IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re	)	**Case No. S197391**
	)	**(Related Case Nos. S054489, S137884)**
	)	
KEITH ZON DOOLIN	)	
	)	
	)	
On Habeas Corpus.	)	***Death Penalty***
	)	

SUPPLEMENT TO PETITION FOR WRIT OF HABEAS CORPUS, AND APPENDIX (EXHIBITS 158-166)

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	) WRIT OF HABEAS CORPUS, AND
	) APPENDIX (EXHIBITS 158-166)
	)
On Habeas Corpus.	**) *Death Penalty Case***
	)

TO: HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND ASSOCIATE JUSTICES

COMES PETITIONER, KEITH ZON DOOLIN, through counsel who submit this verified Supplement To Petition for Writ of Habeas Corpus and petitions this Court for a writ of habeas corpus. The following is submitted in support of the relief sought herein.

INTRODUCTION

This Supplement To Petition for Writ of Habeas Corpus is mandated because of oversights by prior counsel and newly discovered evidence. Seven months ago the undersigned, Robert R. Bryan and Pamala Sayasane,

were appointed to replace prior counsel who were permitted to withdraw. (Order, July 22, 2015.) During the initial review of some of the voluminous case documents, it became evident that the prior attorneys failed to raise significant claims in the pending habeas corpus petition. (Petition for Writ of Habeas Corpus, Oct. 24, 2011, *In re Doolin*, No. S197391.) That necessitated the submission of this pleading.

A Petition for Writ of Habeas Corpus was filed in the United States District Court on October 18, 2011. (*Doolin v. Wong*, No. 09-CV-01453-AWI (Dkt. 85).) On January 17, 2012 that case was stayed and held in abeyance pending the exhaustion of unexhausted claims in this Court. (Dkt. 134.) The undersigned were appointed federally January 29, 2015 (Dkt. 168) on behalf of Petitioner, to replace prior counsel who had been on the case six years. This Court thereafter appointed them. (Order, July 22, 2015.) They have been reviewing parts of the extensive case material. It consists of approximately 55 GB of computer files and 70 boxes of material related to the pending habeas corpus claims. The trial record alone consists of over 16,000 pages.

The pending Petition for Writ of Habeas Corpus, consisting of 11 claims supported by Exhibits 1-152, was filed in this Court on October 24, 2011. (*In re Doolin*, No. S197391.) Exhibits 153-157 were filed December 28, 2012. Petitioner seeks herein to supplement the pending petition with Claims 12-16, supported by Exhibits 158-166, which are presented below.

CLAIMS FOR RELIEF

Claim 12 Newly-discovered evidence establishes that Petitioner is actually innocent of murdering Peggy Tucker and is thus entitled to a new trial. That he was convicted and sentenced to death for a murder he did not commit renders his imprisonment illegal and in contravention of the rights guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution.

A. Petitioner incorporates by reference all facts, exhibits and claims of

constitutional violations alleged elsewhere in this Petition, and further incorporates the exhibits and declarations mentioned herein.

B. The record on appeal and the pleadings on direct appeal and postconviction are incorporated by reference as if set forth fully herein.

C. Petitioner is actually innocent of the Peggy Tucker murder for which he was convicted and sentenced to death, and thus his execution is unconstitutional.

D. An evidentiary hearing is necessitated because of newly discovered evidence, which establishes Petitioner's innocence. "The substantial risk of putting an innocent man to death clearly provides an adequate justification for holding an evidentiary hearing." (*In re Davis* (2009) 557 U.S. 952, 953.)

E. Petitioner was represented at trial by Rudy Petilla, an attorney who was prejudicially ineffective. (*See* Pet. for Writ of Habeas Corpus,[1] Claims 2, 4-6.)

1. Petilla (California Bar No. 109383) was suspended from the practice of law on November 9, 2001. On November 19, 2004, he resigned from the Bar with charges pending.

2. Had the lawyer conducted a semblance of a reasonable investigation on behalf of Petitioner, it would have been established that his client did not kill Ms. Tucker.

3. As it was, Petilla's representation was well below a reasonable standard of competence. (*Strickland v. Washington* (1984) 466 U.S. 668, 691.) In fact, Petitioner was essentially without an advocate at his capital trial. (*United States v. Cronic* (1984) 466 U.S. 648, 656.) The record, already before this Court, establishes that the lawyer conducted virtually no investigation. In fact he converted to his own use investiga-

[1] Hereinafter cited as "PHC."

tive and expert funds. That was used to support a gambling habit. (*See, e.g.,* PHC [Case No. S197391], at pp. 3-4, 59-64, 109-113, 117-122, 126-131, 315.)

F. A jury convicted Petitioner of the first degree murders of Peggy Tucker and Inez Espinoza, and four counts of attempted murder with the use of a firearm. The special circumstance allegation of multiple murder was found true and the jury returned verdicts of death. (*People v. Doolin* (2009) 45 Cal.4th 390, 399-400.) Petitioner was sentenced to death.

G. Ms. Tucker was shot and killed on the night of September 19, 1995. (RT 1711.)

1. Her boyfriend, Rick Arreola, left their motel with her around midnight and saw her get into a Lincoln Town Car. (RT 1716, 1722.) She was working as a prostitute. (RT 1711, 1714, 1732.) Arreola waited on the street for her to return. (RT 1718.) Later he saw the car again. (RT 1719-1720.) The interior dome light went on as it approached and the driver looked down at the passenger side as he passed. Tucker was not seen. (RT 1720-1721.) Arreola testified at the preliminary hearing that he just got "a glimpse" of the driver. (CT 212:12-14.) At trial he came up with new details, e.g., a white, round-faced and clean-cut person. (RT 1723-1725.) About a month after the murder he had been shown a photo lineup and thought three suspects looked familiar. Before showing him the lineup, the police said that they may have caught Ms. Tucker's killer. (RT 1737.) At trial he said that the photograph of Petitioner in a photo lineup as one who looked "quite a bit" like the man who drove the Lincoln, although the face looked heavier and the hair was different. (RT 1725-1726; 1729, 1738.) However, Arreola had testified at the prelimi-

nary hearing that he could not identify anyone in the photographic lineup. (CT 217:14-17.) At trial, he claimed to not remember saying that and falsely insisted having picked out Petitioner. (RT 1733.)

