. If she had  
19 to do it, it would add time.

20 THE COURT: Mr. Schneider, can you perhaps  
21 facilitate obtaining such things?

22 It sounds like the physical and chronological and  
23 social circumstances of confinement might be important to  
24 somebody trying to make an evaluation. Whether he's been  
25 subjected to some form of confinement that might have caused  
26 mental deterioration, I guess is what Mr. Forman is after.

27 So at least a summary form for the blocks of time  
28 that would be pertinent is fine, and where he's been housed,

1 how much access he has to other people, and if his status  
2 has changed, how it's changed in that regard, how big his  
3 cell is, whether he is subject to noise from other people in  
4 the vicinity, whether he is able to talk to other people in  
5 the vicinity, if he's not allowed to visit with them, how  
6 much time he gets out, the basic rules of the place he's  
7 being kept.

8 MR. SCHNEIDER: Just in a form of a correctional  
9 officer writing up some summary based upon his experience.

10 THE COURT: I think that would be the basis of it.  
11 I assume they can go back through his record and just see  
12 where he's been housed.

13 MR. SCHNEIDER: I believe he's been in the  
14 Adjustment Center for a long time and I think even in the  
15 same cell for quite awhile. It shouldn't be a problem. His  
16 confinement has basically been the same for some years now.

17 THE COURT: Hopefully it will just amount to  
18 substantial blocks of time where he's been one place and  
19 then the next, and with a description of while he's in these  
20 places, what he gets in the way of recreation, what he gets  
21 in the way of contact with either prison staff or inmates.

22 MR. FORMAN: The discovery motion, I believe, asks  
23 for all documents reflecting the physical dimensions of his  
24 cell and conditions, but I don't believe we asked for a  
25 summary description from a guard. Maybe it would be  
26 appropriate to bring somebody in to talk about that, but I  
27 am not asking for the prison to go out and create documents.

28 THE COURT: If you can get some kind of a

1 reasonable time line from the time he was originally  
2 incarcerated in the State Prison system up to the present,  
3 where he's been moved from time to time and what the basic  
4 rules of his confinement have been in these various places,  
5 whether there are disciplinary reasons that have resulted in  
6 restriction of his exercise periods or other opportunities  
7 to breathe fresh air and perhaps see other people, just so  
8 they know generally what's been going on.

9           After Mr. Forman has a chance to look at something  
10 like that, maybe he can let me know whether he has any  
11 problems with it in terms of its exhaustiveness, but I would  
12 suspect if you produce just raw logs or other information,  
13 it wouldn't make any sense to his people anyway. It would  
14 be better if we have assistance.

15           Call me any time if you are not satisfied that you  
16 are getting sufficient cooperation from the Legal Office in  
17 approaching Mr. Kirkpatrick to see whether he will cooperate  
18 in any other interviews, which I suspect he won't because he  
19 said very definitely he wouldn't, or access to the records  
20 to do copying.

21           I will order that subject to the protective order  
22 I just described, you can make copies. If somebody wants to  
23 draw an order providing for those things, I will sign it,  
24 otherwise we can give you a minute order, or call Ms. Dull  
25 or all of those things.

26           MR. FORMAN: I would be happy to take a shot at  
27 drafting an order.

28           THE COURT: If you will run it by Mr. Schneider.



1 I would prefer not to end up having too many more meetings  
2 than we need to have.

3 So if we can allow enough time now for this  
4 process of assessment so that maybe the next time we can get  
5 together and we need to take a couple of days, we can do it,  
6 give you a chance to ask questions of Dr. McEwen and present  
7 whatever alternative theories you want to present, if there  
8 are any.

9 Do we think that February makes sense?

10 MR. FORMAN: I don't want to speak without  
11 speaking to the people I have retained. I was thinking of  
12 my own schedule. February makes sense, but I don't want to  
13 speak for others.

14 THE COURT: Well, why don't we pick a February  
15 date. We will also have to talk to Dr. McEwen, advise her  
16 that she would be needed, and it may be that we are going to  
17 hit a time when she's not available.

