IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re

ROBERT LEWIS, JR.,

On Habeas Corpus.

CAPITAL CASE
S117235

Los Angeles County Superior Court No. A027897
The Honorable Richard F. Charvat, Judge

RETURN TO PETITION FOR WRIT OF HABEAS CORPUS; EXHIBITS IN SUPPORT OF RETURN

EDMUND G. BROWN JR.
Attorney General of the State of California

DANE R. GILLETTE
Chief Assistant Attorney General

PAMELA C. HAMANAKA
Senior Assistant Attorney General

KEITH H. BORJON
Supervising Deputy Attorney General

MARGARET E. MAXWELL
Supervising Deputy Attorney General
State Bar No. 169830

300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2282
Fax: (213) 897-6496
Email: DocketingLAAWT@doj.ca.gov

Attorneys for Respondent

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re **ROBERT LEWIS, JR.,** On Habeas Corpus.	**CAPITAL CASE** S117235

TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Robert Ayers, Jr., Warden of California State Prison, San Quentin, makes this Return to the petition for writ of habeas corpus and admits, denies, and alleges as follows:

I[1/]

Respondent admits that petitioner is currently held in custody by the California Department of Corrections at the California State Prison, San Quentin, where he is an inmate on death row. Respondent asks this Court to take judicial notice of its records, including all documents filed on behalf of petitioner and respondent in the course of petitioner's first automatic appeal (case number Crim 24135), his second automatic appeal (case number S020670), and his previous habeas corpus action (case number S005412). (Evid. Code, § 452; see *In re Clark* (1993) 5 Cal.4th 750, 798, fn. 35.)

All references to transcripts refer to the original and supplemental clerk's and reporter's transcripts filed in the second automatic appeal (case no. S020670), unless otherwise specified.

---

1. Respondent's Return corresponds to the numbered paragraphs of the 16-page Petition for Writ of Habeas Corpus.

II

Respondent alleges that on October 27, 1983, petitioner went to the home of Milton Estell, bound and gagged Mr. Estell, and stabbed him in the chest and shot him in the back. Mr. Estell died from his wounds. Petitioner was apprehended in Mr. Estell's Cadillac five days later. Petitioner possessed a forged bill of sale putting the victim's car in the name of petitioner's girlfriend. Petitioner told investigating officers that he purchased the car several days before the murder with money he won in Las Vegas. (*People v. Lewis* (1990) 50 Cal.3d 262, 271-273.)

As to the allegations contained in paragraph 2 of the petition: respondent admits that, in Los Angeles County Superior Court case number A027897, a jury convicted petitioner of the first-degree murder and robbery of Milton Estell. (Pen. Code, §§ 187, subd. (a), 211.) The jury found true the allegation that petitioner personally used a firearm (§ 12022.5(a)) and that petitioner personally used a deadly and dangerous weapon (knife; § 12022(b)) during the commission of the murder and robbery. The jury found true the special circumstance, under the 1978 death penalty law, that the murder was committed during the commission or attempted commission of a robbery. (Pen. Code, § 190.2, subd. (a)(17).) (CT 7-15, 42.) At the conclusion of the penalty phase, the jury fixed the penalty at death. (CT 16-30, 42.) On November 1, 1984, the trial court sentenced petitioner to death in accordance with the jury's verdict. (CT 42-43.)

Petitioner filed a petition for writ of habeas corpus (case no. S005412) with this Court on April 29, 1988. On May 19, 1989, this Court issued an order requesting respondent to file an informal response to the petition. After the parties filed responsive pleadings, this Court denied the petition on the merits on September 7, 1989. The order denying the petition provided, in its entirety,

as follows: "The petition for writ of habeas corpus DENIED."[2/] The Court's order is an implicit determination that in his petition for writ of habeas corpus, petitioner failed to make a prima facie case as to any of the issues presented. (*People v. Miranda* (1987) 44 Cal.3d 57, 119, fn. 37; accord, *In re Gay* (1998) 19 Cal.4th 771, 780, fn. 6; *People v. Duvall* (1995) 9 Cal.4th 464, 475.)

On March 1, 1990, this Court affirmed petitioner's convictions but reversed the judgment of death and remanded for a new hearing pursuant to Penal Code section 190.4(e) (*People v. Lewis* (1990) 50 Cal.3d 262.) On March 20, 1991, the trial court heard and denied petitioner's motion for modification of the verdict (Pen. Code, § 190.4, subd. (e)). (CT 225.) Petitioner was sentenced to death on count I in accordance with the jury's verdict. (CT 226-232.)

Petitioner filed his opening brief in his automatic appeal on April 16, 2002. The Respondent's Brief was filed on July 15, 2002, and the reply brief was filed on January 6, 2003. On June 24, 2004, this Court affirmed petitioner's sentence and judgment of death. (*People v. Lewis* (2004) 33 Cal.4th 214.)

On July 2, 2003, petitioner filed the instant petition for writ of habeas corpus. On November 7, 2003, Respondent filed an informal response to the petition for writ of habeas corpus pursuant to Rule 60 of the California Rules of Court. On April 16, 2004, petitioner filed an informal reply. On October 31, 2007, this Court issued an order directing the Director of the Department of Corrections and Rehabilitation to show cause why relief should not be granted as to *Claims XIV, XV, XVI, and XVIII.* Respondent hereby makes this Return.

---

2. Respondent notes that petitioner's first state habeas corpus petition was filed prior to this Court's decision in *In re Clark, supra*, 5 Cal.4th 750.

III[3/]

Respondent denies petitioner's convictions or his judgment and sentence of death were unlawfully or unconstitutionally imposed in any manner. Respondent alleges petitioner was lawfully and constitutionally convicted of the charged charges and that his judgment and sentence of death were lawfully and constitutionally imposed.

In *People v. Duvall* (1995) 9 Cal.4th 464, this Court clarified the procedures applicable upon the issuance of an order to show cause. An OSC "signifies the court's *preliminary* determination that the petitioner has pleaded sufficient facts that, *if true*, would entitle him to relief." (*Id.* at p. 475, emphasis added.) The return to the OSC is required to allege facts tending to show the petitioner's confinement is legal and also respond to the petition's factual allegations. (*Id.* at p. 476.) Where appropriate, the return should also provide such documentary evidence as will allow the court to determine which issues are truly in dispute. (*Ibid*; see *In re Gay*, *supra*, 19 Cal.4th at pp. 783-784, fn. 9.) The court will not order an evidentiary hearing unless it determines there are *material facts* in dispute. (*People v. Duvall*, *supra*, 9 Cal.4th at p. 480.)

The return need not prove the petitioner's factual allegations are wrong:

> [I]f an evidentiary hearing is held, it is the petitioner who bears the burden of proof. At this *pleading* stage, however, the general rule has been that respondent must either admit the factual allegations set forth

---

3. Paragraph III of the Petition recites the claims for relief as argument headings. Paragraph III also incorporates by reference the memorandum of points and authorities (which does not include numbered paragraphs); the memorandum, in turn, incorporates by reference material from the prior habeas proceeding in case number S005412, material outlined in the exhibits to the petition, and material from other stated claims. Respondent structures the Return to correspond with the four claims outlined in the order to show cause and attempts to identify and respond to the allegations in these additional documents in an effort to address and frame the claims and issues presented.

in the habeas corpus petition, or *allege additional facts* that *contradict* those allegations. If a dispute arises regarding material facts, the appellate court will then appoint a referee to determine the true facts at a hearing in which the petitioner will have the burden of proof. At this early stage, however, the People's burden is one of pleading, not proof.

(*Id.* at p. 483, emphasis in original, footnote omitted.)

To the extent *Claims XIV, XV, XVI and XVIII* include factual allegations that petitioner suffers from mental retardation, organic brain damage, and/or learning disabilities, respondent disputes those allegations as stated below. However, absolute refutation of the conclusions offered by petitioner's current psychological experts will require examination and assessment of petitioner by a qualified expert retained by the prosecution, examination of the data reviewed and produced by petitioner's current experts Dr. Khazanov and Dr. Adrienne Davis, and review of the case files and examination of trial experts Maloney and Sharma. Such review and examination cannot be accomplished without a right to formal discovery and subpoena power.

Respondent addresses the specific allegations for *Claims XIV, XV, XVI and XVIII* below.

Claim XIV: Ineffective Assistance Of Counsel: Failure To Introduce Mitigating Evidence

In *Claim XIV*, petitioner contends his trial counsel's failure to introduce mitigating evidence during the penalty phase resulted in an unreliable sentence constituting cruel and/or unusual punishment under the California and federal constitutions. (Petn. 104-135.) Specifically, petitioner contends that trial counsel failed to present mitigating evidence of "a lifetime of trauma, mental retardation and learning disabilities" (Petn. 129-130), failed to present good character evidence (Petn. 130-131), and failed to present evidence that petitioner spent most of his formative years in juvenile institutions and those

institutions failed to properly "identify and address [petitioner's] mental health needs" and did not prepare him to find employment once he was released (Petn. 125).

When the basis of a challenge to the validity of a judgment is ineffective assistance of trial counsel, a defendant must show that counsel's representation fell below an objective standard of reasonableness under prevailing professional norms. He must also show there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. (*In re Avena* (1996) 12 Cal.4th 694, 721; see *Strickland v. Washington* (1984) 466 U.S. 668, 687-688, 691-692, 694 [104 S.Ct. 2052, 80 L.Ed.2d 674].)

Respondent disputes the allegations that trial counsel's representation fell below an objective standard of reasonableness under prevailing professional norms in 1984 based upon the information presented to and reasonably available to trial counsel. Nor did the absence of evidence of the nature presently asserted in the Petition prejudice petitioner.

1. Lifetime Of Trauma, Mental Retardation And Learning Disabilities

Respondent denies Ronald Slick denied petitioner effective assistance of counsel by failing to investigate and present evidence of trauma, mental retardation, or learning disabilities. Petitioner identifies his "lifetime of trauma" to consist of him being the "product of a broken home" due to his father's "abandonment" of the family when petitioner was age three and his mother's alcoholism, lack of supervision, and casual relationships with men. (Petn. 105, 129-130.) Petitioner also alleges that trial counsel should have presented evidence that his father had "a long criminal history and [was] a sexual predator" who "was a perverse and dangerous role model to Petitioner." (Petn.

105, 107, 129.) In essence, the Petition asserts that trial counsel should have villified petitioner's mother and father in the penalty phase of petitioner's trial.

Respondent alleges that none of petitioner's family members advised trial counsel that petitioner suffered any physical, emotional, or sexual abuse, no such information was alleged or documented in the prior habeas petition filed by appointed counsel in 1988, and no declaration from petitioner or his family members nor any documentation evidencing any such abuse is provided in this proceeding. Rather, petitioner's childhood experiences, as related by his sisters and father, failed to convey any nexus or proportionality to petitioner's juvenile criminal conduct, his four robbery convictions, or his capital crime. (See Video Decls. of Rose Davidson, Gladys Spillman filed in case no. S005412; see also S005412 Petn. Exhs. 8, 9.) In their sworn videotaped declarations, petitioner's sisters portray their mother as a woman who tried to do her best for her children and worked to support them, who played cards with them at night, provided structure by requiring petitioner to take out the garbage, water the lawn and perform other chores, prayed with her children as a group before bedtime, and taught petitioner to be well-mannered and help their neighbors. (See Video Decls. Rose Davidson and Gladys Spillman filed in S005412.) Rather than internalize these lessons, "[petitioner] readily admitted he did not like school, learned very little and was truant a great deal. He describes his associates, during his formative years, as the delinquent, nonconforming element and stated he had been involved in numerous gang activities." (Petn. Exh. 28 at p. 2.)

At the penalty phase, trial counsel stipulated that petitioner had been convicted of four prior robberies; this stipulation, which was devoid of any description of the underlying criminal conduct, was the sole aggravating evidence presented by the prosecution. (S020670 Supp. 4RT 809-810.) Had the defense presented more extensive mitigation, nothing in the stipulation

prevented the prosecution from introducing rebuttal evidence to demonstrate that petitioner personally used a gun in each of his four prior robbery convictions; one February 1977 robbery resulted in petitioner discharging his gun when a witness attempted to apprehend him; and another 1977 robbery resulted in the death of an innocent bystander during a "shoot out" between petitioner and the victimized store clerk; his fourth robbery conviction resulted from his 1982 armed robbery of two men in a used car lot. (Return Exh. B at pp. 8-9.) The stipulation and restricted mitigation evidence also avoided the jury from learning that Petitioner had committed assaults and numerous disciplinary infractions while in juvenile and adult custody and the details of petitioner's poor performance while on parole, including that he committed his February 1977 robbery less than three months after his parole from his 1972 robbery conviction. Such evidence would have readily supported an argument that petitioner was a sophisticated criminal who presented a danger to the public at large and other inmates. Limitation of the defense mitigation evidence served to forestall the presentation of additional available aggravating evidence about petitioner's prior criminal convictions and custodial offenses and allowed trial counsel to argue that a sentence of life without the possibility of parole was a sufficient punishment for petitioner and to focus upon the juror's individual responsibility as sentencers. (S020670 Supp. 4RT 828-837.) It permitted trial counsel to argue that the absence of information about the robberies gutted their significance as aggravating circumstances. (S020670 Supp. 4RT 840.)

Nor did trial counsel deny petitioner effective assistance of counsel by not presenting additional evidence concerning his father's criminal history. (Petn. 105, 107.) During the penalty phase petitioner's sister, Rose Davidson, testified that their father had been in prison "a number of times" as had their brother, Ellis Williams. (Supp 4RT 811-812.) Earlier, during his examination of petitioner's father, trial counsel elicited Robert Lewis, Sr.'s criminal history

for the jury, including convictions for escape, forgery, and child molestation. (Supp. 4RT 677-678.) The documented criminal history of Robert Lewis, Sr. consists predominantly of traffic warrants punctuated by two arrests for gambling in 1951 and 1957 (Petn. Exh. 27 at pp. 1-4), an escape conviction in 1959, and a forgery conviction in 1963 (Petn. Exh. 27 at pp. 1-3). Robert Lewis Sr.'s Penal Code section 288 conviction resulting from his incestuous relationship with his daughter (petitioner's half-sister) Ramona (Petn. Exh. 27 at p. 4) was clearly serious and reprehensible. However, the victim did not reside in petitioner's household and the offense occurred in 1968 (when petitioner was himself incarcerated) and well after petitioner's own juvenile offenses initiated in 1964. (Petn. Exh. 37 at p. 2; Petn Exh. 38.) Psychological assessments concluded Robert Lewis, Sr. was not a mentally disordered sexual offender. (Petn. Exh. 25, 26.) Given the nature of his father's criminal record prior to and during petitioner's minority, respondent denies trial counsel was ineffective for failing to present additional evidence concerning the criminal history of Robert Lewis, Sr.

To the extent *Claim XIV* relies upon allegations of mental retardation and/or organic brain damage, as discussed in greater detail in the response to *Claim XV*, trial counsel did not render deficient performance in failing to present evidence of mental retardation, organic brain damage, or learning disabilities because this evidence did not exist in 1984. Trial counsel retained a psychologist (Dr. Michael Maloney) and a psychiatrist (Dr. Kaushal Sharma); both experts examined petitioner prior to trial and expressly informed trial counsel that no mental defenses were available for petitioner. Had there been evidence of petitioner's alleged mental retardation and organic brain damage, it would have been discovered and reported to trial counsel by these qualified experts. Information from family members available to trial counsel further served to contradict and negate a suggestion that petitioner suffered from a

mental condition that would mitigate his capital crime. (See Video Decls. of Rose Davidson, Gladys Spillman filed in case no. S005412; see also S005412 Petn. Exhs. 8, 9.) Trial counsel's interactions with petitioner, petitioner's courtroom behavior during his trial, the pre-trial observations of the defense investigator, who interviewed Petitioner for a total of 14 hours on six occasions (Petn. Exh. 12, App. 1 at pp. 2-4) perceived petitioner to be "quite articulate" (Petn. Exh. 12 at p. 2 ¶ 6), provided any independent bases to pursue or present evidence of this nature.

2. Good Character

Petitioner alleges trial counsel denied him effective assistance of counsel by failing to investigate petitioner's life and background and present evidence petitioner's "family and friends described him as a loving, generous, considerate, respectful and well-behaved person who deeply affected [sic] by his broken-home life and his early prison experiences." (Petn. 105, 124.)

Initially, respondent observes that trial counsel presented evidence that his father and sisters loved and cared for petitioner. During the penalty phase, trial counsel referenced the guilt phase testimony of petitioner's father (S020670 Supp. 4RT 676-678)[4/] and sister, Gladys Spillman (S020670 Supp. 4RT 690-692), in which they had testified that they loved and cared for petitioner. Trial counsel also presented additional testimony from petitioner's sister Rose Davidson, who testified their mother had died in 1967, their father and brother had been in state prison, and about her love for petitioner. (S020670 Supp. 4RT 810-812.)

Trial counsel investigated petitioner's family history and the availability of evidence of his "good character" by personally interviewing petitioner's

---

4. Petitioner's father also corroborated petitioner's claim that he possessed the victim's car days prior to the murder. (Supp. 4RT 676-678.)

sisters, his wife, and his girlfriend prior to petitioner's trial. (Return Exh. A; S005412 Petn. Exhs. 7, 8, 9.) Trial counsel's retained investigator also interviewed Gladys Spillman and Rose Davidson on July 10, 1984, petitioner's girlfriend Dee Walker and his father on July 14, 1984 (Petn. Exh. 12, App. 1 at p. 3), and petitioner's wife, Janiroe Lewis, for three hours on July 20, 1984, in addition to interviewing petitioner for approximately 14 hours. (Petn. Exh. 12, App. 1 at p. 4.)