2. Detective Robert Schiotis had been present at the photo line-up interview. His report contradicted Arreola's testimony that he had identified Mr. Doolin: "Det. Murrietta prepared a Photo display folder and we attempted to locate the witness and two surviving victims. At approx 1930 hours, we located Rick Arreola. We showed him the photo display consisting of 6 photographs one of which was Petitioner's DMV photo. Arreola was not able to identify any of the photographs but said #2 and #3 looked like the suspect. Det. Murrietta asked him if any did not look like the suspect and Arreola said #4 and #6 were not the suspect. He said 5 (Petitioner) could be but his face 1ooked heavy and the hair different." (Supp. PHC Ex. 66, at p. 2072.)

3. Ms. Tucker had been shot in the right hip. (RT 1671-1673.) Opiates and cocaine metabolites were found in her blood and methamphetamine in the stomach. (RT 1685, 1688.) There were two condoms in her right hand. (RT 1679.)

H. Petitioner's present counsel have recently discovered new evidence that Josefina Sonia Saldana, aka Josefina Sonia Hernandez, a prosecution witness in Petitioner's trial (RT 1662-1670), murdered Peggy Tucker whom Petitioner was convicted of killing.

1. In 1996 Petitioner was convicted of that crime and sentenced to death. (CT 656-662, 671, 769-771.)

2. Ms. Saldana, using the name Hernandez, had testified for the prosecution that on or about September 18, 1995, she lived at 2369 South Grace Street, Fresno. Shortly before midnight, she

claimed to have heard dogs barking, a gunshot, and "a loud voice, oh, my God, oh, my God." (RT 1665.) However, she "did not call the police." (RT 1666.) The next morning she noticed "a lot of police out in our alley." (RT 1667.) The body of Ms. Tucker was lying there. (RT 1643, 1667, 1671, 1699.)

3. In September 1998, two years after Petitioner had been sentenced to death and placed on San Quentin's death row, Ms. Saldana was arrested and charged with two counts of murder and kidnapping.[2]

   a. On September 14, 1998, she had lured Margarita Flores, eight-months pregnant, from her Fresno home with the promise of free baby furniture and diapers.

   b. After killing Ms. Flores, Ms. Saldana dismembered the body that was then scattered in Southern California and Tijuana, Mexico.

   c. Ms. Saldana was arrested after bringing a dead fetus to a hospital. Her apparent accomplice, a farm worker named Serafin Rodarte, hanged himself on September 22, 1998. A suicide note was found. It stated, in part, "she made me do it."

   d. In 2001 Ms. Saldana was convicted of murdering the mother and child.

   e. David Raymond Mugridge, who represented Ms. Saldana at her double-murder trial, recently explained that he possesses exculpatory evidence regarding Petitioner:

[2] This and other related information is based upon investigative interviews conducted postconviction. Petitioner's counsel do not presently have access to the *Saldana* trial transcripts and police-prosecution reports. Once an Order To Show Cause is issued and Petitioner granted discovery and subpoena power, he will provide the evidentiary support alleged herein.

1. I am an attorney in good standing and licensed to practice in the state of California. My law practice is in Fresno, California, where I have litigated numerous homicides including those involving the death penalty. I am a state bar certified criminal law specialist. Most of my time involves special circumstance cases which I have receive by courts appointment. I have been a trial lawyer for approximately 30 years. I am an attorney in private practice, limited exclusively to criminal defense—trials and appellate work.

2. During my years practicing law in Fresno County, I became familiar with Rudy Petilla, now deceased, who represented Keith Zon Doolin on capital murder charges in 1996. Rudy had a poor reputation in the Fresno legal community. I was shocked to learn that he was appointed as counsel in the Doolin case.

3. Recently I was contacted by attorneys Pamala Sayasane and Robert R. Bryan, new state and federal habeas counsel for Mr. Doolin. They asked me about what I knew regarding Rudy and his representation of Mr. Doolin.

4. I related to them that I have exonerating information regarding Mr. Doolin which came to my attention during my representation of Josefina Sonia Saldana, aka Josefina Sonya Hernandez. I represented during her 2001 murder trial for killing Margarita Flores and her baby. Shortly after being convicted, Ms. Saldana committed suicide in the Fresno County Jail by hanging. I recall that she had lived at 2369 South Grace Street, Fresno, at the time of her arrest.

5. I explained to Ms. Sayasane and Mr. Bryan that I had potentially exonerating information regarding Mr. Doolin. However, it was explained that I am bound by the attorney-client privilege from disclosing how I came upon this information or the nature of the evidence.

6. I told the attorneys that I would gladly tell them what I know, and even provide them with access to the materials in my possession, if a court directed me to do so.

7. I have struggled about what to do with this predicament. As an attorney who has practiced for many years, I strongly believe in the rule of law. However, I also believe in doing what is right, and that includes doing whatever I can to ensure that an innocent man is not wrongfully executed. I agreed to provide Mr. Doolin's counsel with this declaration so that they could preserve their client's right

and alert the court to this matter. (Ex. 162, Decl. of David Raymond Mugridge, Feb. 4, 2016.)

I. The facts indicate that Ms. Saldana also killed Natalie Ann Carrasco, another prostitute. (Ex. 165, *Clues Sought in Killing of Tattooed Prostitute, Motive for Slaying Undetermined, Police Say*, Fresno Bee, June 26, 1993.)

1. On or about June 23, 1993, the body of Natalie Carrasco, shot to death, was found in front of Ms. Saldana's house, at 2369 South Grace Street, Fresno. (Two years later Peggy Tucker's body was found behind the same residence.)