18 Do you want to set the matter tentatively for the  
19 26th of February?

20 MR. SCHNEIDER: Sure.

21 THE COURT: Let's do it February 26th at  
22 9:00 o'clock.

23 Let me know what I can do, if anything.

24 Anything else today?

25 MR. FORMAN: I just have one further suggestion.  
26 In light of the statements -- some of the statements made by  
27 Mr. Kirkpatrick as related by Dr. McEwen about his desire to  
28 proceed with litigation and the statements he's made in this

1 court, perhaps it may not be necessary to address the issue  
2 of competency since it doesn't appear that the issue of  
3 waiver -- it appears that it is moot at this point.

4 THE COURT: It is possible.

5 Do you think he will talk to you at all?

6 MR. FORMAN: I have no confidence that he will  
7 talk to me at all. I don't know of anybody that he will  
8 talk to.

9 THE COURT: That's been one of the helpful things  
10 about bringing him over here is he's at least talked a  
11 little bit while he's been here but --

12 MR. FORMAN: I know some people who have been able  
13 to talk to him in the past. I have been trying to employ  
14 them to talk to him after this proceeding began, and he's  
15 declined to see them. I will reinitiate those efforts.

16 THE COURT: Because if it turns out that he  
17 doesn't want to go forward with his request to withdraw, it  
18 probably moots what we are doing here and now. If that  
19 turns out to be the case, I would certainly let the Supreme  
20 Court know.

21 MR. SCHNEIDER: It seems my interpretation of what  
22 he's said is not that he wants to suspend or end his  
23 attempts to withdraw his petition, but he sees that somehow  
24 as part of a larger plan. So I think the defining of his  
25 competence is essential in the progress of his strategy.

26 THE COURT: I am not sure I read it exactly as  
27 Mr. Forman does, but if Mr. Forman thinks there is a way to  
28 confirm his suspicion that Mr. Kirkpatrick really doesn't

1 want to do what we are doing here and doesn't really want  
2 the Supreme Court to dismiss the petition, then we should.

3 MR. FORMAN: Just for the record, if I said that I  
4 am not sure that Mr. Kirkpatrick wants to dismiss the  
5 petition or not. I didn't mean to say that. I just took it  
6 from the report that he does not wish to waive all  
7 proceedings. It seems like he's contemplating numerous  
8 proceedings. He said that in this Court as well.

9 THE COURT: I think that's so. It seems now based  
10 upon what he told Dr. McEwen that he has some plan to  
11 revisit the merits of the trial on the basis of newly  
12 developed evidence, whatever that might be, but in any  
13 event, it doesn't sound like he's committed to terminating  
14 himself.

15 MR. SCHNEIDER: The finalization of a finding of  
16 competence or incompetence would certainly be at least a  
17 touchstone in time so if he changes his mind in the  
18 future -- once that issue is resolved finally, we could go  
19 back to that rather than suspend and start all over again as  
20 we did in 1996 in Federal Court.

21 THE COURT: Well, we are all kind of result  
22 oriented. I would like to get some kind of product out of  
23 this. I am sure the Supreme Court would too, because of  
24 what it is going to end up costing them in whatever fees it  
25 does cost them.

26 Thank you. See you on the 26th, unless we talk in  
27 the meantime.

28 If you want to arrange a conference call at some

1 point in order to discuss logistics or earlier dates for  
2 anything, that's fine. I don't want to talk to people  
3 separately. To the extent we can minimize that kind of  
4 thing, I would like to. Even though he's refused to join us  
5 today, I would like Mr. Kirkpatrick to be with us in this  
6 process.

7 MR. FORMAN: Once these hearings are transcribed  
8 from today, could I ask the Court to send a copy to  
9 Mr. Kirkpatrick since he refuses mail from me regularly.  
10 That's the only way he would know what went on today.

11 THE COURT: That's an excellent idea as long as  
12 somebody buys an original.

13 (Whereupon, the proceedings were concluded.)  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 STATE OF CALIFORNIA )  
 2 ) ss.  
 3 COUNTY OF MARIN )  
 4  
 5

6 I, MAUREEN A. STEGER, do hereby certify that I am  
 7 Certified Shorthand Reporter pursuant to the laws of the  
 8 State of California; Official Court Reporter of the Marin  
 9 County Courts of the State of California, thereof;

10 That acting as such reporter I took down in  
 11 stenotype the testimony given and proceedings had in the  
 12 within-entitled action fully, truly and correctly.