Trial counsel did not present evidence of petitioner's "good character" for the following reasons:

> Although Mr. Lewis' father and two sisters were willing to testify that Mr. Lewis was a good student, participated in track and field at school and was generally a good influence on Rose Davidson's children, I knew Mr. Lewis never completed much less attended high school and that his criminal history began when he was 12 years old and continued until age 32 when the present crime was committed."

(Return Exh. A.) Indeed, Petitioner's school records demonstrate that he was *not* a good student. (Petn. Exh. 34, 35, 36.) Additional information available to trial counsel further contradicted claims of petitioner's childhood positive behavior. For instance, in a 1973 social evaluation conducted at RGC-Tracy, the evaluator observed, "[petitioner] readily admitted he did not like school, learned very little and was truant a great deal. He describes his associates, during his formative years, as the delinquent, nonconforming element and stated he had been involved in numerous gang activities." (Petn. Exh. 28 at p. 2.) Petitioner's criminal history and prior assessments by probation and parole officers demonstrates that at the time of his 1983 capital offense he was a sophisticated criminal who personally used guns to subdue his victims, had escaped punishment for the death of an innocent bystander killed during the aftermath of a 1977 robbery, which was not prosecuted as a murder case (Petn.

Exh. 39 at p. 1; Return Exh. B at pp. 8-9), and had expressly acknowledged that "committing armed robberies was his business, and that he did not mind serving time in prison." (Return Exh. B at pp. 8-9.)

Faced with this evidence, trial counsel's decision not to present evidence of petitioner's "good character" was a valid tactical decision. For the same reasons, petitioner cannot demonstrate that he was prejudiced by the absence of testimony.

3. Impact Of Incarceration

As discussed in greater detail in the response to *Claim XVI*, respondent denies that trial counsel denied petitioner effective assistance of counsel by failing to present evidence that petitioner spent most of his formative years in juvenile institutions, evidence regarding the impact of incarceration upon him, and evidence the failures of those institutions to properly "identify and address [petitioner's] mental health needs" or provide him employable skills. Had trial counsel presented this type of evidence at petitioner's trial, it would have prompted admission of evidence concerning the nature and details of Petitioner's juvenile and adult criminal history, which would have demonstrated for the jury that at the time of his 1983 capital offense and his 1984 trial he was a sophisticated criminal (see Petn. Exh. 50 at p. 2; Return Exh. B at pp. 8-9) who engaged in armed robberies as a "business" and "did not mind serving time in prison" (Return Exh. B at pp. 8-9), used guns during his robberies, and had previously avoided responsibility for the death of an innocent bystander during the aftermath of one of his robberies. (Return Exh. B at pp. 7-9.)

As a result, the Petition does not establish either deficient performance or prejudice within the meaning of *Strickland*.

Claim XV. Ineffective Assistance Of Counsel: Mental Retardation And Brain Damage

In *Claim XV*, petitioner contends that his trial counsel denied him effective assistance of counsel by failing to investigate and present mitigating evidence that petitioner was mentally retarded and suffered from brain damage/learning disabilities. (Petn. 136-166.) Respondent denies these allegations. Respondent alleges that trial counsel retained the services of a qualified expert psychiatrist (Kaushal Sharma) and a qualified expert psychologist (Michael Maloney) who adequately and competently examined and evaluated petitioner prior to his trial. (Petn. Exh. 13 ¶ 83-84.) Both experts expressly and unequivocally advised trial counsel that no mental condition or defense existed to mitigate the charged offenses. Additionally, in 1986 petitioner was examined by Dr. Terry Kupers, a psychiatrist, retained by petitioner's first habeas counsel, who failed to diagnosis petitioner as suffering from any mental disorder or condition that would qualify as mitigation evidence. (See Return Exh. I.) Respondent disputes the allegations that trial counsel's representation fell below an objective standard of reasonableness under prevailing professional norms in 1984 based upon the information presented to and reasonably available to trial counsel. Nor did the absence of evidence of the nature presently asserted in the Petition prejudice petitioner. Although respondent urges this Court to vacate and discharge the order to show cause as to *Claim XV*, should the Court continue to conclude a prima facie case for relief has been stated as to *Claim XV*, an evidentiary hearing is required.

1. Mental Retardation Criteria

Penal Code section 1376 defines "mentally retarded" as "the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the age

of 18." (§ 1376, subd. (a).) This definition was derived "from the two standard clinical definitions referenced by the high court in *Atkins [v. Virginia* (2002) 536 U.S. 304]." (*In re Hawthorne* (2005) 35 Cal.4th 40, 47.) The high court in *Atkins* quoted the definitions in the American Psychiatric Association's Fourth Edition of the Diagnostic and Statistical Manual of Mental Disorders ("DSM-IV")[5/] and the 1992 AAMR manual.[6/] (*Atkins v. Virginia, supra,* 536 U.S. at p. 308, fn. 3.) Whether a person is mentally retarded is a question of fact. (*In re Hawthorne, supra,* 35 Cal.4th at 49.)

---

5. The DSM-IV defines mental retardation as follows:
"The essential feature of Mental Retardation is significantly subaverage general intellectual functioning (Criterion A) that is accompanied by significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety (Criterion B). The onset must occur before age 18 years (Criterion C). Mental Retardation has many different etiologies and may be seen as a final common pathway of various pathological processes that affect the functioning of the central nervous system." Diagnostic and Statistical Manual of Mental Disorders 41 (4th ed. 2000). "Mild" mental retardation is typically used to describe people with an IQ level of 50-55 to approximately 70. Id., at 42-43.

(*Atkins v. Virginia, supra*, 536 U.S. at p. 308, fn. 3; accord *In re Hawthorne, supra,* 35 Cal.4th at pp. 47-48.)

6. The 1992 AAMR Manual provides:
"Mental retardation refers to substantial limitations in present functioning. It is characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental retardation manifests before age 18." Mental Retardation: Definition, Classification, and Systems of Supports 5 (9th ed. 1992).

(*Atkins v. Virginia, supra*, 536 U.S. at 309, fn. 3.)

2. Trial Counsel Retained Qualified Psychological Experts Who Identified No Mental Defenses Or Mitigation

Trial counsel retained the services of a qualified expert psychiatrist (Kaushal Sharma) and a qualified expert psychologist (Michael Maloney) who examined and evaluated petitioner prior to his trial. (Petn. Exh. 13 ¶ 83-84.) Neither of the qualified experts retained by trial counsel informed him that petitioner was mentally retarded or suffered from a mental disorder, brain damage, or learning disabilities that would qualify as mitigating circumstances. To the contrary, retained psychologist, Dr. Michael Maloney, conducted psychological testing of petitioner in 1984 and concluded petitioner's full scale IQ was 73 as measured by the WAIS-R. (Petn. Exh. 13 ¶ 84.) Additionally, Dr. Maloney was present during trial counsel's interviews of Denise Walker (petitioner's girlfriend), Robert Lewis, Sr. (his father), Rose Davidson (his younger sister), and Janiero Lewis (his wife). (Return Exh. A at p. 3.) After the interviews, Dr. Maloney "opined that Mr. Lewis did not appear to have any particular psychological problems." (Return Exh. A at p. 3.)

Mr. Slick also retained Dr. Kaushal Sharma to examine petitioner. Dr. Sharma interviewed petitioner for a total of four hours over two days; he also reviewed documentation provided about the crime and numerous prison records concerning petitioner. (Return Exh. G at p. 1 [Dr. Sharma's report].) Dr. Sharma provided a report to Mr. Slick stating, "The defendant is presently not suffering from a mental disorder and was not suffering from such a mental disorder at the time of the alleged crime." (Return Exh. G at p. 1.) Dr. Sharma specifically advised trial counsel Slick that his examination revealed, "[n]o evidence of psychosis, organic brain disorder, depression, or any other major disorder was noted during the examinations. The defendant in the past has been given a diagnosis of Anti-social Personality Disorder starting at an early age. I agree with that diagnosis." (Return Exh. G at p. 3.) Dr. Sharma continued,

"In the absence of any significant mental illness or other emotional or mental disturbance, I have nothing to suggest any mitigating circumstances for the defendant. In fact, given the defendant's long prison record, antisocial behavior at an early age, lack of mental illness, lack of duress, and lack of intoxication, may suggest that no such mitigating factors exists in this case." (Return Exh. G at p. 3.) And Dr. Sharma observed something about petitioner's personality and demeanor in 1984 that may explain his strikingly different presentation in 2003: "the defendant presents himself as a charming, manipulative young man who was willing to make any statement as long as it suit his needs." (Return Exh. G at p. 2.)

Respondent alleges that trial counsel was entitled to rely on the reports of the qualified experts he consulted. (See *Summerlin v. Stewart* (9th Cir. 2001) 267 F.2d 926, 943; *Murtishaw v. Woodford* (9th Cir. 2001) 255 F.3d 926, 947 [entitled to rely on expert consulted].) Moreover, trial counsel was not required to seek additional expert opinions simply because he received unfavorable opinions. (*Hendricks v. Calderon* (9th Cir. 1995) 70 F.3d 1032, 1038; *Walls v. Bowersox* (8th Cir. 1998) 151 F.3d 827, 835.)

Respondent denies that trial counsel had any reason to doubt the qualifications of Dr. Sharma or Dr. Maloney or doubt the veracity of the opinions they offered him. Neither expert suggested or opined that further examination, testing, or information was needed. Neither expert restricted his examination or testing of petitioner based upon an express or implicit request by trial counsel. Respondent denies that trial counsel was alerted by either Dr. Sharma or Dr. Maloney that there was a need for additional psychological testing or for additional documentation, and respondent denies that petitioner's behavior or statements or any information provided by his family members in 1984 suggested that additional investigation of petitioner's mental condition or cognitive abilities was necessary or advisable.

3. Petitioner's Claim Of Mental Retardation And Brain Damage Is Contradicted By Other Evidence

In addition to the express trial expert opinions opining that petitioner's mental condition did not offer mitigating evidence, other evidence available to this Court contradicts a claim that petitioner suffers from mental retardation and/or organic brain damage and disputes a finding that the absence of the type of evidence now proposed by petitioner denied him effective assistance of counsel.

For instance, in 1986, petitioner's first habeas counsel retained Dr. Terry Kupers, a psychiatrist, to examine petitioner and offer an opinion concerning what evidence in mitigation could and should have been presented during petitioner's penalty phase trial. (See Return Exh. I.) Dr. Kupers did not diagnosis petitioner as suffering from any mental disorder or condition that would serve as mitigation.

Moreover, the individuals working on petitioner's behalf at his trial who personally interacted with petitioner observed that he was articulate, was capable of volitionally controlling his behavior, and fully understood the nature and consequences of his actions. Kristina Kleinbauer, the retained defense investigator, personally interviewed petitioner for a total of 14 hours over six days: May 24, 1984, June 6, 1984, and June 13, 1984, July 5, 1984, July 11, 1984, and July 17, 1984. (Petn. Exh. 12, Appendix 1 at pp. 2-4.) During these repeated contacts, Kleinbauer perceived petitioner to be "a very pleasant man who was *quite articulate*." (Petn. Exh. 12 at p. 2 ¶ 6.)

Petitioner's family members have provided information contradicting a claim that petitioner suffered deficits in functional adaptive skills prior to his 1984 trial. His family members presented evidence of his adaptive skills at communication, representing that "During 1983 and 1984 and through to the present, [petitioner] has regularly written his nieces and nephews to urge them

to be good and obey their parents." (S005412 Petn. at pp. 32-33; Video Decl. of S. Spillman filed in S005412; Video Decl. of Rose Davidson filed in S005412.)

Petitioner's behavior in court further failed to alert trial counsel to any cognitive deficiencies constituting mitigation. Indeed, prior to the presentation of evidence to Petitioner's jury, petitioner engaged in an extensive advisement and waiver of his constitutional rights as part of his admission of his four prior robbery convictions and consulted with counsel during the proceeding. (S020670 Supp. 1RT 63-72.)

Additionally, trial counsel's file included 287 pages of Department of Corrections documentation concerning petitioner; trial counsel provided this information to petitioner's current counsel in 1996. (See Petn. Exh. 8 at p. 2.) Although petitioner has declined to provide all of that documentation in support of the Petition, documentation available from petitioner's prison file demonstrates that petitioner presented inmate appeals and inquiries between August 1979 and June 1980. These appeals demonstrate petitioner was capable of understanding and expressing complex legal concepts; for instance, in August 1979 petitioner sought reduction of his prison sentence by eight months (Return Exh. C); in April 1980 petitioner sought return of property (Return Exh. C); in April 1989 petitioner inquired concerning the future impact of prior decisions (Return Exh. C); and in June 1980 petitioner appealed his prison sentence based upon the interplay of Penal Code section 1170.1(f) and a prior administrative appeal (Return Exh. C).

Respondent alleges that trial counsel provided his retained experts preliminary questions and information concerning potential mental defenses on or about May 8, 1984. (Petn. Exhs. 60, 61.) Thereafter, trial counsel obtained 287 pages of documents pertinent to petitioner's background and incarceration from the California Department of Corrections and reviewed that material.

(Return Exh. J at p. 6; Petn. Exh. 8 at p. 2.) Trial counsel personally met with Dr. Maloney to discuss the psychologist's findings (Return Exh. J at p.7) and also prepared additional information for Dr. Sharma. (Return Exh. J at p. 6). Dr. Sharma's report recites that he received Petitioner's prison documentation from trial counsel after the initial information was provided. (Return Exh. G at p. 1.) Petitioner's retained experts, as qualified experts, are presumed to be capable of independently identifying additional relevant information and documentation needed to fully evaluate petitioner's educational and psychological testing -- particularly since that documentation appears to consist of California Department of Corrections documentation. (See Petn. Exhs. 32, 35, 36, 37, 38, 39, 41, 59.)

4. Organic Brain Damage/ Learning Disabilities

Although not entirely clear, it appears that the Petition alleges petitioner suffers from organic brain damage/dysfunction separate and apart from mental retardation and that evidence of this dysfunction should have been presented as mitigation evidence at petitioner's trial. (Petn. 158-161; Petn. Exh. 13, ¶ 106-117; Petn. Exh. 68, ¶ 4- 20.) Respondent disputes these findings for the same reasons the allegation of mental retardation is disputed. More specifically, available evidence contradicts Dr. Khazanov's opinion that the alleged deficiencies observed in 2003 were present either at the time of the 1984 trial or during petitioner's minority. For instance, petitioner's self-report in 1970 that he "plays basketball, runs track and participates in football activities" evidence that his motor functioning prior to adulthood was more than sufficient to participate in complicated recreational activities. Similarly, prior to adulthood, petitioner engaged in complicated mechanical tasks, including building and refurbishing bicycles for sale. (See Video Decl. of Gladys Spillman filed in case no. S005412.) Contrary to a claim that petitioner has significant deficits in communication and socialization, in 1983 and 1984

petitioner "regularly [wrote] his nieces and nephews to urge them to be good and obey their parents." (S005412 Petn. at pp. 32-33; Video Decl. of S. Spillman filed in S005412; Video Decl. of Rose Davidson filed in S005412.) As a child, he performed household chores, assisted his sister with the laundry, performed household tasks and chores on his own volition without prompting, performed errands (shopping, yard work, removing garbage) for his family and the neighbors. As an adult, he went to the store to purchase the ingredients for his favorite pudding, which his sister Rose made for him as compensation for assistance he provided to her. (Video Decl. of S. Spillman filed in S005412; Video Decl. of Rose Davidson filed in S005412.)

Additional contradiction of petitioner's claim of brain damage is found in petitioner's prison file. In 1985, Dr. John Geiger, a staff psychologist employed by San Quentin conducted a psychiatric evaluation of petitioner. (Return Exh. D.) The psychiatrist opined, "During interviews this man was capable of contributing information and he was cooperative. There was no evidence of serious psychiatric disturbance, and there was no indication of thought disorder or serious depression. He was alert and active, and aware of his circumstances. His intellectual capacity is somewhat below the average range. His ability to form conclusions and his cognitive function in general was unimpaired." (Return Exh. D at pp. 1-2.)

This Court should vacate and discharge the order to show cause concerning *Claim XV*.

Claim XVI: Ineffective Assistance Of Counsel: Psychological Impact Of Incarceration

In *Claim XVI*, petitioner contends trial counsel's failure to investigate and present expert testimony regarding the psychological impact of petitioner's incarceration as a juvenile at a young age and the absence of mental health

assessment and treatment during his juvenile and adult incarcerations was ineffective assistance of counsel because such evidence could have rebutted the prosecutor's argument that petitioner "chose" the path to criminality. (Petn. 167-178; see Petn. Exh. 15.) Respondent disputes the allegations that trial counsel's representation fell below an objective standard of reasonableness under prevailing professional norms in 1984 based upon the information presented to and reasonably available to trial counsel. Nor did the absence of evidence of the nature presently asserted in the Petition prejudice petitioner. In 1989, this Court denied a similar claim raised by petitioner in his first habeas petition filed in case number S005412, where petitioner presented a version of this claim which was substantiated by the declaration of psychiatrist Dr. Terry Kupers. (See Return Exh. I; see also S005412 Petition at p. 6 ¶ g, Informal Reply at p. 19; Reply Exh. D.) With the exception of the current reliance upon an assumption of mental retardation or organic brain damage, Dr. Davis's declaration provides no more substance than the previously rejected claim.

As an initial matter, Petitioner has failed to establish that the presentation of such evidence was standard practice for defense counsel in Los Angeles County in 1984. (See *Wiggins v. Smith* (2003) 123 S.Ct. 2527, 2536-2537 [156 L.Ed.2d 471].) Indeed, it appears that the presentation of such evidence had not yet become a standard practice in the local defense community in 1989, when petitioner presented his first habeas petition in this Court challenging his trial counsel's trial representation. (See S005412 Petition.) Petitioner's factual support for this contention is the declaration of clinical psychologist Adrienne Davis, who indicates that she first advised criminal defense practitioners concerning the impact of prolonged institutionalization in 1997. (Petn. Exh. 15, ¶ 5.) Absent such a prevailing practice, Petitioner has not and cannot meet the deficient performance prong of the *Strickland* test.