2. After Natalie's death, Saldana went to her funeral and befriended the victim's mother, Becky Carrasco. In an apparent attempt to deflect blame from herself, Saldana told Becky that she saw Natalie being pushed out of a black car by a black man.[3]

3. Becky Carrasco pursued an investigation regarding her daughter's death. That included discussions with detectives working on the case.

   a. The Fresno Police Department determined that a serial killer was murdering prostitutes. (Ex. 163, *Police Suspect Serial Killer*, Fresno Bee, Sept. 21, 1995; Ex. 164, *Three Violent Deaths—One Killer?*, Fresno Bee, Sept. 24, 1995.)

   b. Years later a detective revealed that he believed Josefina Saldana killed Natalie. He thus asked Becky to try to persuade Ms. Saldana to confess to her daughter's murder. However, before Becky could speak with Saldana, she committed suicide in jail. (Ex. 162, at ¶ 4.)

[3] The information from Becky Carrasco, provided herein, is based upon an interview with her on January 31, 2005.

c. It was the opinion of Becky Carrasco, based upon discussions with the police and Ms Saldana, that Ms. Saldana killed her daughter.

d. Becky also believed that that it was Ms. Saldana who murdered Peggy Tucker, not Petitioner. Indeed, both women were prostitutes, both were shot to death, and both were found on or near the property of Ms. Saldana. And conveniently, in each of these killings, Ms. Saldana claimed to have heard or saw someone else commit the crime, thereby deflecting blame from herself.

J. Under the circumstances, Petitioner is entitled to an evidentiary hearing on the innocence issue. (*In re Davis, supra*, 557 U.S. at p. 953.) The execution of an innocent person violates the Constitution. (*Herrera v. Collins* (1993) 506 U.S. 390, 419.) "[T]he execution of a legally and factually innocent person would be a constitutionally intolerable event.") (O'Connor, J., joined by Kennedy, J., *concurring*). "[T]he Constitution forbids the execution of a person who has been validly convicted and sentenced but who, nonetheless, can prove his innocence with newly discovered evidence." (*Id*. at p. 431, Blackmun, J., joined by Stevens and Souter, JJ., *dissenting*.)

K. One of the underlying principles guiding the Fifth, Sixth, Eighth, and Fourteenth Amendments is the protection of an innocent person from wrongful conviction. When the violation of an innocent person's constitutional rights results in their wrongful conviction and sentence of death, then the purpose of the writ is no greater served than when seeking to correct such a grave injustice. (See *Harris v. Nelson* (1969) 394 U.S. 286, 290-291.)

L. This new evidence of innocence cannot be constitutionally ignored. When factored with the substantial evidence of innocence previously presented in the pending exhaustion petition, it is submitted that no ju-

ror could have found Petitioner guilty beyond a reasonable doubt.

M. Thus, the interest of justice demands that Petitioner be granted an evidentiary.

Claim 13 The trial judge's undisclosed bias against Petitioner and related misconduct deprived the capital defendant of his constitutional right to a fair and impartial trial. Consequently his imprisonment and death judgment are illegal and in contravention of the rights guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments.

A. The allegations in each claim in this Petition along with the accompanying citations and exhibits in support thereof, as well as the trial record and prior pleadings before this Court, are incorporated by this reference as if fully set forth herein.

B. A judge has a duty to ensure that a criminal defendant has a fair trial. Here, the facts and record establish that the Honorable James L. Quaschnick, judge, suffered from conflicts of interest due to his prior negative relationship with Petitioner and his family. As will be discussed in further detail below, the judge improperly failed to disclose such conflicts, which guided his unreasonable actions and rulings against the defense. The judge's bias against Petitioner resulted in considerable harm, including but not limited to: unreasonably denying Petitioner's request for the assistance of second counsel pursuant to *Keenan v. Superior Court* (1982) 31 Cal.3d 424, 428-430, despite the fact that this was a highly complicated case involving two murders and four attempted murders; and, dismissing Petitioner's multiple requests pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 to replace his state-appointed counsel, who from the onset of his appointment exhibited the incompetence for which he was widely known within the Fresno legal community. Judge Quaschnick also interfered with the case by dissuading Petitioner's aunt and uncle, whom the judge knew through a mutual

friend, from attending the trial, thus depriving Petitioner of familial support and potentially valuable mitigation witnesses.

C. Canon 3E of the California Code of Judicial Ethics imposes on judges an obligation to disqualify themselves in any proceeding in which disqualification is required by law. (*See also* 28 U.S. Code § 455 [regarding judicial disqualification].) Specific statutory grounds for disqualification are set forth in Code Civ. Proc. §170.1. Section (a)(1), for example, states that a judge is disqualified if he has personal knowledge of disputed evidentiary facts concerning the proceeding (although information that has come to the judge in the course of presiding over the matter do not trigger this provision). Additionally, section 170.1(a)(6) requires disqualification if, "for any reason (A) the judge believes his or her recusal would further the interests of justice, (B) the judge believes there is a substantial doubt as to his or her capacity to be impartial, or (C) a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.

D. The standard for disqualification of a judge is fundamentally an objective one; if a reasonable member of the public at large, aware of all the facts, would fairly entertain doubts concerning the judge's impartiality toward a particular party, disqualification is mandated, and the existence of actual bias is not required. (*People v. Panah* (2005) 35 Cal.4th 395, rehearing denied, certiorari denied 546 U.S. 1216.)

Facts Giving Rise to Actual or Perceived Bias of Judge Quaschnick

E. Judge Quaschnick met the grounds for disqualification under Code of Civil Procedure because he had a prior negative history with Petitioner's family and was privy to personal information about them such that any reasonable person would entertain a doubt about the judge's ability to be fair and impartial. (§170.1, (a)(1) and (a)(6).)