13 That I thereafter caused the foregoing proceedings  
 14 of said cause to be transcribed into typewriting, and that  
 15 the foregoing 14 pages constitute a true and correct  
 16 transcription of said notes.

17  
 18 DATED: San Rafael, California, this 30th day of  
 19 December, 2000.

20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28

*Maureen A. Steger*  
 MAUREEN A. STEGER

CSR NO. 5721

**SUPREME COURT  
FILED**

**AUG 16 2000**

**Frederick K. Ohlrich Clerk**

**DEPUTY**

**C O P Y**

**IN THE SUPREME COURT OF CALIFORNIA**

In re WILLIAM D. KIRKPATRICK  
on Habeas Corpus.

S075679

**BY THE COURT:**

Petitioner having submitted to this court a document dated July 23, 2000, stating that petitioner does not wish to proceed with the petition for writ of habeas corpus filed on his behalf in this court, and good cause appearing, the Presiding Judge of the Marin County Superior Court is ordered to select a judge of that court to sit as a referee in this proceeding and to promptly notify this court of the referee selected.

After appointment by this court, the referee is directed to hold, after proper notice to the parties, an evidentiary hearing to determine whether William D. Kirkpatrick is mentally competent to withdraw his petition for writ of habeas corpus, applying the standard set out by the United States Supreme Court in *Rees v. Payton* (1966) 384 U.S. 312, as follows: "whether [the prisoner] has capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether he is suffering from a mental disease, disorder, or defendant which may substantially affect his capacity

....” (*Id.* at p. 314.) The referee also shall make findings on the question whether the prisoner has made a knowing, intelligent, and voluntary waiver of his right to proceed. (See *Whitmore v. Arkansas* (1990) 495 U.S. 149, 165.) The Attorney General and counsel appointed for Kirkpatrick, the Federal Public Defender, may participate in the hearing. Separate counsel may be appointed for Kirkpatrick if he so requests. The referee may appoint experts in the field of psychiatry and psychology to examine and test Kirkpatrick and to testify at the hearing before the referee. (See *Rees v. Payton, supra*, 384 U.S. at pp. 313-314; *Mason v. Vasquez* (9th Cir. 1993) 5 F.3d 1220, 1221-1224.) The referee shall make findings whether Kirkpatrick’s competence is established by a preponderance of the evidence. (*Mason v. Vasquez, supra*, at p. 1225.) After the hearing, the referee shall promptly make the required findings and transmit those findings to this court with the record of the hearing, including all exhibits.

**SUPREME COURT  
FILED**

**AUG 17 2000**

**Frederick K. Ohlrich Clerk**

**DEPUTY**

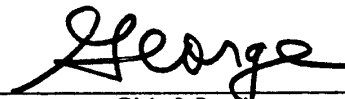
**IN THE SUPREME COURT OF CALIFORNIA**

---

**IN RE WILLIAM D. KIRKPATRICK ON HABEAS CORPUS**

---

The final line on page one of the order filed on August 16, 2000, insofar as it reads "...mental disease, disorder, or defendant..." is hereby amended to read "...mental disease, disorder or defect...".



**Chief Justice**



Waiver Form

I ~~do~~ not wish to proceed with my petition for writ of habeas corpus review in this matter. I wish the sentence and judgement of execution in people v. William Kirkpatrick Jr. K 590144 to be carried out at this time.

Date 7-23-2000

RECEIVED  
JUL 27 2000  
CLERK SUPREME COURT

William Kirkpatrick Jr.  
William Kirkpatrick Jr.

Dear Mr. Wainwright,

~~Attached~~ you will find my waiver <sup>to</sup> **RECEIVED**  
update my petition. You will also find <sup>some</sup> **JUL 27 2000**  
shit that a nunny named 'Ohlrich' sent me. **COURT**  
CLERK

I would appreciate your locating him and assisting him in showing his document up his ass.

Pay attention Wainwright, on June 8th 2000, I sent a declaration to you scumbags charging Sgt R.G. Schneider with a blatant and indefensible criminal act and breach of security. That cocksucker Ohlrich has been covering it up for more than a month now. I'm not letting it go!!!

That little fuck is trying to get the guards to murder me here and he's now using this joke you call a court to help him!