Respondent alleges that trial counsel retained psychiatrist Kaushal

Sharma and psychologist Michael Maloney prior to trial in 1984, and these experts personally examined petitioner. (Petn. Exh. 13, ¶ 83-87; Petn. Exh. 15, ¶ 34.) Neither expert advised trial counsel that petitioner's prior incarcerations and, more specifically, the lack of mental health diagnoses and treatment while incarcerated, qualified as mitigating circumstances that should be presented to the jury. Indeed, respondent alleges that Dr. Sharma, the psychiatrist retained by trial counsel to examine petitioner and advise counsel, reviewed records of petitioner's prior incarcerations as part of his evaluation. (Petn. Exh. 13, ¶ 83.) Dr. Sharma advised trial counsel that he discovered, "[n]o evidence of psychosis, organic brain disorder, depression, or any other major disorder during the examinations." (Return Exh. G at p. 3.) Dr. Sharma concluded, "In the absence of any significant mental illness or other emotional or mental disturbance, I have nothing to suggest any mitigating circumstances for the defendant. In fact, given the defendant's long prison record, antisocial behavior at an early age, lack of mental illness, lack of duress, and lack of intoxication, may suggest that no such mitigating factors exists in this case." (Return Exh. G at p. 3.) Trial counsel's reliance upon these qualified mental health experts did not deny petitioner effective assistance.

Respondent alleges that petitioner's claim of ineffective assistance is rebutted by documentation evidencing that petitioner received mental health and educational assessment based upon the personal observations and interactions of petitioner with juvenile justice officials while incarcerated as a juvenile and as an adult; the consistent conclusions produced from these first-hand observations were that his academic and vocational deficiencies were the result of volitional behavior. (Petn. Exhs. 28, 29, 30, 32, 39, 40, 41, 43, 59.) Petitioner personally acknowledged the volitional nature of his behaviors in 1973, when an evaluator at RGC-Tracy observed "[petitioner] readily admitted he did not like school, learned very little and was truant a great deal. He

describes his associates, during his formative years, as the delinquent, nonconforming element and stated he had been involved in numerous gang activities." (Petn. Exh. 28 at p. 2.) Respondent further alleges that juvenile rehabilitation efforts were hampered by petitioner's sociopathic tendencies, his assaultive behavior against other juvenile wards, his escape from juvenile custody, and his lack of interest or motivation to pursue academic or vocational training. (See Petn. Exh. 59; see also Return Exh. F ["subject is not academic or vocationally oriented"].) Respondent alleges that trial court did not deny petitioner effective assistance of counsel by declining to affirmatively present – or open the door to the presentation of rebuttal evidence of – his repeated defiant, assaultive, and truant behavior.

Evidence of the impact of juvenile and adult incarcerations would have necessitated the presentation of evidence concerning petitioner's lengthy juvenile and adult incarcerations and his poor behavior while in custody. Respondent alleges petitioner was incarcerated in various juvenile facilities from 1964 until April 1967, June 1967 through May 1968, August 1968 until September 1969, and November 1969 until February 1971. (Petn. Exh. 37 at p. 2; Petn Exh. 38.) His confinement was prolonged by his repeated assaultive behaviors and disciplinary issues. Rather than present petitioner in a sympathetic light, such evidence risked portraying petitioner as a hardened and incorrigible criminal who posed a danger to prison inmates as well as the community at large and, therefore, deserved the death penalty.

Moreover, had trial counsel presented expert testimony at trial suggesting that the juvenile justice system had failed to consider and employ less restrictive and punitive measures to address petitioner's criminal behavior prior to committing him to the Youth Authority (see Petn. 169-174; Petn. Exh. 15), such testimony would have been rebutted by available documentary evidence. Less restrictive measures undertaken included that petitioner was

initially arrested August 15, 1964 for petty theft and returned to the custody of his mother; court supervision was initiated on November 5, 1964, following a second petty theft arrest; petitioner was continued on voluntary supervision following a third petty theft arrest on December 31, 1964; petitioner was released after tampering with a car on February 17, 1965; petitioner was counseled and released following a petty theft arrest on March 24, 1965; and petitioner was counseled and released following another petty theft arrest arising from two incidents. (Petn. Exh. 37 at p. 2; see also Petn. Exh. 28 at p. 2.) Petitioner was only committed to juvenile forestry camp in May 1965 after these numerous additional arrests and less restrictive measures failed. (Petn. Exh. 37 at p. 2; Petn. Exh. 28 at p. 2.) Petitioner was declared not suitable for the camp program and committed to the Youth Authority in November 1965 after "numerous disciplinary actions." (Petn. Exh. 28 at p. 2; see also Petn. Exh. 37 at p. 2.)

Because Dr. Davis did not personally examine petitioner, she does not diagnose petitioner and, instead, speculates concerning other diagnoses and more "appropriate" juvenile treatment options than those offered to petitioner. For instance, Dr. Davis states that "as a juvenile, other diagnoses could have been considered including depression, post-traumatic stress disorder, attention deficit disorder, adjustment disorder, to name a few." (Petn. Exh. 25, p. 5.) "Had these diagnoses been explored and considered, appropriate treatment could have been implemented including but not limited to psychotropic medication and/or intensive counseling at a facility like the Dorothy Kirby Center, which provided treatment for emotionally disturbed minors, who engage in delinquent behavior. This kind of facility would have carefully evaluated Mr. Lewis' need for psychotropic medications and could have monitored its effectiveness for Mr. Lewis in a closed, secure setting." (Petn. Exh. 25 at p. 5, ¶ 18.)

Neither Dr. Davis nor Dr. Khazanov opines that petitioner actually suffered from any treatable mental disorder. Neither Dr. Davis nor Dr. Khazanov specify what "psychotropic medications" or mental health "treatment" would have been available to remedy or treat either mental retardation or the type of organic brain damage petitioner is alleged to suffer. (Petn. Exh. 15 at p. 5.) Dorothy Kirby Center did not exist until 1976,[7/] when Petitioner was 24 years old and no longer a juvenile subject to housing in such a facility. Dr. Davis does not identify any trauma that could form the basis of a diagnosis for post traumatic stress disorder, and none is independently available from the other documentation provided and referenced in the Petition.

Dr. Davis does not and cannot provide an opinion whether different treatment options were warranted at the time petitioner was a juvenile, nor does she offer an opinion concerning how different treatment options would have impacted petitioner.

While in juvenile and adult custody, petitioner's academic performance was evaluated and academic opportunities provided. (Petn. Exh. 28 at p. 5; Return Exh. E [noting petitioner was enrolled in school in 1975].) Petitioner attended school while in juvenile custody. (Petn. Exhs. 34, 35, 36.) In 1977, the counselor who authored an Institution Programming Summary observed, "Lewis displays rather classic sociopathic features generally predicting he is not capable at this point of being a viable candidate for psychotherapy." (Petn. Exh. 39 at p. 1.) Records show that petitioner, at least during his 1977 incarceration, refused education and refused vocational training. (Petn. Exh. 39 at p. 1.)

Respondent alleges that the presentation of evidence of various

---

7. The Dorothy Kirby Center was formerly the Las Palmas School for Girls, which opened its doors in 1975. The facility changed its name in 1976 and began accepting male wards for treatment. (See www.cdcr.ca.gov/Divisions_Boards/DJJ/About_DJJ/History.html.)

purported failures by the correctional institutions that housed petitioner would have opened the door to cross-examination and rebuttal evidence elaborating on the factual circumstances of petitioner's prior crimes, his assaults upon other inmates and continuing criminal conduct while incarcerated, and his refusal to accept educational and vocational training since these facts and circumstances were all relevant to an assessment of the correctional system's handling and treatment of petitioner.

Trial counsel's tactical choices restricted the evidentiary presentation of the prosecution. The prosecution's aggravating evidence consisted of a stipulation that petitioner had been convicted of four robberies in case numbers A012661, A017581, A017555, and A024769. (S020670 Supp. 4RT 809-810.) Had trial counsel presented evidence concerning the impact of petitioner's prior incarcerations, the prosecution would have had the motive and opportunity to present evidence concerning the circumstances of the prior robberies that resulted in his incarcerations. Presentation of evidence concerning petitioner's prior criminal history would have demonstrated that he was a sophisticated criminal who would present a danger to the public at large and other inmates. For instance, the petitioner's four prior robbery convictions (the subject of the stipulation at trial) all involved petitioner's personal use of a gun. In case number A012661, on June 5, 1972, petitioner robbed the J.B. Jiffy Mart in Long Beach at gunpoint. (Petn. Exh. 40 at pp. 2-3; Return Exh. B at p. 8.) In case number A017581, petitioner "entered a liquor store[,] drew an automatic handgun, and racked a shell into the chamber, while demanding money." After pushing the clerk and taking money from the register, petitioner fired his gun when a witness attempted to stop him. (Return Exh. B at p. 8.) In case number A017555, petitioner entered a clothing store, pointed a revolver at the clerk, and threatened to kill the clerk if he did not cooperate. As petitioner and his cohort fled, the clerk and petitioner exchanged gunfire. An innocent bystander was

killed during the "shoot out." (Return Exh. B at p. 8.) The district attorney's office elected not to prosecute petitioner for the killing. (Petn. Exh. 39 at p. 1.) During judicial proceedings in case number A017555, petitioner "informed the probation officer that committing armed robberies was his business, and that he did not mind serving time in prison." (Return Exh. B at pp. 8-9.) In case number A024769, petitioner walked onto a used car lot and robbed two people at gunpoint. (Return Exh. B at p. 9.) Additionally, in October 1971, he was apprehended burglarizing a woman's bedroom; the victim's watch was recovered from petitioner's father's truck. (Petn. Exh. 40 at p. 2; Return Exh. B at p. 8.) On July 8, 1972, after a bank employee reported petitioner and another man were suspiciously loitering in the parking lot, petitioner was detained and found to be carrying a loaded firearm. (Petn. Exh. 40 at p. 3.)

Reviewing the information reasonably available to trial counsel in 1984, trial counsel's performance in this area did not fall below the community standard of care in 1984 nor did the absence of expert testimony concerning the impact of incarceration prejudice petitioner.

This Court should vacate and discharge the order to show cause concerning *Claim XVI.*

Claim XVIII: Cruel And/or Unusual Punishment–Mental Retardation

In *Atkins v. Virginia* (2002) 536 U.S. 304, the Supreme Court concluded that execution of the mentally retarded violates the Eighth Amendment. (*Id.* at p. 321.) In *Claim XVIII*, Petitioner contends that he is mentally retarded and that executing him would constitute cruel and unusual punishment as articulated in *Atkins*. (Petn. 180-183.) The factual basis for this claim is the declaration of Dr. Natasha Khazanov, a psychologist, who examined him on June 10, 2003, August 18, 2003, and August 20, 2003, and opines in her declaration that petitioner suffers from mild mental retardation and organic brain damage.

(Petn. Exh. 13, ¶ 11; Petn. Exh. 68, ¶ 3.) After the informal response and informal reply were filed, this Court decided *In re Hawthorne* (2005) 35 Cal.4th 40. In light of the *Hawthorne* decision, Respondent has reevaluated whether Petitioner has met the threshold showing of mental retardation to entitle him to an evidentiary hearing on his *Atkins/Hawthorne* claim. As discussed below, it appears that Petitioner has made such a threshold showing and that an evidentiary hearing should be ordered in compliance with *Hawthorne*. Accordingly, this matter should be transferred to the Los Angeles County Superior Court with directions to hold a hearing on Petitioner's claim of mental retardation.

However, respondent disputes that petitioner has made a sufficient showing of mental retardation to entitle him to relief without an evidentiary hearing. Moreover, respondent alleges that evidence available to this Court strongly contradicts petitioner's expert opinion that any perceived cognitive deficits pre-dated petitioner's adulthood or his 1984 trial.

1. Mental Retardation Criteria

Based on the *Atkins* decision, this Court in *In re Hawthorne, supra*, 35 Cal.4th at pp. 44-47 considered how to resolve postconviction claims of mental retardation and ultimately set forth a procedure tracking the standards and procedures set forth in Penal Code section 1376 that apply to *preconviction* proceedings. *Id.* at p. 47. Section 1376 defines "mentally retarded" as "the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the age of 18." (§ 1376, subd. (a).)[8/] As this Court explained:

---

8. This definition was derived "from the two standard clinical definitions referenced by the high court in *Atkins*"and taken the definitions in the American Psychiatric Association's Fourth Edition of the Diagnostic and Statistical Manual of Mental Disorders ("DSM-IV") and the 1992 AAMR

> Postconviction claims of mental retardation should be raised by petition for writ of habeas corpus. . . . To state a prima facie claim for relief, the petition *must* contain 'a declaration by a qualified expert stating his or her opinion that the [petitioner] is mentally retarded. . . ." (§1376, subd. (b)(1). *Not only* must the declarant be a qualified expert, i.e., an individual with appropriate education, training, and experience, *the declaration must explain the basis for the assessment of mental retardation in light of the statutory standard.*

(*In re Hawthorne*, 35 Cal. 4th at p. 47, emphasis added; *see Atkins v. Virginia*, 536 U.S. at pp. 308-309 [petitioner presented expert who testified that he was mentally retarded].)

Whether a person is mentally retarded is a question of fact. (*In re Hawthorne, supra,* 35 Cal.4th at p. 49.) "[Mental retardation] is not measured according to a fixed intelligence test score or a specific adaptive behavior deficiency, but rather constitutes an assessment of the individual's overall capacity based on a consideration of all the relevant evidence." (*Ibid.*) At an *Atkins* hearing, a court is not bound by expert opinion testimony or test results, but may instead weigh and consider all evidence germane to the question of mental retardation. (*Id.* at p. 50.)

2. Application Of Mental Retardation Criteria To Petitioner

Here, petitioner has presented two declarations from a psychologist, Dr. Natasha Khazanov, in which Dr. Khazanov opines that petitioner is mentally retarded. (See Petn. Exh. 13, ¶ 11; Informal Reply Exh. 68.) As this Court has held, "*Not only* must the declarant be a qualified expert, i.e., an individual with appropriate education, training, and experience, *the declaration must explain*

---

manual. (*In re Hawthorne, supra,* 35 Cal.4th at p. 47; *Atkins v. Virginia, supra,* 536 U.S. at p. 308, fn. 3.)

the basis for the assessment of mental retardation in light of the statutory standard." (*In re Hawthorne*, 35 Cal. 4th at p. 47.) Respondent disputes the opinion of Petitioner's expert, Dr. Khazanov, and allege Dr. Khazanov's opinion is disputed by facts readily available from the judicial record before this Court.

a. Factor (1): Intellectual Functioning

Petitioner, referring to the declaration from Dr. Natasha Khazanov, states that petitioner is mentally retarded, based upon intelligence testing conducted in 2003 resulting in a verbal IQ score of 66, a performance IQ score of 75, and a full scale IQ score of 67. (Petn. 182; Petn. Exh. 13, ¶ 91.)

According to the DSM-IV-TR,

> The choice of testing instruments and interpretation of results should take into account factors that may limit test performance (e.g., the individual's socio-cultural background, native language, and associate communicative, motor, and sensory handicaps). When there is significant scatter in the subtest scores, the profile of strengths and weaknesses, rather than the mathematically derived full-scale IQ, will more accurately reflect the person's learning abilities. When there is a marked discrepancy across verbal and performance scores, averaging to obtain a full-scale IQ score can be misleading.

(DSM-IV-TR, *Mental Retardation*, at p. 42.) Dr. Khazanov's declaration does not indicate that she accounted for petitioner's socio-cultural background or literacy level in selecting her testing methods or interpreting the test results.

b. Factor (2): Adaptive Skills

Petitioner has the burden of demonstrating that he has significant deficits in two or more categories of adaptive behavior skills such as communication, self-care, home living, social/interpersonal skills, self-direction, functional

academic skills, work, leisure, health and safety. (*Atkins, supra,* 536 U.S. at p. 308, fn. 3.) Although Dr. Khazanov's original declaration only briefly mentions this criteria (Petn. Exh. 13, ¶ 129-132, 138), in her subsequent declaration submitted with the Informal Reply she opines that petitioner shows deficits in communication (e.g., inability to write a sentence or recite the alphabet), self-care, functional academic skills, work, and health and safety. (Petn. Exh. 68, ¶ 24.) Respondent disputes Dr. Khazanov's stated opinion that petitioner was significantly deficient in two or more adaptive functioning skills at the time of his 1984 trial. Moreover, Dr. Khazanov's assessment of petitioner's adaptive functioning skills fails to appropriately consider and account for his current "community setting," i.e., death row where petitioner has been incarcerated since 1984. Respondent alleges that to the extent any perceived deficiencies in petitioner's adaptive skills are not the product of petitioner's malingering and prevarication, the perceived deficiencies are a product of his current incarceration rather than a product of an innate cognitive condition.

According to Dr. Khazanov, "Clinicians have at their disposal objective rating scales and assessment methods for the comprehensive evaluation of adaptive functioning skills. Such instruments were largely developed for the express purpose of testing adaptive functioning as it relates to mental retardation, and the tests accordingly have a high degree of validity in connection with this use." (Petn. Exh. 13, ¶ 131.) Dr. Khazanov did not utilize either of the two objective instruments, the Vineland Adaptive Behavior Scale and the American Association on Mental Retardation Adaptive Behavior Scale, identified in the DSM-IV-TR for assessing mental retardation. (DSM-IV-TR at p. 42.) Furthermore, "To verify the accuracy of results obtained from these instruments, the clinician usually must also interview one or more knowledgeable persons who are well-acquainted with the subject's typical,

unprompted adaptive behavior." (Petn. Exh. 13, ¶ 132.) Dr. Khazanov did not interview petitioner's sisters to evaluate petitioner's unprompted adaptive behavior or adaptive skills prior to his current incarceration.