1. His appearance of prejudice was unequivocal.

2. The judge failed to disclose such pertinent information.

3. For example, when Judge Quaschnick was in private practice in 1981, an attorney in his law firm (Wild, Carter, Tipton, Quaschnick & Oliver) represented Charles Doolin in a contentious divorce from Donna Larsen, Petitioner's mother. (Ex. 158, Dissolution of Marriage*, Donna Doolin vs. Charles Dwane Doolin*, Madera County Case No. 269123.) As detailed in the first habeas corpus petition filed in this Court (Case No. S137884), Mr. Doolin was Petitioner's stepfather, having met his mother in 1975 and marrying her shortly thereafter in 1976. During his approximate six-year relationship with Donna Larsen, Charles verbally and physically abused her and her children. That included sexually abusing Petitioner's older sister, Shana. (*See, e.g.*, PHC Claim 2 [Case No. S137884], at pp. 57, 77-98.) Because his law firm advocated on behalf of Charles Doolin, Judge Quaschnick was likely privy to confidential and biased information about Petitioner and his family, and therefore was inclined to prejudge the case against the defense.

4. Judge Quaschnick also had a bias due to his relationship with another one of Donna Larsen's ex-husbands, William ("Bill") Baker. In 1985, while serving as a superior court judge in Madera County, Judge Quaschnick was involved with Bill's criminal case. (See Ex. 159, *People v. William E. Baker*, Case Nos. 6244, 5944 & 5876.) Bill was charged and convicted of lewd acts on young girls under the age of 14, pursuant to Penal Code 288(a), including Petitioner's sister, Shana. (*Ibid*.) Judge Quaschnick was friends with Bill's parents, his mother Dorothy Edmonds (nee Baker) and his stepfather, Judge

Edmonds.[4] (Ex. 161, Decl. of Jim Bacon, at ¶ 8.) Bill's parents were upset about his conviction, despite the fact that he had also molested their daughters, June and Nancy. (*Ibid*; see also PHC [Case No. S137884], at pp. 98-99 [molestation of June, Nancy, and Petitioner's sister Shana].) Bill received an eight-year prison sentence but ended up serving only about 18 months. (Ex. 161, at ¶ 8.) Apparently at the Edmonds' request, Judge Quaschnick helped Bill get an early prison release. (*Ibid*.) Thus, there existed substantial doubt regarding Judge Quaschnick's ability to be fair towards Petitioner.

5. Judge Quaschnick's impartiality and misconduct was further highlighted by his failure to disclose his friendship with Petitioner's great aunt and uncle, Marie and Charlie Nipp, and his use of that relationship to dissuade them from attending the murder trial. The judge's action deprived Petitioner of familial support, as well as potentially valuable penalty phase witnesses. The judge's interference showed that he could not be fair in the case.

6. Jim Bacon, a family friend of Petitioner, recalled: "The Nipps were there with us on the first day of Keith's preliminary hearing, when Judge Quaschnick took over the case. The Nipps did not show up to court again after that first day. I heard later that the judge had something to do with that; for some reason, he didn't want them there." (Ex. 161, at ¶ 9.)

7. Jim's account is corroborated by an investigator, Richard L. Barnes. In his declaration, Mr. Barnes recalled that in May of 1998, after Petitioner's conviction, he was "asked by attorney Michael Fannon to interview Marie and Charlie Nipp, Mr.

[4] The first name of Judge Edmonds is not presently known.

Doolin's great aunt and uncle, regarding potential impropriety by the trial judge, James L. Quaschnick."[5] (Ex. 160, Decl. of Richard Barnes, at ¶ 2) During an interview at their Fresno home, the Nipps told Mr. Barnes that they attended one day of the preliminary hearing, but did not come to court thereafter because the judge did not want them there. (*Id*., at ¶ 3-4, 6.) Judge Quaschnick related his desire through "a mutual close friend, Betty Funk." (*Id*., at ¶ 4.) Betty told Marie that "Judge Quaschnick said he did not want them to sit through the testimony of the prostitutes who would be testifying in the case," because the judge allegedly "hated prostitutes and claimed he did not want to expose [the Nipps]" to such indecency. (*Ibid*.)

8. Judge Quaschnick likely chose Betty as the intermediary between him and the Nipps because Betty and Marie were very close and "talk[ed] on the phone daily." (*Ibid*.) Similarly, the judge and Betty were also "good friends," as evidenced by the fact that he had "bought her a spa to help her with the healing process" following complications with her breast implant. (*Id*., at ¶ 5.) Betty required breast augmentation surgery after an accident caused her to have her breasts removed. (*Ibid*.) Marie's husband, Charlie, recalled that "Judge Quaschnick had lost his wife due to leakage of her breast implants, so understood what Betty was going through." (*Ibid*.)

[5] Petitioner's mother, Donna Larsen, sought Mr. Fannon's help in preserving this issue for her son's appeal. (Ex. 161, at ¶ 9.)

Prejudice Arising Out of Judge Quaschnick's Conflict of Interest

F. The evidence establishes that Judge Quashnick's conflicts of interest impacted his decision-making in the case, resulting in harm to Petitioner.

1. As previously noted, the judge engaged in misconduct and undermined the defense when he used his influence to deprive Petitioner of the support of his great aunt and uncle, Marie and Charlie Nipp. Had the judge not interfered, the Nipps could have testified on Petitioner's behalf at the penalty phase. The judge knew or should have known that his conduct was improper, as evidenced by him using a third party, Betty Funk, to dissuade the Nipps from being involved with Petitioner's trial.

2. Furthermore, the judge's bias against Petitioner and his family were evident in the numerous unfair rulings in the case. Any member of the public at large, aware of all the facts, would have fairly entertained doubts concerning the judge's impartiality based upon the unreasonableness of the judicial action taken against the defense. (§ 170.1(a)(6)(C).)

