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Attorneys for Petitioner,
KEITH ZON DOOLIN

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re

KEITH ZON DOOLIN

On Habeas Corpus.

**No. S234285
(Related Nos. S197391, S054489)**

MOTION FOR ORDER PERMITTING FORMER COUNSEL FOR JOSEFINA SALDANA, DECEASED, TO GRANT PETITIONER'S ATTORNEYS ACCESS TO THE FILES AND ANY OTHER INFORMATION IN HIS POSSESSION BEARING ON THEIR CLIENT'S INNOCENCE, AND, EXHIBIT 162

Death Penalty Case

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

COMES KEITH ZON DOOLIN through counsel who make this urgent motion for an order permitting David Raymond Mugridge, former attorney for Josefina Sonia Saldana, aka Josefina Sonya Hernandez, deceased, to disclose to Petitioner's counsel any information in his knowledge or possession that bears on the innocence of their capital client. Mr. Mugridge has stated his desire to turn over the exculpatory evidence in order "*to ensure that an innocent man is not wrongfully executed.*" (Attached hereto is Ex. 162, Decl. of David Raymond Mugridge, Feb. 4, 2016, italics added, filed with pending Pet. for Writ of Habeas Corpus.) However, to assist in bringing out the truth, he needs authorization from this Court to do so.

The following is presented in support of the relief sought herein:

1. Newly-discovered evidence establishes that Petitioner is actually innocent of murdering Peggy Tucker. (Pet. for Writ of Habeas Corpus, May 4, 2016, Claim 1 at pp. 3-13.)

2. Petitioner would not have been capitally convicted but for the ineffective assistance of trial counsel, Rudy Petilla, who conducted essentially no investigation. In 1996 he rushed a complicated capital case to trial within two months of being appointed because he wanted to be paid as quickly as possible, and misappropriated the bulk of the funds meant for the case investigation to support a gambling habit. In 2001 the lawyer was suspended from the practice of law by the State Bar Court. It found that he had engaged in fraudulent acts involving dishonesty and moral turpitude. He resigned from the California Bar in 2004, with charges pending.

3. Petitioner is in this dire position through no fault of his own, but because of the actions and omissions of the State. As set out in the habeas corpus petition, it was the Fresno County Superior Court that knowingly appointed an inept attorney as defense counsel even though his incompetence was well known. It was the Superior Court that created an inherently flawed fixed-fee payment scheme that allowed Petitioner's unethical lawyer to pocket all funds not spent on the case investigation. It was a Superior Court judge that allowed an ill-prepared and unethical lawyer to rush to trial a complicated capital case involving two separate murders and four attempted homicides within a couple of months of counsel's appointment. And the case was presided over by the same judge who failed to disclose his prior history and bias against Petitioner's family, and refused to replace the lawyer despite knowing that a bankruptcy court had found him guilty of fraud.

4. Relief is urgently sought because Petitioner has waited over 20 years to prove his innocence. There is a reasonable fear that exculpatory information and evidence is being lost because of the passage of so much time.

Background

5. A jury convicted Petitioner of first degree murder for the deaths of Peggy Tucker and Inez Espinoza. He was also convicted of four counts of attempted murder with the use of a firearm. The special-circumstance allegations of multiple murder were

found true resulting in verdicts of death. (*People v. Doolin* (2009) 45 Cal.4th 390, 399-400.)

6. New evidence reflects Petitioner's innocence of the Tucker murder. Establishment of that would eliminate the multiple murder special circumstance allegation, render invalid the death judgment, and necessitate a new trial. It would also mandate a new guilt-phase trial because the jury heard evidence that was prejudicial and untrue.

7. It is contended in the habeas corpus petition that an evidentiary hearing is necessitated because of the newly-discovered evidence of 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; see also Pen. Code, § 1473 [a writ of habeas corpus can be sought due to material false evidence having been introduced against a petitioner at trial].)

8. Moreover this new evidence of innocence, when viewed in combination with the constitutional errors and other evidence of innocence previously presented and pending in Case No. S197391, mandates reversal of Petitioner's convictions and death judgment.

Newly-Discovered Evidence

9. New counsel herein have discovered evidence that Ms. Saldana, a prosecution witness in his trial (RT 1662-1670), murdered Ms. Tucker, a prostitute whom Petitioner was convicted of killing and sentenced to death (CT 656-662, 671, 769-771). Ms. Tucker was shot and killed on the night of September 19, 1995. (RT 1711.) She had been shot in the right hip. (RT 1671-1673.)

10. Ms. Saldana, using the name Hernandez, testified that on the night of the shooting she heard dogs barking outside her house, 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.)