Petitioner's familial history provided by his sisters contradicts a finding he lacked social/interpersonal adaptive skills. Petitioner engaged in appropriate familial relationship with his sisters, Rose Davidson and Gladys Spillman. He performed household chores without prompting or direction, performed services for neighbors, played with his sisters and their children, and provided advice to his nieces and nephews to obey their parents. (See S005412 Petn. Exh. 7; Video Decl. of Rose Davidson filed in case no. S005412; Video Decl. of Gladys Spillman filed in case number S005412.) Petitioner had a common-law relationship with Frances Mae Lang for five years; when not incarcerated, he paid half the rent when he was employed. (Petn. Exh. 28; Petn. Exh. 30 at p. 2.) Upon his intake at Deuel Vocational Institution in December 1970, petitioner reported using the library twice a week. (Petn. Exh. 32.) Any perceived deficits in petitioner's adaptive functioning (Petn. Exh. 13, ¶ 134-137; Informal Reply Exh. 68, ¶ 23) are explained by his history of repeated and lengthy incarceration for his current offense (since 1984) as well as repeated juvenile and adult incarcerations from 1965 (see Petn. Exh. 15, ¶ 30) and/or malingering rather than a mental condition, specifically mental retardation.

Respondent also disputes Dr. Khazanov's opinion that petitioner suffers a deficit in adaptive functioning in the area of "self-care." When Dr. Khazanov examined petitioner in June 2003, she observed that he "appeared in prison-issued clothing that was neat and clean." (Petn. Exh. 13, ¶ 88.) Dr. Khazanov's observation of petitioner's neat and clean appearance in 2003 was consistent with the observations and experience of petitioner's girlfriend, Dernessa Walker, between 1981 and 1984. In his 1989 petition for writ of habeas corpus (case no. S005412), Ms. Walker declared that she met petitioner in 1981 and

that they had spent "a lot of time together." (S005412 Petn. Exh. 9, ¶ 2.) Ms. Walker declared that "[petitioner] took very good care of himself. He was careful to eat properly and never used illegal drugs." (S005412 Petn. Exh. 9, ¶ 5.) Ms. Walker further declared that petitioner "often chastised me to make certain that my children ate properly and had enough milk and fruit in their diet. He took my little girls to the beauty shop and paid for their haircuts. When we visited his sister Gladys' home I could see that he was very close to her and her children. He often took them out to play and gave them advice on how to stay out of trouble." (S005412 Petn. Exh. 9, ¶ 4.) Additionally, the videotaped declarations of petitioner's sisters Gladys Spillman and Rose Davidson demonstrate that as a child petitioner regularly performed chores, such as taking out the trash and watering the lawn, assisted his sister Gladys with laundry tasks, and assisted with the care of his mother by washing her feet and hair. (Video Decl. of Gladys Spillman filed in case no. S005412.)

Concerning alleged deficiencies concerning employment, respondent alleges that limited employment history is the product of his repeated incarcerations. However, he earned money through various jobs and enterprises. According to his sister, as a teenager petitioner earned money by building and refurbishing bicycles from parts and selling them. (Video Decl. of Gladys Spillman filed in case no. S005412.) Petitioner's primary adult "employment" when out of custody consisted of armed robberies. (Return Exh. B at pp. 8-9 [in 1977 petitioner "informed the probation officer that committing armed robberies was his business, and that he did not mind serving time in prison.".) These robberies were punctuated by short periods of gainful employment. For instance, when petitioner was 20 years old, petitioner told a probation officer that he had been most recently employed by his father as a brick layer, but previously had held jobs as a gas station attendant for six months and as a car wash attendant for five months between periods of

incarceration in jail. (Petn. Exh. 30 at p. 2.)

Concerning "functional academics," Dr. Khazanov opines that "[l]ack of appropriate remedial formal education and schooling may account for his inability to develop these [age-appropriate academic] skills during childhood. Mr. Lewis stated that he has been learning how to read and write during his incarceration. However, he cannot sound out words, and given the type of reading errors he made on testing, appears to be relying on his low functioning visual spatial abilities to memorize whole words by sight, without any processing of the letter-sound relationships and without much success. Lack of progress in acquiring at least some level of mastery in such a long time suggests that he is fundamentally unable to grasp the concepts of literacy. This finding is indicative of a profound deficit in one of the areas of adaptive functioning -- functional academics -- and, along with the WAIS-III findings, should be considered as supportive evidence for the diagnosis of mental retardation." (Petn. Exh. 13, ¶ 94.)

Respondent alleges that petitioner's academic achievement history is reflective of his failure to regularly attend school and lack of motivated self-effort rather than evidence of mental retardation or organic brain damage. (Petn. Exh. 35, 36; Informal Reply Exh. 68, ¶ 22.) Dr. Khazanov alleges that petitioner cannot write a "sensible" sentence. (Petn. Exh. 68, ¶ 24.) However, petitioner's extensive prison disciplinary record demonstrates numerous instances in which he has articulated complex concepts in written form. (Return Exh. C.) Petitioner also regularly wrote letters to his nieces and nephews that instructed them to obey their parents. (Video Decl. of Rose Davidson filed in case no. S005412.) Moreover, when detained in 1983 and questioned by homicide detective MacLyman, petitioner read a form *Miranda* advisement and initialed the appropriate waivers on the form using the alias "Sherman Davis." (S020670 Supp. 1RT 43-46; Return Exh. H [A027897 Peo.

Exh. 1].) Petitioner provided a complex and articulate explanation for his possession of the murder victim's Cadillac -- including that he had purchased the car three days prior to the murder from "an elderly gent" (S020670 Supp. 1RT 33) for $11,000 with money he won in Las Vegas. (S020670 Supp. 1RT 33-41, 46-48.)

c. Factor (3): Manifestation Of Mental Retardation Before Age 18

Petitioner has not demonstrated that his alleged mental retardation occurred before age 18. In support of this factor Dr. Khazanov speculates responding to the onset of petitioner's alleged mental retardation: "Unfortunately, the diagnosis of mental retardation was not made until now. I have been provided with enough information about the milieu in which Mr. Lewis was raised to conclude that evidence of retardation *may* well have been present, but not noticed." (Petn. Exh. 13, ¶ 138, emphasis added.) Respondent disputes this speculative assumption. Had there been evidence of petitioner's alleged mental retardation in 1984, it would have been discovered and reported to trial counsel by the two qualified experts, Dr. Michael Maloney and Dr. Kaushal Sharma, who were retained by trial counsel and personally examined petitioner.

Petitioner misstates his Linguistic Score of 68 on a 1968 SRA IQ test (Petn. Exh. 59) as a substantially lower and erroneous score of 58. Although Petitioner focuses upon the component Q score of 61, petitioner's Beta IQ Performance score of 83, his Verbal Total of 67, and Non-Verbal score of 99 demonstrate his component "Q Score" of 61 is not an accurate measure of his intelligence. (Petn. Exh. 59.) These latter three scores were the only scores repeated in petitioner's high school transcript record for 1968. (Petn. Exh. 36.) As the governing diagnostic manual cautions, "When there is significant scatter in the subtest scores, the profile of strengths and weaknesses, rather than the

mathematically derived full-scale IQ, will more accurately reflect the person's learning abilities. When there is a marked discrepancy across verbal and performance scores, averaging to obtain a full-scale IQ score can be misleading." (DSM-IV-TR, *Mental Retardation*, at p. 42.) A Youth Authority Clinic Educational Report authored September 11, 1968, explained petitioner's test scores as follows, "This tends to be a non-reading non-bookish boy whose cultural set is so diverse from the major cultural patterns that he can not be adequately tested. His scores as listed are meaningless for subject is not academic or vocationally oriented. He is able to function at a dull normal but that surmise is a projection based on his non-verbal S.R.A. score. He can learn and may profit from a reading program based on his needs." (Petn. Exh. 59; Return Exh. F.) To the extent petitioner previously did not excel at various intelligence and academic performance tests, respondent alleges the testing reflected petitioner's lack of educational motivation and his sociocultural background.

While petitioner was awaiting trial in the present case, he was evaluated by a psychiatrist, Dr. Kaushal Sharma, and a psychologist, Dr. Michael Maloney. Although petitioner conspicuously fails to attach the notes of the interviews and testing performed by Dr. Maloney, Dr. Khazanov relates that Dr. Maloney evaluated petitioner as having a full scale IQ score of 73. (Petn. Exh. 13 ¶ 84.) Dr. Khazanov criticizes Dr. Maloney for not pursuing a potential diagnosis of mental retardation. However, petitioner does not provide the component scores (performance vs. verbal) or mention Dr. Maloney's assessment, if any, whether petitioner was malingering and cooperative in the testing or whether other factors, such as petitioner's literacy level, impacted the results and interpretation of the tests performed.

Additional contradiction of petitioner's claim of mental retardation is found in petitioner's prison file. In 1985, Dr. John Geiger, a staff psychologist

employed by San Quentin conducted a psychiatric evaluation of petitioner. (Return Exh. D.) The psychiatrist opined, "During interviews this man was capable of contributing information and he was cooperative. There was no evidence of serious psychiatric disturbance, and there was no indication of thought disorder or serious depression. He was alert and active, and aware of his circumstances. His intellectual capacity is somewhat below the average range. His ability to form conclusions and his cognitive function in general was unimpaired." (Return Exh. D at pp. 1-2.)

Finally, in 1986 petitioner was examined by Dr. Terry Kupers, a psychiatrist retained by petitioner's first habeas counsel. Dr. Kupers did not observe or diagnosis petitioner as suffering from mental retardation. (See Return Exh. I.) To the contrary, some of Dr. Kupers observations in 1986 -- specifically the care he provided for his mother as a child and young man, his strong and long-lasting personal relationships, and -- tend to contradict Dr. Khazanov's assumptions that petitioner's suffered deficits in adaptive functional skills prior to the age of 18. (See Return Exh. I, ¶ 5, 9, 13.)

During the 1968, 1984, 1985, and 1986 evaluations, no diagnosis of mental retardation was made. Accordingly, respondent disputes the allegation that any perceived mental retardation occurred before he was 18.

Conclusion Regarding Mental Retardation Claim

Based upon the foregoing, respondent disputes and denies the factual allegations that petitioner suffers from mental retardation or that, given his mental condition, execution of his death sentence would constitute cruel and unusual punishment. Nevertheless, the bare threshold showing made by petitioner appears to require that an evidentiary hearing be ordered in compliance with *Hawthorne*. Accordingly, this matter should be transferred to the Los Angeles County Superior Court with directions to hold a hearing on Petitioner's claim of mental retardation.

IV

Except as otherwise indicated, respondent denies each and every allegation of the petition, the prior habeas petition, and the prior automatic appeals as incorporated by referenced into the petition and denies that petitioner's confinement is in any way illegal, and denies that petitioner's rights have been violated in any respect.

V

Respondent alleges that petitioner's prior habeas petition denied by this Court in 1989 includes the same contentions and allegations as recited in *Claim XIV* and *Claim XVI* -- with the exception of the incorporation of allegations petitioner suffers from mental retardation and organic brain damage. The Petition fails to identify with specificity any new facts "discovered" since the filing of the first habeas petition relevant to Claims XIV, XV, XVI and XVIII; the prior habeas petition was supported by declarations of numerous experts, including a psychiatrist who examined petitioner (see Return Exh. I) and opined concerning the potential of petitioner's family history as mitigating evidence (*Claim XIV*) and the psychological impact of incarceration (*Claim XVI*). Respondent alleges that the alleged factual bases of *Claims XIV, XV, XVI, and XVIII* pre-dated the prior habeas corpus petition.

VI-VIII

This Court has jurisdiction to consider and decide the Petition. The Petition is presumptively timely. Petitioner's automatic appeal was previously decided by this Court. Habeas appears to be an appropriate vehicle to resolve *Claims XIV, XV, XVI, and XVIII.*

IX

Materials, documents, and persons relevant to the proof or refutation of

Claims XIV, XV, XVI, and XVIII are uniquely within the control of petitioner. Should a referee be appointed and an evidentiary hearing held, petitioner should be held to proving the allegations of the claims as stated in the Petition.

WHEREFORE, it is respectfully submitted that the second petition for writ of habeas corpus should be denied and the order to show cause discharged as to *Claim XIV*, *Claim XV*, and *Claim XVI* unless petitioner disputes any material assertion contained herein. If petitioner does deny any material fact asserted herein, a referee should be appointed and an evidentiary hearing should be convened to resolve such disputed fact or facts, after which the petition for writ of habeas corpus should be denied and the order to show cause vacated and discharged. As for *Claim XVIII*, the bare threshold evidentiary showing made by petitioner appears to require that an evidentiary hearing be ordered in compliance with *Hawthorne*. Accordingly, this matter should be transferred to the Los Angeles County Superior Court with directions to hold a hearing on Petitioner's *Claim XVIII* concerning mental retardation.

Dated: January 29, 2008

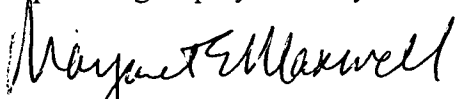
Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

DANE R. GILLETTE
Chief Assistant Attorney General

PAMELA C. HAMANAKA
Senior Assistant Attorney General

KEITH H. BORJON
Supervising Deputy Attorney General



MARGARET E. MAXWELL
Supervising Deputy Attorney General

Attorneys for Respondent

LA2003XH0016
60273990.wpd

INDEX TO EXHIBITS IN SUPPORT OF RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

EXHIBIT A

DECLARATION OF RONALD SLICK, ESQ.

I, RONALD SLICK, declare as follows:

1. I have been practicing law in California for the past 17 years and have been certified as a criminal law specialist for the past 10 years. I have tried approximately 13 death penalty cases and 48 murder cases to a jury. It has been my experience that the death qualification voir dire process wherein the four Witherspoon questions are presented to prospective jurors favors the prosecution more than the defense. While a prosecutor must ensure that all 12 jurors favor the death penalty, the defense only needs one juror reluctant to impose the death penalty. By limiting the death qualification voir dire to the four standard Witherspoon questions, the prosecution is at a disadvantage in terms of ferreting out jurors who are reluctant to impose the death penalty even though they answer the Witherspoon questions appropriately.

Based on my review of the evidence and interviews with Mr. Lewis, his family and friends, it was my opinion then, and is now, that the prosecution had a very strong case with respect to the guilt of Robert Lewis, Jr. Accordingly, I believed it was strategically advantageous to limit voir dire in this case in the hope that at least one of the 12 jurors ultimately selected would be favorable to the defense and not get peremptorily challenged by the prosecutor.

2. In preparing for trial, I interviewed Mr. Lewis' sister, Gladys Spillman. Ms. Spillman told me that the gold chain which Mr. Lewis was wearing at his preliminary hearing, and which the prosecutor claimed had been taken from the victim, was actually purchased by her and given to Mr. Lewis as a gift. Ms. Spillman showed me a receipt from the "Lewis Jewelry" store which she claimed substantiated her purchase. Thereafter, I contacted Los Angeles jeweler Marion Kluger who personally examined and weighed the gold chain in question. Marion Kluger advised me that the receipt which described the chain Ms. Spillman purchased as an 18" "14K Gold V Chain" did not describe the gold chain in question because that chain was not a "V" chain. Marion Kluger further advised me that the price Ms. Spillman paid for her gold chain, which according to the receipt was $88, was inconsistent with the weight and fair market value of the chain in question. The chain in question was heavier and would have, in the jeweler's opinion, cost Ms. Spillman more than $88. Based on this examination, Marion Kluger advised me that the receipt was either a forgery or related to jewelry other than the gold chain in question. Accordingly, I decided not to introduce at trial the jewelry receipt Ms. Spillman had given me. Since the receipt bore no relation to the gold chain in question, I considered but rejected as futile the idea of calling the shopkeeper as a witness.

3. During the course of preparing for trial, I interviewed Mr. Lewis along with several of his friends and family members including Denise Walker, Robert Lewis, Sr., Rose Davidson, Janiero Lewis and Gladys Spillman. Psychologist Michael Maloney was retained and attended each of these interviews except for the interview with Gladys Spillman. My purpose in having Dr. Maloney present at these interviews was to determine first, whether Mr. Lewis had any psychological problems which could be gleaned from information his family and friends provided. Following these interviews, Dr. Maloney opined that Mr. Lewis did not appear to have any particular psychological problems. I then retained Kaushal Sharma, a psychiatrist, to personally examine Mr. Lewis. Dr. Sharma submitted a written report to me indicating that Mr. Lewis had no identifiable psychological problem despite his extensive criminal history.

Second, I had considered calling Dr. Maloney at trial to fill in the evidentiary gaps regarding Mr. Lewis' background in order to present a positive image of Mr. Lewis to the jury. Although Mr. Lewis' father and two sisters were willing to testify that Mr. Lewis was a good student, participated in track and field at school and was generally a good influence on Rose Davidson's children, I knew Mr. Lewis never completed much less attended high school and that his criminal history began when he was 12 years old and continued until age 32 when the present

crime was committed. Accordingly, I decided not to call either Dr. Maloney, Dr. Sharma or Mr. Lewis' friends at trial because none could provide credible mitigating evidence, psychological or otherwise. Although I did call Mr. Lewis' father and two sisters as witnesses at trial, I did not use them as character witnesses for fear that I would be opening up a "Pandora's Box" for the prosecution to impeach these witnesses with Mr. Lewis' extensive criminal history.