3. For example, despite the fact that this was a highly complicated case involving two first-degree murders and four attempted murders, the judge refused to grant the defense request for second counsel, as mandated under *Keenan v. Superior Court, supra*, 31 Cal.3d at pp. 428-430. While trial counsel, due to his incompetence, failed to follow the proper procedure for seeking the assistance of *Keenan* counsel, that should not have prevented the judge from granting the request and ensuring that Petitioner was adequately represented at trial. (See PHC [Case No. S197391], at pp. 150-155 [ineffec-

tive assistance of trial counsel for failing to properly seek *Keenan* counsel].) The judge, through his vast knowledge and experience, knew or should have known that such a complicated case mandated two attorneys. The assistance of co-counsel was especially needed here because it was evident that Mr. Petilla was ill-prepared to handle the case by himself.

4. Additionally, after unreasonably denying Petitioner the needed assistance of second counsel, Judge Quaschnick was dismissive of Petitioner's repeated requests to replace Mr. Petilla with competent counsel. (PHC [Case No. S197391], at pp. 5-6, 25-26, 129, 299, 314-316 [discussion regarding Petitioner's *Marsden* motions].) As alleged in the pending exhaustion petition and supporting exhibits (Case No. 197391), "[a]t the time he was appointed, Petilla 'had a poor reputation with everybody in the Fresno County criminal courts'" as well as "a terrible reputation among lawyers in Fresno County." (*Id*., at p. 115-116.) That Mr. Petilla was "widely held in contempt by judges and other lawyers" was not a secret. (*Id*., at p. 60.) Mr. Petilla earned such reputation by being "chronically unprepared, did little or no investigation on his cases," and failed to consult with experts necessary to make informed and strategic decisions about his client's defense. (*Id*., at p. 116.) In fact, Mr. Petilla was a source of such ridicule among the defense bar that attorneys wondered "whether he graduated from a U.S. law school." (*Ibid*.) When word spread that he was appointed to handle Petitioner's complicated capital case, "the consensus among criminal defense lawyers was, plainly, 'you've got to be kidding me!'" (*Ibid*.) Thus, Judge Quaschnick knew or should have known of attorney's poor reputation, and should have

been on alert for signs of deficient performance during the trial. Even if initially unfamiliar with Mr. Petilla's reputation, once the judge actually observed counsel's incompetence, immediate action should have been taken to appoint new and qualified counsel. A criminal defendant has an absolute constitutional right to competent counsel, and here even more so given that Petitioner's life was at stake. (*Strickland v. Washington, supra*, 466 U.S. at p. 691.)

5. Yet, despite being presented with instance after instance of the attorney's lack of preparedness and ineffectiveness, Judge Quaschnick turned a blind eye and allowed the harm to Petitioner to go unabated. Trial counsel's ineffectiveness, and the judge's awareness of such incompetence, is well-documented in the trial record as well as the prior pleadings filed in this case. (Case Nos. S054489 [AOB], S197391 [PHC], S137884 [PHC].) For example, within two weeks of his appointment, Mr. Petilla took the case to preliminary hearing. As observed by public defender Charles Dreiling, who represented Petitioner before being replaced due to a conflict of interest: "I thought Rudy Petilla was crazy for going to prelim two weeks after his appointment to the case. In the Public Defender's office, everybody (including me) thought, 'he's dumping his client.' What he certainly was doing was squandering an opportunity to develop his case - two weeks after his appointment, he could not know if he did or did not have a case to make in defense of Mr. Doolin, or what that case might be." (PHC [Case No. S197391], at p. 117.) According to Mr. Dreiling, at least a year's time was needed to prepare for the preliminary hearing. (*Id*., at p. 143.) Yet, within just a couple of months of his appointment, Mr. Petilla took the

case to trial.[6] Such a timeline is unheard of, especially in a capital case. As Mr. Dreiling rightfully noted: "In a case involving six separate aggravated crimes, two murders and four attempted murders, no conceivable strategic purpose was served in holding a preliminary hearing within two weeks of appointment and a trial 60 days later." (*Id*., at p. 140.)

6. Thus, the speed with which trial counsel insisted on taking the case to trial should have raised red flags to Judge Quaschnick that something was very wrong in the way Petitioner was being represented. Indeed, the multiple motions Petitioner filed pursuant to *People v. Marsden, supra*, 2 Cal.3d 118, outlined for the court counsel's lack of preparedness, distraction during the trial due to his gambling habits,[7] and the progressive breakdown in the attorney-client relationship as a result of counsel's deficient performance. (PHC Claim 7 [Case No. S197391], at pp. 339-341; RT 1645-1661; RT 4633-4665; CT 801, *et seq*.; RT 4908-4951.) That Judge Quaschnick did not replace Mr. Petilla despite the wealth of evidence of the attorney's incompetence would prompt anyone to reasonably

[6] As set out in prior pleadings before this Court, Mr. Petilla was heavily in debt due to a gambling addiction and was motivated to speed the case through trial in order to receive installment payments on the case. (*See, e.g.*, PHC [Case No. S197391], at pp. 3-4, 59-64, 109-113, 117-122, 126-131, 315.)

[7] During the trial, Rudy Petilla was observed leaving his office and entering a building which housed a gambling hall. (Ex. 161, Decl. of Jim Bacon, at ¶ 4.)

conclude that Judge Quaschnick's actions and/or omissions was driven by his bias against Petitioner and his family.[8]

7. Moreover, Judge Quaschnick was certainly duty-bound to remove the attorney and order a new trial when presented with evidence that a bankruptcy judge had found Mr. Petilla guilty of having committed fraud to finance his gambling. (*See* PHC Claim 7 [Case No. S197391, at pp. 314-315, 339-341.)

8. Katherine Hart, a respected member of the Fresno County capital defense panel, was so astounded by the injustice to Petitioner that she prepared for him, *pro bono*, a motion seeking replacement counsel and a new trial. (*Ibid*.) Although the motion was accompanied by compelling supporting declarations and other evidence, such as the transcript of Mr. Petilla's bankruptcy hearing, Judge Quaschnick simply denied the request. An attorney guilty of fraud, an act of moral turpitude, should not have been allowed to represent a capital defendant. Thus, that Judge Quaschnick denied the defense motion and allowed Mr. Petilla to remain as counsel is further evidence of the judge's bias against Petitioner and his family.