The evidence of this is empirical. I wish

to press charges. I wish my waiver acted upon. And I wish the public defenders office investigated for bigotry. It seems that they - the CPDs office has decided to burden me with - of all things a homosexual racist!!!. I know for a fact he's - (Bill Forman) - a faggot because a fellow inmate allowed me the use of his investigator who reported that 'Forman' is a rather enthusiastic cocksucker - literally! Forman's bigotry is revealed by his liberal use

of the word nigger: especially when ~~used~~ used  
me. It would appear that everyone in that  
office has a love affair with that word. I  
am only half black, why don't they ever  
call me spic? or 'mutt' even? Why always  
'nigger'?

Either way, that office refuses to communicate  
with this 'nigger'! I had - what I thought was  
a productive conversation on the phone - recorded  
with Gorman on April 3<sup>rd</sup> 2000. In which he  
assured me he would send me copied reports  
from my investigators. I have not heard from  
him since. I wrote to him on June 2<sup>nd</sup> 2000  
demanding to see him - I've never met  
him - and to date I've gotten no response.  
Enough is enough Warden. Acknowledge my  
waiver. This 20 year joke has gone on  
long enough!!!

It should be noted that  
Gorman did say that my  
final appeal was in but  
the dep. AG refuses to  
respond to it.

yours truly  
William Kirkpatrick  
7-23-2000

1 DANIEL E. LUNGREN  
Attorney General of the State of California  
2 GEORGE WILLIAMSON  
Chief Assistant Attorney General  
3 CAROL WENDELIN POLLACK  
Senior Assistant Attorney General  
4 KEITH H. BORJON  
Supervising Deputy Attorney General  
5 ROBERT C. SCHNEIDER  
Deputy Attorney General  
6 State Bar No. 94590  
300 South Spring St.  
7 Los Angeles, CA 90013  
Telephone: (213) 897-2283  
8 Fax: (213) 897-2283  
9 Attorneys for Respondent

FILED  
CLERK, U.S. DISTRICT COURT  
- 6 1997  
CENTRAL DISTRICT OF CALIFORNIA  
BY

CLERK, U.S. DISTRICT COURT  
OCT 28 1997  
CENTRAL DISTRICT OF CALIFORNIA  
DEPUTY

10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
12

13 WILLIAM KIRKPATRICK, JR.,  
14  
15 Petitioner,  
16  
17 v.  
18 ARTHUR CALDERON, Warden, and the  
ATTORNEY GENERAL OF THE STATE OF  
19 CALIFORNIA  
Respondents.

DEATH PENALTY CASE  
CV 96-0351-WDK

[PROPOSED]

ORDER FINDING  
PETITIONER'S INTENTION TO  
PROCEED WITH FILING OF  
PETITION FOR WRIT OF  
HABEAS CORPUS

20 The Court has determined that Petitioner, William  
21 Kirkpatrick, Jr. intends to proceed with the filing of his  
22 Petition for Writ of Habeas Corpus in this Court.

23 THEREFORE, GOOD CAUSE HAVING BEEN SHOWN, it is ORDERED that  
24 Petitioner will continue to be represented by the Federal Public  
25 Defender. The Federal Public Defender will file the Petition for  
26 Writ of Habeas Corpus on Petitioner's behalf by June 24, 1998.  
27

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

IT IS FURTHER ORDERED the Petitioner is not to communicate directly with the Court. All communication from Petitioner to the Court must be presented through the Federal Public Defender.


IT IS FURTHER ORDERED that if Petitioner decides to abandon or waive the filing of a Petition for Writ of Habeas in this matter he is to sign the attached Waiver Form and deliver it to the Federal Public Defender, who will file it with the Court.

IT IS SO ORDERED.  
DATED: November 6, 1997.

WILLIAM D. KELLER

---

THE HONORABLE WILLIAM D. KELLER  
United States District Judge

Proposed by:  
DANIEL E. LUNGREN, Attorney General  
of the State of California  
By:   
ROBERT C. SCHNEIDER  
Deputy Attorney General  
Attorneys for Respondents

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

WAIVER FORM

I do not wish to proceed with my Petition for Writ of Habeas Corpus review in this matter. I wish the sentence and Judgment of Execution in People v. William Kirkpatrick, Jr., A-590144, to be carried out at this time.

DATED: \_\_\_\_\_

\_\_\_\_\_  
William Kirkpatrick, Jr.