4. In deciding what special jury instructions to request, I considered the evidence which had been presented and determined there was no factual or legal basis for seeking an instruction less than second degree murder. I did request second degree murder instructions and my request was granted.

5. In preparing for trial, I interviewed Mr. Lewis on several occasions and asked him to provide me with a list of potential alibi witnesses. Mr. Lewis was unable to provide me with any names. In my interviews with members of Mr. Lewis' family, I specifically inquired whether any of them were alibi witnesses or knew the names of others who might be. No one I spoke with was willing to provide Mr. Lewis with an alibi nor did they provide me with the names of other potential alibi witnesses.

6. Paragraph 4 of the Declaration I provided to Mr. Lewis' appellate counsel contains a typographical error. In that declaration it states I spent approximately 42 hours of preparation time working on this case. I actually spent approximately 190 hours of preparation time and related this fact to Mr. Lewis' appellate counsel.

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

Dated: 5-30-99

Ronald Slick, Esq.

EXHIBIT B

Rec'd 9-28-84 COURT COPY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

PROBATION OFFICER'S REPORT

173

REPORT SEQUENCE NO.

DEFENDANT'S NAME(S)			
ROBERT LEWIS JR. AKA's See Prior Record.			
ADDRESS (PRESENT / RELEASE)			
UNKNOWN			
BIRTHDATE	AGE	SEX	RACE
5-31-52 ✓	32	MALE	BLACK
CITIZENSHIP STATUS		DRIVER'S LICENSE / EXP. DATE	
U.S.		UNKNOWN	
PROBATION NO.	CII NO.	BOOKING NO.	
X- 022793	2922217 ✓	7338335 ✓	
DAYS IN JAIL THIS CASE		CUSTODY STATUS/RELEASE DATE	
☒ ESTIMATED ☐ VERIFIED 333		COUNTY JAIL	

COURT	JUDGE	COURT CASE NO.
SO "G"	BEAM	A027897
HEARING DATE	DEFENSE ATTY.	PROSECUTOR
9-28-84	SLICK COURT APPT.	HODGEMAN
DPO	AREA OFFICE	PHONE NO.
L. ERICKSON	LB	432-0411 X491

TYPE REPORT
X Probation and sentence
___ Pre-Conviction (131.3 CCP)
___ Post sentence
___ Diversion (Specify) _____

PRESENT OFFENSE: LEGAL HISTORY

CHARGED with the crimes of (INCLUDE PRIORS, ENHANCEMENTS OR SPECIAL CIRCUMSTANCES)

187 PC WITHIN THE MEANING OF 12022.5 PC AND 1203.06(A)(1) PC, WITHIN 12022(B) PC AND WITHIN 190.2(A)17 PC

(MURDER PERSONALLY USING A FIREARM MAKING INELIGIBLE FOR PROBATION AND PERSONALLY USING A DEADLY AND DANGEROUS WEAPON, OFFENSE COMMITTED WHILE COMMITTING A ROBBERY); 211 PC WITHIN THE MEANING OF 12022.5 PC AND 1203.06(A)(1) PC, WITHIN 12022(B) PC (ROBBERY PERSONALLY USING A FIREARM MAKING INELIGIBLE FOR PROBATION AND ALSO PERSONALLY USING A (CONT'D. P2

CONVICTED of the crimes of (INCLUDE PRIORS, ENHANCEMENTS OR SPECIAL CIRCUMSTANCES) (Same as charged)

187 PC WITHIN 12022.5 PC AND 1203.06(A)(1) PC, WITHIN 12022(B) PC AND WITHIN 190.2 (A) 17 PC (MURDER PERSONALLY USING A FIREARM MAKING INELIGIBLE FOR PROBATION AND PERSONALLY USING A DEADLY AND DANGEROUS WEAPON, WHILE COMMITTING A ROBBERY), COUNT ONE; 211 PC WITHIN 12022.5 PC AND 1203.06(A)(1) PC AND WITHIN 12022(B) PC (ROBBERY PERSONALLY (CONT'D)

CONVICTED BY	DATE OF CONVICTION/REFERRAL	COUNT(S) CONTINUED TO P & S FOR DISPOSITION
JURY	8-28-84	
PROPOSED PLEA AGREEMENT		SOURCES OF INFORMATION
N/A		
DATE(S) OF OFFENSE		TIME(S)
BETWEEN 10-27-83, 6:30 P.M.; 10-28-83 10:58 P.M.		

DEFENDANT: (SEE PRIOR RECORD SECTION)
☐ N/A ☐ ON PROBATION ☒ ON PAROLE-REMAINING TIME _____
☐ SENTENCED TO STATE PRISON/COUNTY JAIL ON CASE _____
☐ PENDING PROBATION VIOLATION ☐ PENDING NEW CASE

HOLDS/WARRANTS: ☒ YES ☐ NO

RECOMMENDATION:

☐ PROBATION ☒ DENIAL ☐ COUNTY JAIL ☐ STATE PRISON ☐ DIAGNOSTIC STUDY ☐ 707.2 WIC ☐ 1203.03 PC ☐ CYA ☐ OTHER _____

PRESENT OFFENSE CONT'D.:

DEADLY AND DANGEROUS WEAPON), Count Two.
FOUR PRIOR 211 PC'S CASES NO. A012661, A017555, A017581, AND A024769
ALL FALLING WITHIN 667(A) PC.

*CONVICTED OF:

USING A FIREARM MAKING INELIGIBLE FOR PROBATION AND ALSO PERSONALLY USING A DEADLY AND DANGEROUS WEAPON), COUNT TWO.

DEFENDANT ADMITTED FOUR PRIOR 211 PC'S, CASE NO. A012661, CASE NO. A017555 CASE NO. A017581, AND CASE NO. A024769 WITHIN 667(A) PC.

THE JURY FOUND SPECIAL CIRCUMSTANCE TO BE TRUE AND FIXED THE PENALTY AT DEATH.

PRESENT OFFENSE: (CONTINUED)

SOURCES OF INFORMATION (this page)
D.A. FILE, PRELIMINARY TRANSCRIPT

ARREST DATE	TIME	BOOKED AS	OFFENSE	LOCATION OF ARREST	ARRESTING AGENCY
11-1-83	9:00 PM	SHERMAN DAVIDSON	187 PC AND WARRANT FOR CASE NO. A027349 CHARGING VIOL 11351 H&S AND 979 PC	HILL STREET AND LEWIS AVENUE LONG BEACH	LBPD

CO-DEFENDANT(S)	CASE NO.	DISPOSITION

ELEMENTS AND RELEVANT CIRCUMSTANCES OF THE OFFENSE:

COUNT ONE: DEFENDANT KILLED MILTON LOUIS ESTELL, STABBING HIM WITH KNIVES AND SHOOTING HIM WITH A REVOLVER. HE ALSO ROBBED HIM.

COUNT TWO: DEFENDANT, USING A KNIFE AND A GUN, TOOK VICTIM MILTON LOUIS ESTELL'S 1979 CADILLAC AND OTHER PROPERTY.

THE VICTIM WAS TRYING TO SELL HIS 1979 CADILLAC. DEFENDANT CAME TO HIS HOUSE, LOOKED AT THE CAR WITH THE VICTIM, AND ENTERI THE RESIDENCE. INSIDE, HE BOUND THE VICTIM'S ARMS AND LEGS WITH NECKTIES AND AFTER STUFFING TOILET PAPER IN THE VICTIM'S MOUTH ALSO GAGGED HIM WITH NECKTIES. THE VICTIM'S HEAD WAS KNOCKED AGAINST A WALL, AND THEN, HE WAS STABBED WITH TWO KNIVES. THE CORONER'S REPORTS SHOWED FOUR STAB WOUNDS IN THE HEART AREA AND THAT THREE OF THE STAB WOUNDS PENETRATED THE LEFT LUNG. USING A PILLOW AS A MUFFLER, THE DEFENDANT ALSO SHOT THE VICTIM IN THE UPPER LEFT SIDE OF HIS BACK.

LEAVING THE HOUSE, THE DEFENDANT TOOK THE VICTIM'S 1979 CADILLAC ELDORADO. AT THEI TIM EOF HIS ARREST, HE WAS DRIVING THAT CAR. ALSO TAKEN FROM THE HOME WAS A TELEVISION SET, A CAMERA AND FLASH,

PRESENT OFFENSE CONT'D.:

AND JEWELRY INCLUDING A GOLD CHAIN AND BLACK Ring WITH DIAMONDS. THE DEFENDANT WORE THE GOLD CHAIN TO THE PRELIMINARY HEARING WHERE IT WAS TAKEN FROM HIM AFTER THE VICTIM'X EX-WIFE IDENTIFIED IT.

VICTIM:

SOURCES OF INFORMATION (this page)
D.A. FILE, PRELIMINARY TRANSCRIPT, VICTIM'S RELATIVES

NAME	COUNT(S)
MILTON LOUIS ESTELL	ONE AND TWO

INJURY: PROPERTY LOSS (TYPE / COST / ETC.)
DEATH

INSURANCE COVERAGE
UNKNOWN

LOSS: ☒ YES ☐ NO	ESTIMATED LOSS	RESTITUTION ALREADY MADE	APPLIED FOR VICTIM RESTITUTION FUND
	N/A	NONE	☒ UNK ☐ YES ☐ NO

VICTIM STATEMENT:

THE VICTIM, BORN JULY 27, 1924, WAS 59 YEARS OLD, AND AN EMPLOYEE AT THE GAS DEPARTMENT IN THE CITY OF LONG BEACH AT THE TIME OF HIS DEATH. HE HAD TWO CHILDREN, A GIRL NINE, AND SON SIX, WHO WERE PLANNING TO VISIT WITH HIM THAT WEEKEND. THE CORONARY REPORT INDICATES THAT THE VICTIM, PRIOR TO THIS INCIDENT WAS IN GOOD HEALTH. HIS OLDER BROTHER, CLARK ESTELL, STATES THAT THEY WERE VERY CLOSE AND THAT HE FEELS A TRAGIC LOSS. HE BELIEVES THAT TOO MANY PEOPLE SLIDE THROUGH THE SIEVE OF THE LEGAL PROCESS. HE HOPES THAT THE DEATH PENALTY WILL BE EXACTED.

THE VICTIM'S EX-WIFE LEONA COPELAND DECLARES THAT ALTHOUGH HER MARRIAGE TO THE VICTIM WAS A SHORT ONE SHE FEELS A LOSS WITH HIS DEATH. HE WAS "SUCH A WONDERFUL PERSON" AND A "WONDERFUL, WONDERFUL FATHER". SHE TALKED TO HIM A FEW DAYS BEFORE HIS DEATH AND HE HAD "SO MANY PLANS FOR HIS RETIREMENT AND FOR HIS CHILDREN". HE WAS A KIND

CONT'D. P-6

RESTITUTION	TOTAL NUMBER OF VICTIMS	ESTIMATED LOSS TO ALL VICTIMS	VICTIM(S) NOTIFIED OF P&S HEARING ☐ YES ☐ NO

DOES DEFENDANT HAVE INSURANCE TO COVER RESTITUTION: ☐ YES ☐ NO	INSURANCE COMPANY NAME/ADDRESS/TELEPHONE NO.

_____ VICTIM LIST CONTINUES NEXT PAGE

VICTIM CONT'D.:

PERSON AND A HAPPY PERSON WHO CAME FROM A WELL RESPECTED FAMILY. THIS HAS BEEN "LIKE A NIGHTMARE. IT JUST DOESN'T SEEM TRUE."

ATTEMPTS TO REACH JACQUELINE ESTELL, THE VICTIM'S OTHER EX-WIFE, WERE NOT SUCCESSFUL. SHE IS THE MOTHER OF THE VICTIM'S TWO CHILDREN.

PRIOR RECORD:

SOURCES OF INFORMATION (this page)
D.A. FILES, PROBATION RECORDS, AND CII 8-31-84)

AKA'S:
ROBERT JUNIOR LEWIS, ROBERT LEE, ELLIS SPILLMAN, SHERMAN DAVIDSON

JUVENILE HISTORY:

AGE 12 — 11-5-64 - LBPD - PETTY THEFT - PETITION REQUESTED. ON 12-25-64 654 SUPERVISION INITIATED.

(DURING THE SIX MONTHS PERIOD OF SUPERVISION, THE DEFENDANT WAS ARRESTED THREE ADDITIONAL TIMES. THE FIRST ARREST WAS ON DECEMBER 31, 1964 FOR PETTY THEFT. THE SECOND WAS ON FEBRUARY 17, 1965, FOR CAR TAMPERING, AND THE THIRD WAS ON MARCH 24, 1965 FOR PETTY THEFT.)

AGE 12 — 4-12-65 - LBPD - TWO COUNTS PETTY THEFT - PETITION REQUESTED. PETITION SUSTAINED. ON 6-4-65 IN LONG BEACH JUVENILE COURT FORMAL PROBATION GRANTED ORDERED PLACED IN CAMP PROGRAM. 11-8-65 COMMITTED TO THE CALIFORNIA YOUTH AUTHORITY. 4-7-67 PAROLED. 7-5-67 RETURNED PAROLE VIOLATOR. 5-3-68 PAROLED.

(OLD PROBATION RECORDS SHOW THAT THE DEFENDANT WAS ARRESTED FOR SHOPLIFTING AT SEARS WHEN HE ATTEMPTED TO TAKE PARTS FOR A BICYCLE. UPON HIS ARREST POLICE FOUND A STOLEN BICYCLE IN HIS POSSESSION. AS A RESULT OF HIS FAILURE IN CAMP HE WAS COMMITTED TO THE CALIFORNIA YOUTH AUTHORITY.)

AGE 16 — 8-12-68 - LONG BEACH JUVENILE COURT - 211 PC - PETITION SUSTAINED RETURNED TO CALIFORNIA YOUTH AUTHORITY. 9-4-69 PAROLED 10-21-70 RETURNED PAROLE VIOLATOR 2-24-71 PAROLED.

((DURING INTERVIEW IN APRIL 1972, WITH THE PROBATION OFFICER, DEFENDANT EXPLAINED THAT HE WAS SENT BACK TO THE CALIFORNIA YOUTH BECAUSE HE HIT ANOTHER YOUTH WITH A STICK. THE PROBATION OFFICER NOTED THAT THE DEFENDANT'S JUVENILE RECORD SHOWED THAT EVEN BEFORE BEING SENT TO CAMP THE DEFENDANT WAS KNOWN AS EXTREMELY HOSTILE.)

ADULT HISTORY:

10-29-71 — LBPD - RESIDENTIAL BURGLARY. CONVICTED 459 PC SECOND DEGREE MISDEMEANOR SENTENCED TO 47 DAYS IN JAIL.

(OLD PROBATION RE PORT SHOWED THAT THE DEFENDANT ENTERED THE UNLOCKED HOME OF A VICTIM WHERE HE WAS OBSERVED BY THE VICTIM IN HER MASTER BEDROOM. AFTER ARREST THE VICTIM'S WATCH WAS FOUND IN DEFENDANT'S FATHER'S TRUCK.)

PRIOR RECORD CONT'D.:

2-27-72 LBPD - INTOXICATION. ON 2-28-72 SUMMARY PROBATION ONE YEAR.

7-7-72 LBPD - COUNT ONE CARRYING A LOADED FIREARM IN CITY LIMITS; COUNT TWO CARRYING A CONCEALED WEAPON; COUNT THREE INVESTIGATION OF ARMED ROBBERY. ON 10-26-72 CASE NO. A012661 DEPARTMENT SOUTH "D" SENTENCED TO STATE PRISON FOR VIOLATION OF 211 PC WITHIN THE MEANING OF 12022.5 PC (ROBBERY PERSONALLY USING A FIREARM). RELEASED ON PAROLE 11-10-76.

(THE DEFENDANT FORCED THE CLERK IN A STORE TO EMPTY A CASH REGISTER BY THREATENING HIM WITH A SMALL AUTOMATIC WEAPON.)

(THIS IS ONE OF THE PRIORS ALLEGED AND ADMITTED.)

2-25-77 LBPD - 211 PC (ROBBERY WITH A PRIOR) IN WARRANT CASE NO. A017555 FOR 211 PC. CASE NO. A017581 DEPARTMENT SOUTH "G" SENTENCED 6-17-77 TO STATE PRISON FOR VIOLATION 211 PC WITHIN THE MEANING OF 12022.5 PC AND 1203.06 PC (ROBBERY PERSONALLY USING A FIREARM MAKING INELIGIBLE FOR PROBATION). A PRIOR ALSO ADMITTED. ON 9-21-77 DEPARTMENT SOUTH "J" CASE NO. A017551 SENTENCED TO STATE PRISON FOR VIOLATION OF 211 PC WITHIN 12022.5 PC (ROBBERY PERSONALLY USING A FIREARM).

(PROBATION REPORTS COVERING CASE NO. A017581 SHOW THAT ON 2-3-77, THE DEFENDANT ENTERED A LIQUOR STORE DREW AN AUTOMATIC HANDGUN, AND RACKED A SHELL INTO THE CHAMBER, WHILE DEMANDING MONEY. HE THEN WALKED AROUND THE COUNTER PUSHED THE CLERK and took BILLS FROM THE REGISTER. AS HE LEFT THE STORE, A WITNESS ATTEMPTED TO STOP HIM AND THE DEFENDANT'S GUN FIRED. NO ONE WAS HIT.)