9. Additional evidence of Judge Quaschnick's bias is apparent in the manner the judge treated Petitioner's mother, Donna Larsen, during her trial testimony. (See PHC [Case No. S197391], at pp. 317-325.) The prosecutor sought to impeach Donna with alleged bad acts. Although trial counsel moved to bar such impeachment evidence beforehand, the court deferred ruling on the issue until just before Donna's actual

[8] The judge openly displayed his bias against Petitioner, even privately "chatting and laughing with [the prosecutor]" within visual range of the courtroom spectators. (Ex. 161, at ¶ 7.)

testimony. Trial counsel ineffectively failed to request a hearing on the matter before he put Donna on the stand. When the prosecutor began a devastating cross-examination of the witness using the impeachment evidence, the court overruled trial counsel's objection. (*See* PHC [Case No. S197391], at p. 318.) Consequently, Donna was forced to assert the Fifth Amendment multiple times before the jury, causing her to be portrayed before the jury as dishonest, a liar, and a thief. (*Id*., at p. 320.) Drawing such an inference is improper and violative of due process. Moreover, because Donna was an alibi witness for Petitioner, her impeachment in front of the jury undermined the defense case. The judge knew, or should have known, that such ruling was an abuse of his discretion and a violation of Petitioner's right to a fair trial. (*Namet v. United States* (1963) 373 U.S. 179 [improper to derive evidentiary value from unfavorable inferences arising from the claiming of privilege].)

Conclusion

G. Accordingly, the evidence establishes that Judge Quaschnick was not qualified to serve as a judge in this case due to his conflicts of interest. The judge had a *sua sponte* duty to disclose his prior negative history with Petitioner and his family. Had any reasonable person been aware of such information, they would have reasonably entertained a doubt about the judge's impartiality.

H. The judge's failure to disclose such information raises a presumption of prejudice. Indeed, the judge's impartiality was clearly evident in the manner in which he presided over the trial, resulting in great harm to Petitioner.

I. Accordingly, Petitioner's conviction and death judgment was rendered constitutionally unreliable, and he is entitled to a complete reversal.

Claim 14 Petitioner's death judgment must be reversed because misconduct by state actors allowed a juror during penalty phase deliberations to seek her religious advisor's blessing to vote for death.

A. The allegations in each claim in this Petition along with the accompanying citations and exhibits in support thereof, as well as the trial record and prior pleadings before this Court, are incorporated by this reference as if fully set forth herein.

B. In prior habeas petitions filed in this Court, it was alleged that Petitioner was prejudiced by juror misconduct. (*See* PHC Claim 17 [Case No. S137884], at pp. 260-261; PHC Claim 6 [Case No. S197391], at pp. 335-339.) Specifically, a holdout juror who could not vote for death due to her religion was told by the jury foreman to call her religious advisor to get permission to vote with the rest of jury. The juror took the foreman's advice and, following a break, immediately joined her fellow jurors in voting for death.

C. However, prior appellate and habeas counsel failed to also allege that the judge and prosecutor, as well as Petitioner's state-appointed trial counsel[9], knew about the holdout juror and impermissibly al-

[9] As set out in the prior habeas petitions, state-appointed counsel Rudy Petilla was no advocate for Petitioner. He rushed a capital case to trial within only few months of his appointment after having conducted virtually no investigation. (*See* PHC Claims 1-2 [Case No. S197391].) He committed a fraud on the court and against his client when he used investigative funds for his own personal use, including supporting a gambling habit. (*See, e.g.,* PHC [Case No. S197391], at pp. 3-4, 59-64, 109-113, 117-122, 126-131, 315.) The State is complicit in Mr. Petilla's misconduct in that officials knowingly created a fee payment scheme in which appointed counsel had an incentive to pocket all monies rather than spending it on the case, and knowingly appointed an attorney with an extremely poor reputation among judges and lawyers. (*See, e.g.,* PHC Claim 1 [Case Nos. S137884 and

lowed her to consult her religious advisor. They stood by while a clear wrong was being committed.

D. The law is clear that a juror may not discuss the case with a nonjuror or consult extraneous information. (*People v. Pierce* (1979) 24 Cal.3d 199, 207.) It is well-settled that "[i]n a criminal case, any private communication, contact, or tampering, directly or indirectly, with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial . . . The presumption is not conclusive, but the burden rests heavily upon the Government to establish . . . that such contact with the juror was harmless to the defendant." (*Remmer v. United States* (1954) 347 U.S. 227, 229.) Thus, for the court and counsel to allow such juror tampering to occur constituted knowing state misconduct, mandating reversal of the penalty phase.

E. Jim Bacon was standing in the back of the courtroom with Petitioner's mother, Donna Larsen, after the jury had returned the death verdict. (Ex. 161, at ¶I 10.) Jim recalled that Petitioner's attorney, Rudy Petilla, walked toward them and said something to the effect, "that damn juror called her pastor." (*Ibid*.) Jim asked Rudy what he meant, and he explained that "a female juror who was unwilling to return a death verdict was allowed to call her pastor in order to get permission to vote for death." (*Ibid*.) When Jim inquired how Petilla could let this happen, true to the attorney's utter cluelessness throughout the trial, he "simply shrugged his shoulders like he always did." (*Ibid*.)

F. Petilla's statement establishes that all state actors (*e.g.,* the court, prosecutor, and state-appointed trial counsel) were aware prior to the

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S197391].) They knowingly put Petilla in a position of temptation that he predictably could not resist.

death verdict that the juror had an issue with the death penalty, and that she had called her religious advisor for advice.