11. In 1998, two years after Petitioner had been sentenced to death, Ms. Saldana was arrested and charged with two counts of murder and kidnapping. She had lured Margarita Flores, eight-months pregnant, from her Fresno home with the promise of free

baby furniture and diapers. Saldana then murdered Ms. Flores and dismembered the body, pieces of which were scattered in Southern California and Tijuana, Mexico.

12. 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 which stated, in part, “she made me do it.”

13. In 2001 Saldana was convicted of murdering the mother and child. Shortly thereafter she hanged herself in the Fresno County Jail.

14. Her attorney, Mr. Mugridge, has disclosed to the undersigned that he possesses exculpatory evidence regarding Petitioner. He wants to make it available to Petitioner’s counsel, but needs permission from this Court.

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, *supra*, italics added.)

15. The information known to Mr. Mugridge and contained in his case files would establish that Ms. Saldana killed Peggy Tucker and that Petitioner is innocent.

16. 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.) On June 23, 1993, the body of Natalie Carrasco, shot to death, was found in front of Saldana's house. (Two years later Peggy Tucker's body was found behind the same residence.)

17. As alleged in the Petition, Saldana went to Ms. Carrasco's funeral and befriended her mother, Becky Carrasco. In an obvious attempt to deflect blame from herself, as alleged in the Petition, Saldana said that she saw Natalie being pushed out of a black car by a black man. Ms. Carrasco pursued an investigation regarding her daughter's death. That included discussions with detectives working on the case. (Pet. for Writ of Habeas Corpus, *supra*, Claim 1, § K, pp. 11-12.)

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

It is the belief of Becky Carrasco, based upon discussions with both the police and Ms Saldana, that Ms. Saldana killed her daughter. She also concluded 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 very near the property of Ms. Saldana. And conveniently, in each of these killings, Ms. Saldana claimed to have heard or seen someone else commit the crimes thereby deflecting blame from herself.

18. As established on habeas corpus, Petitioner's trial counsel conducted virtually no investigation in the case. Had he done so, he would have learned about Natalie Carrasco's murder and Saldana's likely involvement in her death, as well as evidence of Saldana's guilt in the Tucker murder.

19. Under the circumstances, Petitioner is entitled to an evidentiary hearing regarding his innocence. (*In re Davis, supra*, 557 U.S. at p. 953.)

20. 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*.)

21. 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.)

22. The new evidence of innocence is of great constitutional significance. When factored in with the substantial evidence of innocence presented in the pending exhaustion petition (Case No. S197391), no juror could have found Petitioner guilty beyond a reasonable doubt.


Conclusion

Accordingly, in the interests of justice, this Court is moved to authorize David Raymond Mugridge to make available to the undersigned all files and information in his possession that bear on Petitioner's innocence.

Dated: June 25, 2016

Respectfully submitted,

ROBERT R. BRYAN
PAMALA SAYASANE

By: 
ROBERT R. BRYAN
Attorneys 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 1955 Broadway, Suite 605, San Francisco, California 94109. Today I served a copy of the attached **Motion for Order Permitting Former Counsel for Josefina Saldana, Deceased, To Grant Petitioner’s Attorneys Access To The Files and Any Other Information In His Possession Bearing On Their Client’s Innocence, and, Exhibit 162**, 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

Pamala Sayasane, Esq.
660 - 4th Street, No. 341
San Francisco, California 94107

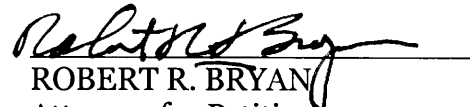
California Appellate Project
101 Second Street, Suite 600
San Francisco, California 94105

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

David R Mugridge, Esq.
1221 Van Ness Ave., Suite 500
Fresno, California 93721

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

Executed on this the 25th day of June 2016 at San Francisco, California.


ROBERT R. BRYAN
Attorney for Petitioner,
Keith Zon Doolin

DECLARATION OF DAVID RAYMOND MUGRIDGE

I, David Raymond Mugridge, declare as follows:

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.

Declaration of David Mugridge

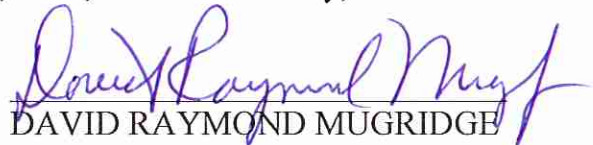
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5. I explained to Ms. Sayasane and Mr. Bryan that I had potentially exonerating information regarding Mr. Doolin. However, it was explained that I am bound by the attorney-client privilege from disclosing how I came upon this information or the nature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

I declare under penalty of perjury under the laws of the State of California and of the United States that the foregoing is true and correct.

Executed on this the 4th day of February, 2016, in Fresno County, California.


DAVID RAYMOND MUGRIDGE

Declaration of David Mugridge

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