(CASE NUMBER A017555 DEFENDANT AND A CO-DEFENDANT ENTERED THE MEN'S STORE WHERE THE DEFENDANT POINTED A REVOLVER AT THE CLERK THREATENIN(TO KILL HIM IF THE CLERK DID NOT COOPERATE. WHEN THE CLERK DID NOT COOPERATE, THE DEFENDANT AND CO-DEFENDANT TOOK CLOTHING FROM THE COUNTER AND LEFT. THE CLERK, TOOK HIS OWN REVOLVER FROM UNDER THE COUNTER, CHASED THE DEFENDANTS, AND FIRED SEVERAL ROUNDS AT THEM. THE DEFENDANT FIRED SHOTS BACK. THEY DID NOT HIT THE CLERK, BUT AN INNOCENT BYSTANDER A DISTANCE AWAY WAS SHOT IN THE EYE AND DIED AS A RESULT. DURING THE PROBATION INTERVIEW IN THAT MATTER, THE DEFENDANT INFORMED THE PROBATION OFFICER THAT COMMITTING ARMED

PRIOR RECORD CONT'D.:

ROBBERIES WAS HIS BUSINESS, AND THAT HE DID NOT MIND SERVING TIME IN PRISON.)

(THESE TWO OFFENSES WERE BOTH PRIORS THAT WERE CHARGED AND ADMITTED.

2-26-82 LONG BEACH PD - 211 PC WITHIN THE MEANING OF 12022.5 PC (ROBBERY PERSONALLY USING A FIREARM). ON 12-7-82 DEPARTMENT SOUTH "D" COURT CASE NO. A024769 DEFENDANT SENTENCED TO STATE PRISON AFTER THE NOLO CONTENDERE PLEA TO TWO COUNTS 211 PC WITHIN THE MEANING OF 12022(A) PC (ROBBERY IN WHICH A PRINCIPAL WAS ARMED) AND ADMITTING THREE PRIORS.

(DISTRICT ATTORNEY'S FILE COVERING THIS MATTER, SHOWS THAT THE DEFENDANT WALKED ON TO A USED CAR LOT, AND THREATENING WITH A GUN, ROBBED TWO PEOPLE.)

PERSONAL HISTORY:

SOURCES OF INFORMATION (this page)
OLD PROBATION REPORTS

SUBSTANCE ABUSE:

_____ No record, indication, or admission of alcohol or controlled substance abuse.

__X__ Occasional social or experimental use of ALCOHOL acknowledged.

_____ See below: Indication / admission of significant substance abuse problem.

Referred to Narcotic Evaluator ☐ Yes ☒ No _____ Narcotic Evaluator's report attached

Additional information

PHYSICAL / MENTAL / EMOTIONAL HEALTH:

_____ No indication or claim of significant physical/mental/emotional health problem.

__X__ See below: Indication / claim of significant physical/mental/emotional health problem.

Additional information

THE DEFENDANT LAST GAVE INFORMATION REGARDING HIMSELF, IN 1977 AT WHICH TIME HE HAD NO HEALTH PROBLEM.

PERSONAL HISTORY:
(CONTINUED)

SOURCES OF INFORMATION (this page)
NO CURRENT INFORMATION

RESIDENCE	TYPE RESIDENCE	LENGTH OF OCCUPANCY	MORTGAGE/RENT	RESIDES WITH/RELATIONSHIP
	UNKNOWN	UNKNOWN	UNKNOWN	UNKNOWN

RESIDENTIAL STABILITY LAST FIVE YEARS	CAME TO STATE / FROM	CAME TO COUNTY / FROM
UNKNOWN	UNKNOWN	UNKNOWN

Additional information

MARRIAGE / PARENTHOOD	MARITAL STATUS	NAME OF SPOUSE / PRESENT COHABITANT
	UNKNOWN	UNKNOWN
LENGTH OF UNION: UNKNOWN	NO. OF CHILDREN THIS UNION: UNKNOWN	SUPPORTED BY
NO. PRIOR MARRIAGES / COHABITATIONS	NO. OF CHILDREN THESE UNIONS	SUPPORTED BY
NO. OF OTHER CHILDREN: UNKNOWN	SUPPORTED BY	

Additional information

FORMAL EDUCATION:
UNKNOWN

76P725B - Prob. 19SC (Rev. 11/83)

PERSONAL HISTORY: (CONTINUED)

SOURCES OF INFORMATION (this page)
D.A. FILE

EMPLOYMENT STATUS	☐ EMPLOYED ☒ UNEMPLOYED	REFERRED TO WORK FURLOUGH ☐ YES ☒ NO	EMPLOYER AWARE OF PRESENT OFFENSE ☐ YES ☐ NO

PRESENT/LAST EMPLOYER / ADDRESS / PHONE	OCCUPATION	PERIOD OF EMPLOYMENT	GROSS MONTHLY WAGE
UNKNOWN			

☐ VERIFIED ☐ UNVERIFIED	EMPLOYMENT STABILITY LAST 5 YEARS	TYPES OF PREVIOUS EMPLOYMENT
	POOR	LABORER

Additional information

ON NOVEMBER 1, 1983, A SELF DESCRIBED GIRLFRIEND OF THE DEFENDANT, STATED SHE HAD KNOWN HIM FOR APPROXIMATELY SEVEN MONTHS AND HAD SPENT A LOT OF TIME WITH HIM. SHE DID NOT KNOW WHERE HE LIVED BUT SAID THAT HE DID NOT WORK BUT THAT HE ALWAYS HAD MONEY.

FINANCIAL STATUS	INCOME STABILITY	NET MONTHLY INCOME
	UNKNOWN	UNKNOWN

PRIMARY INCOME SOURCE	SECONDARY INCOME SOURCE(S)	EST. TOTAL ASSETS	EST. TOTAL LIABILITIES
ILLEGAL ACTIVITIES	UNKNOWN	UNKNOWN	UNKNOWN

MAJOR ASSETS / ESTIMATED VALUE
UNKNOWN

MAJOR LIABILITIES / ESTIMATED AMOUNT (MONTHLY)
UNKNOWN

Additional information

GANG ACTIVITY ☐ YES ☐ NO UNK Name of Gang _____

DEFENDANT'S STATEMENT:

DEFENDANT WAS CALLED TO THE COUNTY JAIL INTERVIEW ROOM WHILE THE PROBATION OFFICER WAS INTERVIEWING ANOTHER DEFENDANT. THE DEFENDANT INTERRUPTED THE PROBATION INTERVIEW IN PROCESS ASKING, "DO I HAVE TO TALK TO YOU?" THE PROBATION OFFICER QUESTIONED HIM BRIEFLY , AND HE SAID HE DID NOT WANT TO TALK ABOUT HIMSELF OR THE CASE.

INTERESTED PARTIES:

DETECTIVE MACLYMAN OF THE LONG BEACH POLICE DEPARTEMNT WAS THE INVESTIGATING OFFICER. HE POINTS OUT THAT THE DEFENDANT HAD THE OLDER MAN AT BAY, TIED AND SUBDUED, BEFORE KILLING HIM. DEFENDANT, AFTER KNIFING THE VICTIM, WANTED TO MAKE SURE HE WAS DEAD, AND SO FIRED THROUGH THE PILLOW INTO THE VICTIM'S BACK.

PAROLE RECORDS SHOW THAT THE DEFENDANT WAS RELEASED FROM STATE PRISON ON JUNE 15, 1983. HE REPORTED ONCE AND THEN ABSCONDED. A WARRANT WAS ISSUED FOR HIM ON JULY 29, 1983. ON JANUARY 3, 1984, HE WAS GIVEN THE 12 MONTHS MAXIMUM VIOLATION SENTENCE AVAILABLE.

EVALUATION:

THIS DEFENDANT'S RECORDS OF THE PAST, SHOW, THAT THIS HOSTILE VIOLENT MAN HAS BEEN EITHER INCARCERATED, OR ON PAROLE, MOST OF HIS ADULT LIFE AND, THAT EVEN BEFORE, HE REACHED ADULTHOOD, HE WAS SUCH A SEVERE PROBLEM IN THE COMMUNITY, THAT YOUTH AUTHORITY CONFINEMNT WAS REPEATEDLY NEEDED. RECORDS INDICATE, THAT ONCE BEFORE, HE WAS RESPONSIBLE, FOR THE DEATH OF ANOTHER HUMAN BEING. THE victim, WAS

NOT THE DEFENDANT'S ENEMY BUT RATHER A CITIZEN EAGER TO SELL A CAR. THE VICTIM'S CHILDREN suffered the greatest loss of all. PURSUAL OF THE RECORDS, HAS NOT REVEALED ANY MITIGATING CIRCUMSTANCES OR ANY REASON FOR HOPE THAT THE DEFENDANT WOULD EVER CHANGE.

RECOMMENDATION:

IT IS RECOMMENDED THAT PROBATION BE DENIED.

RESPECTFULLY SUBMITTED,

BARRY NIDORF,
PROBATION OFFICER

BY Leslie Erickson
LESLIE ERICKSON, DEPUTY
LONG BEACH AREA OFFICE
432-0411 X491

READ AND APPROVED:

ALVIN COBB, SDPO

(SUBMITTED 9-13-84
TYPED 9-17-84)
LE:WLK (7)

I HAVE READ AND CONSIDERED THE FOREGOING REPORT OF THE PROBATION OFFICER.

JUDGE OF THE SUPERIOR COURT

EXHIBIT C

MATE/PAROLEE APPEAL FORM

You may appeal any policy, action or decision which adversely affects your welfare or status. Whenever possible, you must first seek relief informally through discussion with staff. When you have exhausted all channels without relief, you may file a formal appeal on this form. You have 10 days from the date of the original action in which to file an appeal—the filing of a formal appeal may not stop or delay a staff decision.

Send one copy to the Institutional/Regional Appeals Officer. The form may be mailed loose or sealed.

No reprisals may be taken for the use of the appeal procedure.

LOG NUMBER	CATEGORY
79/561	Classification

ME	NUMBER	INSTITUTION/PAROLE REGION	UNIT/ROOM NUMBER
Robert Lewis Jr.	B-45344	Folsom	#" Bldg.

OBLEM (DESCRIBE BRIEFLY. IF YOU ARE APPEALING MORE THAN ONE MATTER, USE A SEPARATE FORM FOR EACH.)

Computation of time is excessive by the period of eight months of the time allowed by law.

CTION REQUESTED

Recomutation of sentence and reduction by eight (8) months from time to be served.

TAFF MEMBER(S) WHO TOOK ACTION

attempted to resolve this nformally wi th:	NAME	TITLE	DATE
SIGNATURE Robert Lewis Jr.		DATE July 28, 1979	

At first and second review levels, you should act within 10 days if dissatisfied. If you take no action within this time, it may be assumed that you have dropped the issue. A delay in filing could prevent an accurate finding of fact.

FIRST LEVEL REVIEWER'S ACTION (Complete within 10 working days)	DATE RECEIVED	DATE DUE
1st. Next copy	7-30-79	8-14-79

Interviewed inmate on 8-6-79 and explained the additional 8 months was given him because the Use of Firearm was proved in both robberies, making them both violent sentences, and the sentence is enhanced by one-third of the Use of Firearm as well as one-third of the base term.

SIGNATURE	TITLE	DATE
Mary A. Deal	Correctional Case Records Manager	8-6-79

If you are dissatisfied, explain the reasons in the space provided on the back of this form, attach supporting documents (CDC 115, Investigator's Report, Classification Chrono, CDC 128-A, etc.), and submit to next level of review.

(over)

DEPARTMENT OF CORRECTIONS
INMATE/PAROLEE APPEAL FORM

You may appeal any policy, action or decision which adversely affects your welfare or status. Whenever possible, you must first seek relief informally through discussion with staff. When you have exhausted all channels without relief, you may file a formal appeal on this form. You have 10 days from the date of the original action in which to file an appeal—the filing of a formal appeal may not stop or delay a staff decision.

Send one copy to the Institutional/Regional Appeals Officer. The form may be mailed loose or sealed.

No reprisals may be taken for the use of the appeal procedure.

LOG NUMBER	CATEGORY
1275	Prop

NAME	NUMBER	INSTITUTION/PAROLE REGION	UNIT/ROOM NUMBER
Robert Lewis	B-45344	Folsom	SHU-125

PROBLEM (DESCRIBE BRIEFLY. IF YOU ARE APPEALING MORE THAN ONE MATTER, USE A SEPARATE FORM FOR EACH.)

I have tried on several occasions to obtain all my personal property (8-TRACK TAPE'S) from inmate Johnson, Cell 1207 Bldg #2. he has also been trying to Return my property to me since he has just listening to them when I was Removed from general population to the security housing unit.

ACTION REQUESTED

CONT. PAGE #2

STAFF MEMBER(S) WHO TOOK ACTION

I attempted to resolve this formally with:	NAME	TITLE	DATE
	SGT. KUYKENDALL	SHU - SGT.	3-18-80
SIGNATURE		DATE	
		March 25, 1980	

At first and second review levels, you should act within 10 days if dissatisfied. If you take no action within this time, it may be assumed that you have dropped the issue. A delay in filing could prevent an accurate finding of fact.

FIRST LEVEL REVIEWER'S ACTION (Complete within ~~10~~ working days)	DATE RECEIVED	DATE DUE
	3-27-80	4-11-80

LEWIS has been advised on several occasions that it would be necessary for him to produce documentary proof that the tapes in question actually were owned by him.

SIGNATURE	TITLE	DATE
C. E. KUYKENDALL	Sergeant (Acting Lieutenant)	2 April 1980

If you are dissatisfied, explain the reasons in the space provided on the back of this form, attach supporting documents (CDC 115, Investigator's Report, Classification Chrono, CDC 128-A, etc.), and submit to next level of review.

(over)

State of California

Memorandum

Date : April 28, 1980

To : LEWIS, Robert
B-45344

From : Folsom State Prison, Represa 95671

Subject: Folsom Appeal 1225

APPEAL: You have tried to obtain your 8-track tapes from inmate Johnson in No. 2 Building and he has also tried to return them to you. You were told that tapes from GP are not allowed to come into SHU for inmates use, so why can't they be collected and placed in your property? First Level Reviewer states you have been asked to produce documentary evidence that the tapes belong to you. You state that DR 3003-B was violated by Sgt. Kuykendall handling first level appeal on an action he participated in (you are correct and this should not have been done). You state the tapes arrived with you from SQ and were not registered on your property card because they are considered expendable.

INVESTIGATION: R&R staff inform me that 8-track tapes are considered expendable and are not listed on property cards. DR 3192 re possession and exchange of personal property states that property may not be loaned or given away except at the time of release to parole or discharge, except as authorized by the Warden.

DECISION: Denied. Because tapes are not listed on property cards, I cannot prove that they belong to you. Even if they do, you were not authorized to loan them. I support SHU staff's decision not to let the tapes come into the unit.

H. MORPHIS
Associate Warden-Administration

I concur with this action:

P. J. MORRIS, Warden

HM:ef
cc: C-File; Appeals File;
Lt. Wham

ASSOCIATE WARDEN'S OFFICE
CLASSIFICATION AND TREATMENT

APR 08 1980

FOLSOM STATE PRISON

April 5, 1980

Mr. Coomba.
Classification & Parole Rep.,

You approved my CRB 1040 appeal concerning the People vs Harvey decision on 3/20/80. Will I receive a tentative copy of a CDC-678 showing the deletion of the enhancement?

Also, since I was removed from the serious offender screening once before, does this prior action disqualify me from the extended term hearings?

I will appreciate any information concerning the above mentioned points.

Respectfully
Robert Lewis

ROBERT LEWIS, B-45344
SHU - 125

...rtment of Corrections — 5 - RED

INMATE/PAROLEE APPEAL FORM

Any policy, regulation, action or decision which adversely affects your welfare may be appealed. Where possible, seek relief informally through discussion with staff. If dissatisfied, you may then file this formal appeal. You have 15 days from the date of the original action in which to file. The filling of this appeal may not stop or delay a staff decision. To file, fill out, sign and date this CDC 602 Form, attach all supporting documents (completed CDC 115, investigator's report, classification chrono, CDC 128-A, Board of Control claim, etc.) and mail loose or sealed to the Institution/Region Appeals Officer.

No reprisals may be taken for the use of the appeal procedure

LOG NUMBER	CATEGORY
1538	Case Records

NAME	NUMBER	INSTITUTION/PAROLE REGION	UNIT/ROOM NUMBER
LEWIS	B 45344	FOLSOM	SHU #125

PROBLEM (DESCRIBE BRIEFLY. IF YOU ARE APPEALING MORE THAN ONE MATTER, USE A SEPARATE FORM FOR EACH.)

I was not convicted of a felony described in Penal Code Section 667.5 subd. (c) and therefore my total maximum prison term connot exceed eight years (twice my three year base term plus two years for gun use (12022.5)) this pursuant to the statutory limitations of Penal Code Section 1170.1 subd. (f). On March 17, 1980 I filed a C.R.B. 1040 administrative appeal (#F80/92) on this eight year P.C. Section 1170.1 (f) issue. This appeal was granted on March 20, 1980.

ACTION REQUESTED

That my present nine year maximum prison term be reduced to eight years in compliance with the above stated facts.

STAFF MEMBER(S) WHO TOOK ACTION

Folsom Records Office Board of Prison Terms

I attempted to resolve this informally with.	NAME	TITLE	DATE
	Allen	CC-I.	6-3-80
SIGNATURE	Robert Lewis Jr.	DATE	June 3, 1980

At each level of review, you should act within 15 days if dissatisfied. If you take no action within this time, it may be assumed that you have dropped the issue. A delay in filing could prevent an accurate finding of fact.

FIRST LEVEL REVIEWER'S ACTION (complete within 10 working days)	DATE RECEIVED	DATE DUE
M. Neal	6-6-80.	6-23-80.

INTERVIEWED BY: _____ DATE: _____

Board of Prison Terms 2154(4)(c) specifically states, "If the current commitment is a violent felony (Robb W/Use of Firearm) and the prior prison term is violent Robb W/Use Case #A-012661, "a 3 year enhancement must be added to the base term for each prior separate prison term", under 667.5 PC There is no limitation on time assessment. The prior felony was pled and proved in Court. The appeal that was granted 3/20/80 dealt with the provisions In re Harvey. The total term at that time was reduced by 8 months.