G. That advisor became the 13th juror.

H. That the court and counsel would allow this to happen is inexcusable and undermined the integrity of the system. Accordingly, Petitioner was deprived of his constitutional rights to a fair trial by an impartial jury, as guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments, and reversal is mandated.

Claim 15 Defense counsel failed at the guilt and penalty phase to reasonably investigate and present viable mental-state defenses, based upon the fact that Petitioner suffered from mental deficits including organic brain damage, which would have negated premeditation, deliberation, and malice aforethought. Consequently, Petitioner was prejudicially denied the right to effective assistance of counsel, a fair trial, an impartial jury, a reliable penalty determination, equal protection of the law, and due process of law, guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments.

To the extent that this claim could have been raised by prior state habeas corpus counsel, Petitioner was deprived of the right to effective assistance of counsel and due process of law.

The following facts, among others to be presented at an evidentiary hearing after full funding, investigation and discovery, support this claim:

A. Petitioner incorporates all of the allegations and facts in all related claims herein including Claims 2 (A-B, H), 4, 5 (A-B, E), 6 (A), and 7, and supporting exhibits, filed in 2011. Further, he incorporates by reference the Petition for Writ of Habeas Corpus, Claims 1-3, 14, and supporting exhibits, filed in this Court on or about October 11, 2005.

B. Through error, this claim was not raised by prior counsel. Due to the weight of the supporting evidence and the constitutional significance of the issues, Petitioner's present attorneys are ethically required to

raise it.

C. There was substantial evidence available to Mr. Petilla, the defense lawyer, well in advance of trial that Petitioner lacked the requisite mental state be guilty of murder during the period in issue.

D. Defense counsel should have investigated and presented evidence that Petitioner lacked the requisite intent to be culpable of murder and the special circumstances.

E. Counsel had no reasonable tactical justification for his deficient acts and omissions.

F. Allan G Hedberg, Ph.D., a prominent forensic psychologist, was contacted by Petilla regarding jury selection, and then eye-witness identification. (Ex. 16, Decl. of Allan G. Hedberg, Ph.D., Oct. 3, 2005, ¶¶ 3-4, p. 603; Ex. 20, Decl. of Allan G. Hedberg, Ph.D., Sept. 20, 2011, ¶¶ 6, 8, p. 87-88.) [10] Then he was asked for an opinion as to Petitioner's mental health status, without providing any background information. (Ex. 16, ¶ 7, p. 604; Ex. 20, ¶ 9, p. 88.)

G. Years later crucial background information was finally provided to Dr. Hedberg by state habeas corpus counsel. That combined, with his testing, resulted in startling findings that provided a basis for both guilt and penalty phases defenses. (Ex. 16, ¶¶ 14-15, 17, pp. 605-608.)

H. Petitioner's mental difficulties included organic brain damage, brain dysfunction, neurological dysfunction most likely localized in the frontal and/or temporal lobes, deficits in verbal and auditory memory, problems in judgment, reasoning, planning, memory, forethought, and he was under extreme mental and emotional distress during the period of the homicides.

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[10] Dr. Allan G. Hedberg's declarations were previously submitted as exhibits in conjunction with the state habeas petitions in this case. (Case Nos. S137884 and S197391.)

I. As stated, Mr. Petilla had no tactical reason for failing to conduct a basic investigation into Petitioner's background, mental health history, and mental state at crucial times. Indeed, the attorney failed to even investigate the defense theory he presented at trial, *i.e.*, that Petitioner was innocent of the charged crimes. (Claim 12, herein, *supra*.) There existed evidence of innocence, but Petilla conducted virtually no investigation. Instead, he used state funds, allotted for such purpose, for his own personal expenses including support for his gambling habit. (*See, e.g.*, PHC [Case No. S197391], at pp. 3-4, 59-64, 109-113, 117-122, 126-131, 315.)

J. But for trial counsel's failings, Petitioner would have received a more favorable outcome at both the guilt and penalty phases.

K. The performance of defense counsel was both deficient and prejudicial, thereby mandating a new trial. (*Strickland v. Washington*, *supra*, 466 U.S. at pp. 687, 693-694; *People v. Ledesma* (1987) 43 Cal.3d 171, 216-217.)

CLAIM 16 California's death penalty scheme, in particular the excessive delay in the adjudication of Petitioner's meritorious claims, including innocence, is in violation of the United States Constitution.

Petitioner was sentenced to death on June 18, 1996. Approximately twenty-one years have now passed. There case is presently at a standstill. Petitioner's federal habeas petition was stayed in 2011 pending exhaustion of claims in this Court. A Petition for Writ of Habeas Corpus was filedOctober 24, 2011, with all briefing completed on December 28, 2012. (See Case No. S197391.) Petitioner, who is innocent of the charged crimes, has been waiting over three years for a ruling on his pending habeas petition. (*See, e.g.*, PHC Claim 19 [Case No. S137884], at p. 269 [regarding innocence].) The excessive delay is contrary to due process and constitutes cruel and unusual punishment, in violation of the Eighth and Fourteenth Amendments.

In support of this claim, Petitioner alleges the following facts and legal bases, among others to be presented after Petitioner's counsel are afforded a reasonable opportunity for full factual investigation, adequate funding, complete discovery as required by the California and United States Constitutions and Penal Code section 1054.9 and other California law, access to a complete and accurate appellate record, access to this Court's subpoena power, access to material witnesses, access to this Court's other processes, and an evidentiary hearing:

A. The allegations in each claim in this Petition along with the accompanying citations and exhibits in support thereof, as well as the trial record and prior pleadings before this Court, are incorporated by reference as if fully set forth herein.