SIGNATURE	TITLE	DATE
[illegible]	Case Records Specialist	6/11/80

If you are dissatisfied, explain the reasons in the space provided on the back of this form, attach supporting documents and submit to the next level of review

EXHIBIT D

LEWIS B-45344

PSYCHIATRIC EVALUATION
SAN QUENTIN PRISON

The subject of this evaluation, Robert Lewis, is a 32-year old Black male inmate received at San Quentin November 7, 1984 from Los Angeles Superior Court as Condemned, and as a parole violator with a new term. He was found guilty by jury trial of Murder 1st with Special Circumstances and he shows three prior California Department of Corrections commitments of December 1972, September 1977, and February 1983. This psychiatric evaluation is based on an examination of the central file, psychiatric file, medical file, and several psychiatric interviews.

Lewis is the second of four children born to his natural parents who separated when he was approximately three years of age. This man was born May 31, 1952 in Long Beach, California, where he spent his early developmental years. There is question as to the circumstances which would have provided a good basis for close, personal, long lasting, meaningful, positive relationships with peers or with adults. Evidently during the early developmental years Lewis' academic progress was uneventful and there is no indication that he had particular problems although as his childhood progressed, there is some indication that his academic function was below average. His home life was somewhat chaotic, and there appeared to be no consistent discipline function. Earlier reports seem to indicate that this man was beyond the control of his mother or other family members, and it appears to be that he did as he pleased from approximately 10 years of age. He was first investigated on delinquency when he was 12 years of age, and when he was 13 he was committed after an investigation on burglary to County Camp. In 1965 he escaped from Nelles Boys School. In August 1968 he was investigated on parole violation and was received at the California Youth Authority in Norwalk. He was placed in Boys Camp on two occasions which involved one escape and a record for fighting and disrespect. In 1968 he was investigated on robbery and in 1970 he transferred to DVI with a placement in the Adjustment Center for an attitude of violence. He was paroled in February 1971 and in May 1971 was arrested for grand theft auto and of armed robbery with subsequent dismissal of charges. Subsequently this man was investigated for carrying a firearm, armed robbery, shoplifting. Concerning the commitment offense, the record shows that the Subject approached the victim because of interest in buying an automobile. Subsequently the Subject bound and stabbed and shot the victim and thereafter took the victim's car and other possessions. The court found the Subject guilty of Murder 1st with Special Circumstances and established the Death penalty to include the finding that the murder was committed while engaged in the commission of a robbery. The victim was 59 years of age and on November 2, 1983 it was determined that the cause of death was multiple stab wounds to the chest while the victim was trying to sell a car.

Mental Status Examination. During interviews this man was capable of contributing information and he was cooperative. There was no evidence of serious psychiatric disturbance, and there was no indication of thought disorder or serious depression. He was alert and active,

and aware of his circumstances. His intellectual capacity is somewhat below the average range. His ability to form conclusions and his cognitive function in general was unimpaired. There were no features of his mental or emotional condition which would indicate a distortion of reality, or a tendency toward severe depression.

DIAGNOSIS: Antisocial personality disorder, 301.70.

CONCLUSIONS: This diagnosis is related to the commitment offense in the sense that this man should no responsible regard for the reasonable rights of other people. Over a significantly long period of time he demonstrated a pattern of behavior which showed a disregard for other people's feelings and attitudes. There is no mental disease or defect which would condition this man's capacity to draw conclusions. There is no condition at present which would respond to special diagnostic or treatment procedures. There is no illness or defect which would impair his ability to comprehend the nature of the death sentence. His violence potential at present is approximately that of the average for San Quentin's Condemned area.

John Geiger MD

JOHN GEIGER, M.D.
STAFF PSYCHIATRIST

EXHIBIT E

ADULT AUTHORITY REPORT

MEDICAL REPORT: Medical Dept. CDC-128-C, dated 7-75, reflects:
HEIGHT: 71" WEIGHT: 165 lbs. AGE: 23 years
Number of sick calls: moderate.
Hospitalizations: none.
Physical condition: good.
Work restrictions: none.
Defects noted: none.

INSTITUTIONAL ACTIVITIES:

CLASSIFICATION: BE61A Score: 50, high, dated 2-73.
Current Custody: Medium A.
Housing: general population. 'B' Unit.

TRANSFERS: Lewis was received at San Quentin on 1-31-73 from RGC-DVI where he was received on 12-11-72. He was committed to the Department of Corrections on 12-5-72 at RGC-CIM.

ACADEMIC INSTRUCTIONS: GPL 4.0 at RGC on 12-18-72. I.Q. revised Beta 80, low range. Lewis is presently enrolled in school at the literacy level where he has maintained a 'C' average.

VOCATIONAL INSTRUCTIONS: Lewis has no employable skills. He claims to have skills as a brick mason. This is not verified in Central File.

WORK: Subject's last work assignment appears to have been in 1974 as an Institution Block Runner. No other work reports available.

RELIGION: Protestant. Claims he does not attend regularly.

CUSTODIAL EVALUATION:

GROUP PARTICIPATION: No participation noted.

SOCIAL:

VISITORS & CORRESPONDENTS: Lewis claims that he corresponds and receives correspondence weekly but receives visits approximately every 4 months from the following people: Mrs. Maggie Lewis, mother, Long Beach, California. Robert Lewis, father, Compton, California. Mrs. Gladys Spearman, sister, Long Beach, California. Mrs. Rose Davis, sister, Long Beach, California. Sherman Davis, brother-in-law, Long Beach, California.

EXHIBIT F

CLINIC EDUCATIONAL REPORT

BIRTH DATE: 5-9-54
LAST SCHOOL ATTENDED: Franklin High School
(Include Address): Long Beach, California
GRADE LEVEL ENROLLED: 10th term 1967 DATE OF ENTRANCE:
DATE TRANSCRIPT REQUESTED: 8-29-68 TRANSCRIPT RECEIVED: ☐ Yes ☐ No

CURRENT TEST DATA

CTMM SHORT FORM (IQ) NA LEVEL: DATE GIVEN:
Non-Lang Factors: Total Mental Factors:
Language Factors: Intel Grade Placement:

SRA IQ TEST DATE GIVEN: 9-3-68
L-Score: 68 Q-Score: 61 Verbal Total: 67 Non-Verbal: 99

REVISED BETA EXAMINATION (Performance): Beta IQ: 83 DATE GIVEN: 8-68

CALIF. ACHIEVEMENT TEST NA LEVEL: FORM: DATE GIVEN:
RV: RC: Total Read:
AR: AF: Total Arith: Grade
Lang: Spell: Total Lang: Placement:

WIDE RANGE ACHIEVEMENT TEST DATE GIVEN: 8-68
Read Grade: Spell Gr: 2.6 Arith Gr: 3.9

GATES READING SURVEY E, Form 1 DATE GIVEN: 8-68
Vocabulary: Reading Vocabulary 5.3 Level of Comprehension: 3.9

COMMENTS (Include other test data):

This [illegible] to be a non-reading, unbookish boy whose cultural set is so diverse from the major cultural patterns that he can not be adequately tested. His scores as limited are meaningless for subject is not academic or vocationally oriented. He may be able to function as a dull normal, but that surmise is a projection based on his [illegible] verbal S.C.A. scores. He can learn and may profit from a reading program based on his needs. He may profit from a counseling program which should be coordinated with his academic needs.

[illegible]

jw

EXHIBIT G

Kaushal K. Sharma, M. D.

FORENSIC PSYCHIATRY

DIPLOMATE, AMERICAN BOARD OF PSYCHIATRY & NEUROLOGY

DIPLOMATE, AMERICAN BOARD OF FORENSIC PSYCHIATRY

MAILING ADDRESS:
P.O. BOX 6275
HUNTINGTON BEACH, CA 92615

July 25, 1984

Mr. Ron Slick
Attorney at Law
2158 Pacific Avenue
Long Beach, CA 90806

Re: ROBERT LEWIS, Jr.
Case No. A027897

Dear Mr. Slick:

Pursuant to our telephone conversation and your letter, dated May 8, 1984, I examined the defendant on May 21, 1984 and June 6, 1984 for a total period of approximately four hours. The defendant was informed about the confidential nature of the examination. In addition to my interview with the defendant, I also reviewed and considered the Murder Book, which included the crime report, the autopsy report, arrest report, etc., the transcript of the preliminary hearing, the probation officer's reports, dated September 21, 1977, June 17, 1977, and December 7, 1982. I was also provided with numerous documents dealing with the defendant's prison record.

The psychiatric issues are the defendant's present and past mental state.

OPINIONS

(1) The defendant is presently mentally competent to stand trial.

(2) The defendant was legally sane and had the capacity to form the requisite mental state required for the alleged charge.

(3) The defendant is presently not suffering from a mental disorder and was not suffering from such a mental disorder at the time of the alleged crime. He is an individual who suffers from Antisocial Personality disorder, and he committed the alleged crime for antisocial purposes. His capacity to appreciate the criminality of his conduct or to conform his conduct to the requirement of the law (§190.3 P.C.) was not impaired. There is no indication that the defendant was significantly intoxicated or was under emotional or mental disturbance which will act as mitigating circumstances for the alleged crime.

DATA AND REASONING

Mr. Lewis is a 32-year-old Black male who is charged with murder and there is also an allegation that the murder was committed in the process of robbery and grand theft auto, and this allegation causes the defendant's charge to be a capital offense. The defendant has a long history of antisocial criminal behavior, and has been previously confined to prisons. He has served time at Tracy, San Quintin, and Folsom State Prisons on two occasions each. His rap sheet indicates that the defendant started to commit antisocial activities at a very early age. He was repeatedly detained at Juvenile Hall for property crimes and assaults. As an adult, his rap sheet includes many entries of series crimes, including felonies of assaults and burglaries, etc.

The defendant was born in Long Beach and grew up in that area. He has no family or personal history of psychiatric contact. He was evaluated by psychiatrists when he was confined to the Youth Authority, however, he was not provided with any treatment per se. The defendant has a seventh grade education only because of his repeated detainment in Juvenile Hall. He was released in June of 1983 from Fulsome State Prison and was arrested for the instant crime a few months later. The defendant denies involvement in the instant crime, in spite of the overwhelming physical evidence to the contrary.

The defendant stated that around the time of the alleged crime, in August of 1983, he was living in a motel in the Lynwood area and he was in need of a car. He stated that he bought the car from the victim for two thousand dollars and paid him in cash. He was given a pink slip by the victim. The defendant denies having anything to do with taking the money belonging to the victim, being inside the victim's residence or committing the alleged crime of murder.

During the interview, the defendant presents himself as a charming, manipulative young man who was willing to make any statement as long as it suit his needs. A major portion of the time during both interviews was spent with the defendant complaining about the weak evidence the State had against him and his opinion that his attorney was not doing enough for him to get him out of jail. Even when evidence like the defendant's fingerprints, handwriting, etc., was brought to his attention, the defendant dismissed them as erroneous. He did not engage in any bizarre behavior during the interview. His speech was goal-directed, coherent and logical.

No evidence of psychosis, organic brain disorder, depression, or any other major disorder was noted during the examinations. The defendant in the past has been given a diagnosis of Anti-social Personality Disorder starting at an early age. I agree with that diagnosis.

The defendant has been involved in numerous crimes but was also making a living as a pimp and selling drugs. Because of his denial of the alleged crime, it is a difficult task to assess the defendant's mental state in relationship to the actual crime. However his history is clearly indicative of the fact that the defendant has not been mentally ill, other than the personality disorder described above. That personality disorder does not impair a persons ability to cognitively know and understand the nature and quality of their act, or distinguish right from wrong.

The defendant denies being intoxicated to any significant degree on the day of the alleged crime. Therefore, my overall opinion is that no reasonable psychiatric-legal defense is available for Mr. Lewis. Such ability to presently describe the situation in a meaningful manner (even though he maintains a different set of facts), indicates that he is able to rationally cooperate with counsel if he wishes to do so, and he is certainly aware of the nature and purpose of the proceedings. Therefore, he is mentally competent to stand trial.

In the absence of any significant mental illness or other emotional or mental disturbance, I have nothing to suggest any mitigating circumstances for the defendant. In fact, the defendant's long prison record, antisocial behavior at an early age, lack of mental illness, lack of duress, and lack of intoxication, may suggest that no such mitigating factors exists in this case.

Thank you for the opportunity to examine this individual. My opinions were conveyed to you over the phone and, therefore, this report is intended to reflect only a summary of my findings. If you have any questions or need clarification, please do not hesitate to contact me.

Very truly yours,

Kaushal Sharma, M.D.
Assistant Professor of
Clinical Psychiatry
USC-School of Medicine

KS:d

EXHIBIT H

[redacted]458 FOR IDENTIFICATION ONLY

DATE 8/9/84

TYPE OF HEARING MOTION TO SUPPRESS STATEMENTS

CASE NO. A027897

People EXH. NO. 1

ADVISEMENT AND WAIVER OF LEGAL RIGHTS

I SHERMAN DAVIDSON HAVE BEEN ADVISED OF MY RIGHTS BY OFFICER(S) R. PAUCK AND W. MACLYMAN AS FOLLOWS:

1. I have the right to remain silent.
2. Anything I say can and will be used against me in a court of law.
3. I have the right to talk to a lawyer and have him present with me while I am being questioned.
4. If I cannot afford to hire a lawyer, one will be appointed to represent me before any questioning, if I wish one. YES S.D.
5. I understand each of these rights explained to me. YES S.D.
6. Having these rights in mind, I wish to discuss the charges against me. YES S.D.

I UNDERSTAND MY RIGHTS AS LISTED ABOVE, AND WISH TO WAIVE THESE RIGHTS AND DISCUSS THE MATTER WITH OFFICER(S) PAUCK & MACLYMAN AND ---. ANY STATEMENTS I MAKE AT THIS TIME ARE FREE AND VOLUNTARY, WITH NO PROMISE OF LENIENCY OR REWARD.

SIGNED: Sherman Davidson

WITNESS: W.C. MacLyman R Pauck

INVEST OFFICERS R. PAUCK & W. MACLYMAN

DATE: 11-1-83 TIME: 2130 HRS

EXHIBIT I

SUPREME COURT OF THE STATE OF CALIFORNIA

In re Robert Lewis, Jr. on Habeas Corpus.	No. DECLARATION OF TERRY KUPERS, M.D. IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

I, Terry A. Kupers, declare:

1. I am a board certified psychiatrist currently engaged in the private practice of psychiatry. I received a M.D. from U.C.L.A. School of Medicine in 1968 and a Masters Degree in social psychiatry from U.C.L.A. Neuropsychiatric Institute in 1974. I have been an Assistant Professor in the Department of Psychiatry and Human Behavior at the Charles Drew Postgraduate Medical School from 1974 to 1977. I am presently a Professor in the Graduate School of Psychology of the Wright Institute in Berkeley. I am a fellow of the American Psychiatric Association. A more complete listing of my background and qualifications may be found in my curriculum vitae which is attached hereto as Exhibit A.

2. Since 1977 I have toured numerous penal institutions as a consultant for the United States Department of Justice and as an expert witness on conditions and mental health services. I am familiar with the conditions in California penal institutions and the programs and psychiatric services they offer from having toured these facilities, interviewed inmates incarcerated therein and reviewed various documents concerning the level of services provided. I have testified as an expert witness about these

conditions and their effects on prisoners in two recent cases which have held the conditions to be unconstitutional. (See Toussaint v. McCarthy (N.D. Cal. 1984) 597 F. Supp. 1388; Wilson v. Deukmejian (Marin Co. Sup. Ct. No. 103454).)

3. In my years of practice in community mental health clinics and in my private practice I have treated numerous clients who have been incarcerated in penal facilities. From my examination of these people and my familiarity with penal institutions I have been able to form opinions on the general effects that incarceration can have on an individual coming from a socio-economically disadvantaged background who is imprisoned for lengthy periods. Because of their length of incarceration and the absence of adequate vocational or educational training these people tend to have a relatively low level of education and little opportunity for meaningful employment after their release. When deprived of adequate space and meaningful activities, which is common in California institutions, these prisoners are prone to psychiatric disturbance and poor adjustment after release on parole. In short, the conditions of their incarceration often do little to mitigate anti-social tendencies and often can aggravate the problem.

4. At the request of counsel for petitioner I interviewed Robert Lewis, Jr. on May 16, 1986 at San Quentin. The interview lasted for two hours. In addition to the interview I reviewed various documents concerning Mr. Lewis including his prison psychiatric and medical file, other prison records contained in his central file, the psychiatric report of Dr. Kaushal Sharma dated July 25, 1984,

the penalty phase evidence admitted at trial, the probation report and the closing argument by the prosecutor at the guilt phase.

5. Robert Lewis is the second oldest of four siblings, having an older sister and a younger brother and sister. His father was absent when he was young, being in a state prison at the time. He remembers visiting his father in prison when he was four or five. His mother, raising the children by herself, was on welfare, and he remembers her being very depressed, and the family poor. He did not want to be a financial burden on her, so he began at an early age to steal what he needed, and to rely entirely on himself. Meanwhile, he took care of his siblings as best he could, and tried to be "the man of the house," though he felt very frustrated in his attempts to replace an absent father, and to take care of and cheer up his mother. She, meanwhile, was very dependent on him, and seems to have been engulfing. He remembers escaping from her whenever he was able to do so.

6. His mother died of leukemia when he was 24. It appears that the mother's illness prevented her from maintaining any effective discipline over Robert. The lack of discipline was exacerbated by the absence of an adult male who could provide discipline and a healthy role model. Nor did school provide a suitable disciplinary structure since Robert's behavior patterns were by then such that he did not have the discipline to participate constructively.

7. His mother's condition had two probable effects. First, it caused him much grief and sadness and may have caused him to feel

somehow responsible for her condition. Second, when he acted improperly her inability to maintain discipline did not provide a sufficiently fixed moral and ethical structure for Robert to learn from. Then, the guilt he felt at causing her displeasure was compounded by the guilt resulting from her condition. The natural result of these feelings was frustration and anger. This in turn led to disruptive behavior that as he grew older became more serious and criminal.

8. Because of the problems in his family situation Robert moved out of his home at an early age. He was married and had a child by the age of 17. Robert still maintains a relationship with his wife, although both continue to see other people. Despite his continual incarceration Robert has managed to maintain a long-term relationship with two other women. To this day he feels welcome to communicate with his wife and her family, and with the other main women in his life. When he is free Robert often spends time with these people.

9. In view of Robert's lengthy periods of incarceration his ability to maintain such strong and lasting relationships is impressive. He has two close friends from childhood whom he sees when he is back in the community. He feels "at home" with each of his three longterm woman partners (including his wife) and their families. He gives to each of his partners' parents the kind of respect he had for his mother. In short, he has an "extended family" that he honors and feels a part of.

10. From the beginning, Robert's life in institutions has been

counter-productive and destructive. In fact, the conditions in the institutions have been to some extent responsible for the increasing seriousness of the crimes Robert has been convicted of. The classic pattern emerged early when Robert at age 12 was incarcerated in the Youth Authority with older boys who taught and encouraged him to commit successively more serious crimes. This led, for example, from purse snatching and shoplifting to robberies. Later, more serious criminals encouraged Robert to use a gun. Because of his yearning for a strong father figure he was particularly susceptible to the influence of older inmates.

11. At the same time the institutions did not provide any meaningful education or rehabilitation opportunities. He was illiterate when first incarcerated and essentially remains so to this day. He explains that when there were educational programs available at an institution where he was incarcerated he was for some reason always ineligible to participate. Symptomatic of the lack of any meaningful educational or rehabilitative programs during his life in institutions is the fact that he cannot name one teacher or counselor who has made a deep and lasting impression on him. He claims that his current attorney is the only person he has met while incarcerated who sincerely seems to care about him.

12. During the years of his incarceration Robert witnessed many of the horrors of prison life--violence, rape, extreme deprivation, etc. All of these factors subjected Robert to the stress and negative effects of prison life at an early impressionable age. This influence when combined with the deprivation of a parental

role model and rehabilitative programs probably contributed to his future anti-social behavior.

13. In spite of the deprivations suffered by Robert in his home and in various penal institutions he still maintains a certain dignity; he still feels responsibility for taking care of family members, and talks lovingly of a mother towards whom he always felt and showed deep respect.

14. While there are no simple causal formulas to apply in this context, there is a significant psychiatric component to Mr. Lewis' life which was never explained during the penalty phase. Had I been requested to do so I would and could testify that Robert's childhood deprivations, both material and emotional, and the lack of educational and rehabilitative programs during incarceration from an early age, as well as the negative influences of institutional life had a material effect on Robert's personality and behavior.

I declare under penalty of perjury the foregoing to be true and correct and that this declaration was executed on July 1, 1987 at Oakland, California.

Terry Kupers

TERRY KUPERS, M.D.

EXHIBIT J

FILED

NOV 0 1984

JOHN J. COSGRAVE, Acting CO. CLERK

BY _____ DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs

ROBERT LEWIS, JR., Defendant.

CASE NUMBER: A 027897

WHEN USED FOR JUVENILE CASES	JAI NUMBER	DATE PETITION FILED

DECLARATION AND ORDER RE FEES FOR ALL SUPERIOR COURT APPOINTMENTS (EXCEPT 987.9 P.C.)

DECLARANT: (1) Complete Section A of this form. (2) Complete and attach the "Detail of Services and Expenses Attachment" form. (3) See instructions on back of this form for assistance.

☐ Check here if you are a first-time claimant or have not made a claim in more than one year.

If you are a continuing claimant and have had a change in status in the last 12 months, check the appropriate box(es) and indicate the new information in items 4 and 5 below.

☐ Name change (former name _____)

☐ Address change ☐ Change from Tax ID No. to Soc. Sec. No. ☐ Change from Soc. Sec. No. to Tax ID No.

SECTION A

Social Security Number OR Tax I.D. Number	Appointed By, Judge	Date Appointed
051-34-2142	JOHN A. ARGUELLES	12-29-83

Payee's Name (Last, First, M I) OR Firm Name	Appt. Dept. No.	Services Rendered on Behalf of (Name):
SLICK RON	SO J	ROBERT LEWIS

Street Address	Pursuant To: Section	Code
2158 Pacific Avenue	987.2	PENAL

City	State	Zip Code	Section	Code
Long Beach	CA	90806		

Date Service Performed From	Date Service Performed To	Before Judge	In Dept. No.	Appointment on Case (Check One):
12-29-83	11-1-84	ELSWORTH BEAM	SO G	☒ Completed ☐ Partially Completed

SUMMARIZE YOUR CLAIM AS FOLLOWS	Time Spent (Hours)	Amt. Requested
Appearances	190	$
Preparation	42	$
Expenses		$
TOTAL	232 hrs Hours	$ Amt.

Type of Service (check one)
- ☒ Attorney
- ☐ Investigator
- ☐ Arbitrator
- ☐ Doctor
- ☐ Expert Witness
- ☐ Other (List) _____

I declare under penalty of perjury, pursuant to Sections 2015.5 C.C.P. and 911.2 G.C. of the State of California, that I have not previously claimed, nor have I been reimbursed for, service(s) as claimed on this Declaration; that the information contained herein and attached is true and correct; and that the claim is presented within one year after the last item of service.

Date 11-1-84 Signature (Declarant) RON SLICK

For Investigator's Claims Only:

I declare under penalty of perjury, pursuant to Section 2015.5 of the Code of Civil Procedure, that all of the services claimed on this Declaration were requested by me and, to the best of my knowledge, were performed, requiring the time and/or financial expenditure indicated.

Date _____ Signature of Defendant's Attorney (Or Defendant, In Pro Per) _____

SECTION B

CLERK: COMPLETE SECTION "B" ONLY

The court clerk having verified that no previous payment has been authorized for this service, the court now orders payment in the following amount:

Amount	Date Authorized
1750.00	Nov 7, 1984

Judge's Authorization Signature _____ Dept. No. SO G District Code SO

Pay Code Letter: A

Serial Number: A1- 49374

Supervising Judge's authorization (required on all awards representing cumulative payments for any attorney in excess of $5,000.00 within the Superior Court) or Juvenile Presiding Judge's authorization (for cumulative payments in excess of $2,500.00 within the Juvenile Court.)

Signature _____ Juvenile Presiding Judge/ Supervising Judge

FOR ALL SUPERIOR COURT CLAIMS FOR PAYMENT FOR SERVICE (EXCEPT 987.9 P.C.)

Court clerk review for completeness attachments, and previous payments (Initials) _____ Pace review (Initials) _____

DISTRIBUTION: White Original to PACE Co. Clerk Stat. Unit, 111 No. Hill, Rm. 105-C, L.A., Pink second copy to Files; Yellow third copy to Register of Actions; Blue fourth copy to Declarant.

76D738 - A219 (Rev. 7-83)

CASE NUMBER	WHEN USED FOR JUVENILE CASES	JAI NUMBER	DATE PETITION FILED
A 027897			

DETAIL OF SERVICES AND EXPENSES ATTACHMENT
(DECLARATION AND ORDER RE FEES FOR ALL SUPERIOR COURT APPOINTMENTS)

SECTION A

ADDENDUM TO 317/700 and 987.2 DECLARATION: With respect to the attached Declaration and Order re Attorney's Fees pursuant to Sections 317/700 W.I.C. and 987.2 P.C., declarant further states that the hours listed by declarant have not been claimed on any other case; nor have they been spent by declarant on any other case whether an appointed case or a private case; and with respect to the hours listed on this attachment the declarant has had no other cases in those courts on the dates listed, except as follows (for each case, list name, case number, date and court; include all cases whether by appointment or private):

SECTION B

The following provides additional space for the Declaration's "Services Performed" box and an area for a detailed description of the declarant's services and expenses when required by the Court.

APPEARANCES: The declarant made the following appearances: (If case is trailing, specify amount of time actually spent waiting in Court in hours, rounding to the nearest half-hour.)

DATE	DEPARTMENT	REASON	TIME SPENT
		REF EXHIBIT "A"	

SECTION "B" Subtotal = 42 hrs.

SECTION C

PREPARATION: The following was spent in preparation, reading transcripts, interviewing witnesses, legal research, interviewing clients, etc..

DATE	SPECIFY	TIME SPENT
	REF EXHIBIT "B"	

SECTION "C" Subtotal = 190 hrs.

SECTION D

EXPENSES: The following money was expended for necessary expenses: (Copies of supporting bills, receipts, cancelled checks, etc. must be attached.)

ITEMIZE	AMOUNT
	$

SECTION "D" Subtotal =

SECTION E

STATEMENT: Statement of the nature of the case and pertinent information in relationship to fees as declared.

~~The defendant was found guilty~~ of murder and sentended to death.

Circumstances of Appointment (Check One)

Conflict ☒; P.D. Unavailability ☐; OTHER ☐ _____

FOR COURT USE ONLY

JUDICIAL OFFICER USE ONLY

B _____ @ _____ /Hr $ _____

C _____ @ _____ /Hr $ _____

D _____ $ _____

TOTAL AMOUNT TO BE APPROVED = $ _____

(Total amount as calculated to be transferred to the Declaration for the Judge's approval and signature.)

Continuation of Fee Declaration Filed by RON SLICK

The Declarant made the following appearances:

DATE	DEPT.	REASON	TIME SPENT
12-29-83	SO J	arraignment	1.0
3-12-84	SO F	pretrial	1.0
5-2-84	SO J	continuance	1.0
5-18-84	SO J	motion to house client at Central Jail	1.0
7-24-84	SO J	ready for trial	1.0
7-31-84	SO J	trailing	1.0
8-8-84	SO G	discussion with court	1.0
8-9-84	SO G	pretrial motions-testimony of MIKE WOODWARD, ROBERT WODDALL, BILL MAC LYMAN	3.0
8-14-84	SO G	conference with court	1.0
8-15-84	SO G	jury selection	6.0
8-16-84	SO G	jury selection	2.0
8-21-84	SO G	trial - jury selection & opening statements	5.0
8-22-84	SO G	trial - testimony of Mrs. Estell, Clark Estell, Michael Washington, Allen Washington, Mike La Duca, Bill Mac Lyman, Dr. Jariwala, Mrs. Atwood, Peter Kurgil, Officer Woodall, Officer Bradford, Officer Carson	5.0
8-23-84	SO G	Trial testimony of Robert Lewis Sr., Nancy Hsien, Gladis Spellman, Final Arguments and Instruction	5.0
8-24-84	SO G	Trial - jury questions and verdict.	2.0

EXHIBIT "A"

PEOPLE VS. OBERT LEWIS CA NUMBER: A 027897

Continuation of Fee Declaration Filed by RON SLICK

The Declarant made the following appearances:

DATE	DEPT.	REASON	TIME SPENT
8-28-84	SO G	Trial penalty phase	3.0
9-28-84	SO G	Motion for new trial	1.0
11-1-84	SO G	Sentencing	2.0
		TOTAL HOURS IN COURT	42.0 hrs.

EXHIBIT "A"

PEOPLE V. ROBERT LEWIS CASE NUMBER: A 027897

Continuation of Fee Declaration Filed by RON SLICK

PREPARATION TIME

DATE	SPECIFY	TIME SPENT
12-22-83	interviewed Denesa Walker	2.0
12-30-83	prepared 987.9 motion and motion to limit voir dire	3.0
1-9-84	reviewed and studied the following D. A. files: A 024769 60 pages A 017581 25 pages A 017555 70 pages and conference with Art Jean, Deputy D. A.	5.0
1-18-84	interviewed client at L. A. County Jail	2.0
1-20-84	prepared a discovery letter	1.0
1-23-84	prepared reports for Lawrence Investigation	2.0
1-24-84	conference with Kristine Kleinbauer, private investigator	1.0
2-1-84	conference with client at L. A. County Jail	1.5
2-24-84	interview Dee Walker	1.5
2-27-84	conference with client at L. A. County Jail	1.0
4-27-84	reviewed file and prepared information for Dr. Sharma and Dr. Maloney	4.0
4-28-84	reviewed state P. D. manual on death penalty (4 volumes) and prepared a work check list	5.0
5-1-84	tracked down clients prior convictions	2.0
5-14-84	prepared questions for jury voir dire	4.0
5-15-84	prepared jury instructions	5.0
5-16-84	researched and prepared 1538.5 motion	4.0

EXHIBIT "B"

PEOPLE V. ROBERT LEWIS CASE NUMBER: A 027897

Continuation of Fee Declaration Filed by RON SLICK

PREPARATION TIME

DATE	SPECIFY	TIME SPENT
5-17-84	research and prepared motion to strike a prior conviction	4.0
5-18-84	conference with client	1.0
5-22-84	reviewed police reports	3.0
5-23-84	studied and outlined clients prison package	5.0
5-24-84	studied and outlined client's prison package	4.0
5-25-84	studied and outlined client's prison package and further research on jury instructions	5.0
5-29-84	interviewed Genero Lewis, Gladys Spillman, conference with Keith Woodwar and Bill Mac Lyman on handwriting evidence	6.0
5-30-84	prepared additional information to send to Dr. Sharma	2.0
5-31-84	interviewed client at L. A. County Jail	1.5
6-1-84	gathered information in preparation for closing argument in guilt phase	3.0
6-7-84	gathered information in preparation for closing argument in penalty phase (including reading other arguments)	4.0
6-18-84	evaluated validity of prior felony convictions. conference with Lee Smith at Long Beach Police Department on fingerprints. Conference with Bill Mac Lyman	5.0
7-19-84	outlined argument for the penalty phase and conference with witness	5.0

EXHIBIT "B"

PEOPLE V. ROBERT LEWIS CASE NUMBER: A 027897

Continuation of Fee Declaration Filed by RON SLICK

PREPARATION TIME

DATE	SPECIFY	TIME SPENT
7-24-84	interviewed client, Gladis Spellman, Mrs. Lewis, Kristina Kleinbauer	6.0
7-25-84	interviewed Michael Maloney in Pasadena and attempted to interview client at L. A. Co. Jail	4.0
7-27-84	reviewed and studied investigation reports and compared information with police reports	5.0
7-31-84	conference with client, conference with Dr. Maloney, Dee Walker, Robert Lewis, Sr., Janireo Lewis, Rose Davis	5.0
8-2-84	outlined Dr. Maloney's testimony	4.0
8-6-84	interviewed Dee Walker and studied effects of motel registration	4.0
8-7-84	prepared to examine witnesses on 1538.5 motion and outlined motion	3.0
8-8-84	conference with Kleinbauer, Mac Lyman, and Bill Hodgeman	4.0
8-9-84	conference with witnesses and outlined additional strategy	3.0
8-10-84	prepared 987.9 motion	2.0
8-13-84	conference with Marion Kluger and reviewed evidence with the court house, studied file	4.0
8-16-84	reviewed file	3.0
8-21-84	reviewed People's evidence and prepared to examine witnesses	2.5

EXHIBIT "B"

PEOPLE V. ROBERT LEWIS CASE NUMBER: A 027897

Continuation of Fee Declaration Filed by RON SLICK

PREPARATION TIME

DATE	SPECIFY	TIME SPENT
8-22-84	prepared closing argument	2.0
8-24-84	reviewed file in preparation of penalty phase	3.0
8-27-84	final argument preparation	5.0
9-18-84	prepared motion for new trial on penalty phase	2.0
9-19-84	conference with Atty. Barney Goldstein and attended part of a proportionality review hearing with Curt Livesay	3.0
9-21-84	attended a proportionality hearing in Dept. J and interviewed witness at L. A. Co. Jail	4.0
10-4-84	reviewed Exhibit "A" in support of motion to strike death penalty 340 pages	5.0
10-5-84	reviewed Exhibit "A" in support of motion to strike death penalty 108 pages	3.0
10-12-84	reviewed and studied Exhibits A & B of my previous motion to strike the death penalty (includes an outline of 82 cases)	8.0
10-13-84	continued review of Exhibits A & B	3.0
10-15-84	reviewed and studied transcript in case number A 026128 to support a motion to strike the death penalty	5.0
10-31-84	visited client at L. A. County jail	2.0
10-31-84	Prepared for sentencing	3.0
	TOTAL PREPARATION HOURS	190.

EXHIBIT "B"

CERTIFICATE OF COMPLIANCE

I certify that the attached **RETURN TO PETITION FOR WRIT OF HABEAS CORPUS** uses a 13 point Times New Roman font and contains 12,160 words.

Dated: January 29, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

MARGARET E. MAXWELL
Supervising Deputy Attorney General

Attorneys for Respondent

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **In re Robert Lewis, Jr. On Habeas Corpus**

No.: **S117235**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On January 29, 2008, I served the attached **RETURN TO PETITION FOR WRIT OF HABEAS CORPUS; EXHIBITS IN SUPPORT OF RETURN** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Robert M. Sanger
Attorney at Law
233 East Carrillo Street, Suite C
Santa Barbara, California 93101

William Hodgman
Deputy District Attorney
Los Angeles County District Attorney's Office
210 West Temple Street
Los Angeles, CA 90012

California Appellate Project (SF)
101 Second Street, Suite 600
San Francisco, CA 94105-3647

John A. Clarke
Clerk of the Court
Los Angeles County Superior Court
111 N. Hill Street
Los Angeles, CA 90012

Governor's Office, Legal Affairs Secretary
State Capitol, First Floor
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 29, 2008, at Los Angeles, California.

D. A. Dvorak
Declarant

Signature

60274206.wpd