B. Petitioner's automatic appeal was filed on November 14, 2003 in Case No. S054489. On October 11, 2005, a first state habeas petition was filed in Case No. S137884. On the appeal, the California court affirmed the conviction and sentence in an opinion dated January 5, 2009 in *People v. Doolin*, *supra*, 45 Cal. 4th 390; rehearing was denied on March 25, 2009. Two justices dissented in part from the denial and would have vacated the sentence of death and remanded the case because of the inherent conflict created by the flat-fee contract. (*Id*. at 457-467.) Justices Kennard and Werdegar were of the opinion that the petition should be granted. The California court denied the habeas petition on the merits on June 24, 2009 without an evidentiary hearing; the unpublished order stated that Justice Kennard was of the opinion an order to show cause should be issued. (Supp. PHC Ex. 47 [Order Denying Writ of Habeas Corpus], at p. 498.) Petitioner filed a petition for certiorari with the Supreme Court of the United States, which was denied. (*Doolin v. California* (2009) 558 U.S. 863.)

C. Petitioner's federal habeas petition was filed on October 18, 2011. (*Doolin v. Davis*, Case No. 09-CCV-01453-AWI-SAB.) It was stayed to permit Petitioner to return to this Court to exhaust new claims. An exhaustion petition was filed on October 24 2011, with all briefing completed December 28, 2012. (*In re Doolin*, Case No. S197391.) The matter has been pending for several years.

D. Petitioner, who at all times has maintained his innocence, has been living under a heavy weight since his unlawful arrest in October of 1995. He suffers daily from the mental and physical anguish borne by someone who knows he is innocent but is unable to be timely and fully heard. Because of his understandable frustration, during the past year Petitioner has submitted multiple pro se letters to this Court seeking immediate redress. However, because Petitioner was represented by counsel, the Court returned the documents without consideration. (Order, *People v. Doolin*, Case No. S054489, Oct. 26, 2015.) Pursuant to Petitioner's request, the documents are being submitted herewith.[11] (Ex. 166166, Petitioner's *pro se* submissions to California Supreme Court, June-Dec., 2015.)

E. Petitioner's prolonged confinement under sentence of death, combined with the excessive delay in the adjudication of his constitutional claims, constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments, as well as International Law. (*Lackey v. Texas* (1995) 514 U.S. 1045 [Stevens, J., joined by Breyer, J., respecting the denial of certiorari].)

F. Additionally, the delay has resulted in prejudice due to the loss of evidence, including death of crucial witnesses.

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[11] The *pro se* documents included five letters written by Petitioner to this Court (June 8, 18, & 28, 2015, July 2, 2015, and December 6, 2015), as well as a Notice and Demand (September September 7, 2015) and Notice of Default (October 14, 2015).

G. Accordingly, Petitioner is entitled to have his claims of constitutional error, including those newly presented herein, heard in a timely manner and that relief be granted.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that the Court grant the relief to which he may be entitled in this proceeding, including the following:

A. Issue a writ of habeas corpus to have Petitioner brought before it to the end that he be discharged from his unconstitutional confinement and restraint, and be relieved of the unconstitutional death sentence;

B. Issue an order to show cause to inquire into the legality of Petitioner's incarceration and why he is not entitled to relief;

C. Conduct a hearing at which proof may be offered concerning the allegations of this petition;

D. Permit Petitioner, who is indigent, to proceed without prepayment of costs and fees;

E. Grant the indigent Petitioner investigative, expert, and other ancillary funds necessary for the identification and development of all claims and facts;

F. Grant Petitioner the authority to obtain subpoenas *in forma pauperis* for witnesses and documents necessary to prove the facts alleged in this petition;

G. Grant Petitioner full, non-reciprocal civil discovery as to all claims alleged herein or subsequently discovered;

H. Stay Petitioner's execution pending final disposition of this Petition;

I. Permit the indigent Petitioner to amend this petition to allege other facts and claims as such are discovered following the availability of essential investigative and expert services;

J. After a hearing and full consideration of the issues raised in this Petition, vacate the judgment of conviction in the Fresno County Superior Court in *People v. Doolin*, Super. Ct. No. 554289-9.

K. Issue an order granting Petitioner release and/or a new trial; and,

L. Grant Petitioner such further relief as is appropriate and in the interest of justice.

WHEREFORE, Petitioner respectfully petitions this Court for a writ of habeas corpus.

Dated: February 8, 2016

Respectfully submitted,

_____
ROBERT R. BRYAN

_____
PAMALA SAYASANE
Attorneys for Petitioner,
Keith Zon Doolin

VERIFICATION

I, ROBERT R. BRYAN, declare under penalty of perjury:

I am an attorney admitted to practice law in the State of California. I am lead habeas corpus counsel for KEITH ZON DOOLIN, who is confined and restrained of his liberty on death row at San Quentin State Prison, San Quentin, California.

I am authorized to file this Petition for Writ of Habeas Corpus on Mr. Doolin's behalf. I am making this verification because he is incarcerated in Marin County, and because these matters are more within my knowledge than his.

I have read the foregoing Supplement To Petition for Writ of Habeas Corpus and know the contents thereof to be true.

Executed on this the 8th day of February, 2016, at San Francisco, California.

_____

ROBERT R. BRYAN
Attorney for Petitioner,
Keith Zon Doolin

DECLARATION OF SERVICE BY MAIL

I, ROBERT R. BRYAN,, declare that I am over 18 years of age, not a party to the within cause; my business address is 2107 Van Ness Avenue, Suite 203, San Francisco, California 94109. Today I served a copy of the attached **Supplement To Petition for Writ of Habeas Corpus, and Exhibits 158-166,** upon the following by mailing same in an envelope, postage prepaid, addressed as follows:

Amanda D. Cary, Esq.
Deputy Attorney General
2550 Mariposa Mall Room 5090
Fresno, California 93721

California Appellate Project
101 Second Street, Suite 600
San Francisco, California 94105

Keith Zon Doolin (Petitioner)
No. 13400, 4-EY-25
San Quentin State Prison
San Quentin, California 94974

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 8th day of February, 2016, at San Francisco, California.

_____
ROBERT R. BRYAN
Attorney for Petitioner,
Keith Zon Doolin