

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Christopher Box v. James Hill, Warden

Box v. Hill · No. 04cv0619-AJB (AHG) · Decided March 27, 2025

OPINION

Box v. Davis

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 CHRISTOPHER BOX, Case No.: 04cv0619-AJB (AHG) 12 Petitioner,

DEATH PENALTY CASE

13 v.

ORDER RE: KEY ISSUES FOR

14 JAMES HILL, Warden,

DISCUSSION AT ORAL

15 Respondent. ARGUMENT AND TIME

ALLOCATIONS

16 17 18 As noted in the Court's March 18, 2025, Order (see ECF No. 259), oral argument on 19
the operative Petition in this case (see ECF Nos. 100, 173) will be held on Thursday, June 20 26,
2025, at 10 a.m. Argument will be set for a total of up to 3 hours, evenly divided 21 between the
parties (up to 90 minutes each, including any rebuttal). Following oral 22 argument, the Court will
take the pending matters in this case under submission, which 23 includes Petitioner's request for
an evidentiary hearing, Respondent's request to dismiss 24 certain claims based on procedural
defenses, and the pleadings concerning Petitioner's 25 notice of lodgment. (See ECF Nos. 100,
185, 217, 231, 235, 236-38, 245.) 26 The Court advises the parties that it desires to hear
substantive argument on the 27 merits of Claims 10, 26A and 27A, and will provide up to 60
minutes for argument on

28 Claim 10 (30 minutes each, including any rebuttal) and up to 50 minutes for argument on

1 Claims 26A and 27A (25 minutes each, including any rebuttal). With respect to these

2 claims, the parties should be prepared to address and discuss in particular:

3 Claim 10

4 - Both parties indicate de novo review of this claim is appropriate. (See ECF Nos. 235 5 at 37,
245 at 48.) Please address the role of deference, even under de novo review, 6 to state court's
factual findings pursuant to *Stevens v. Davis*, 25 F.4th 1141, 1165- 7 66 (9th Cir. 2014). 8 - The

record evidence as to whether Stephanie W. was a member of a “cognizable racial group.” (See e.g. RT 2067, 2069); *Crittenden v. Ayers*, 624 F.3d 943, 955 (9th Cir. 2010), quoting *Batson v. Kentucky*, 476 U.S. 79, 96 (1986).

11 - Whether a prima facie case has been shown as to Carl H. and Stephen A., see *Batson*, 12 479 U.S. at 93-97 and *California v. Johnson*, 545 U.S. 162, 168 (2005), and the 13 deference, if any, to be given to the trial court’s findings. (See e.g. RT 1809.) 14 - Batson step two and the adequacy/inadequacy of the prosecutor’s provided list of 15 reasons for the contested strikes. 16 - As to Batson step three, (1) the impact, if any, of the prosecutor noting that Carl H. 17 was single and noting Stephen A.’s haircut, grammar/pronunciation and that people 18 he knew were shot rather than killed, on the consideration of the other provided 19 reasons and as it relates to an overall analysis of the motivations for the prosecutor’s 20 peremptory strikes, (2) the impact of comparative juror analysis, specifically 21 Stephen A.’s failure to recall the child victim as compared to seated juror Nancy B. 22 and also to struck prospective juror Frank E., and (3) the deference, if any, to be 23 given to the trial court’s findings (see e.g. RT 1814, 2078-79).

24 Claims 26A and 27A

25 - The impact of the limited information Petitioner has provided about the investigation 26 trial counsel conducted into his mental health prior to trial (i.e. that the two experts 27 counsel consulted each indicated Petitioner was not mentally ill and his drug use was 28 not mitigating) on the Court’s evaluation of counsels’ performance. 1 - The record evidence that trial counsel was aware, or should have been aware, of 2 Petitioner’s repeated head injuries. 3 - The import and impact of trial counsels’ use of a defense investigator to locate 4 witnesses and obtain records instead of a social historian or mitigation specialist. 5 - The record evidence, if any, of a connection between Petitioner’s learning 6 difficulties and his mental state at the time of the murders. 7 - Whether the funding requests Petitioner references (CT 1690-93/Exhibit AA) can be 8 considered by the Court. Specifically, please address whether those materials were 9 unsealed and/or provided to the state supreme court when it considered Claim 27A. 10 - The adequacy/inadequacy of trial counsels’ penalty phase investigation and 11 presentation and the impact of the mitigation evidence that counsel could have 12 investigated and presented, in view of the numerous witnesses that testified on 13 Petitioner’s behalf at the penalty phase. 14 The Court further advises that in the remainder of the time allocated for oral 15 argument (70 minutes total; 35 minutes each, including rebuttal), the parties should be 16 prepared to address the following additional procedural and/or substantive matters: 17 - Request for Evidentiary Hearing - In the briefing, Petitioner indicates he requests a 18 hearing on Claim 1-2, 4, 6-7, 12, 15-19, 21-23, 26-27, 30, 36-37 and 39-42. What 19 evidence would Petitioner expect to present at an evidentiary hearing and as to which 20 claims or claims? Please specifically be prepared to address this request as it relates 21 to Claims 1-2, 4, 6-7, 12, 15-19, and 23, which appear to be based solely on the trial 22 record. Additionally, with respect to Claims 26D, 26E, 26I, 27C and 41, please 23 address the impact of a section 2254(e)(2) analysis on the request for evidentiary 24

hearing. See *Shinn v. Ramirez*, 596 U.S. 366 (2022). 25 - Petitioner's Notice of Lodgment and related pleadings (ECF Nos. 235-238) - If the 26 Court grants lodgment, whether and to what extent can the Court consider materials 27 not previously presented to state court under section 2254(d)? Please also be 28 prepared to discuss whether and to what extent the Court can consider lodged 1 materials appearing to relate to Claim 30 and the impact of those materials, if any, 2 on the Court's consideration of that claim. 3 - Procedural Defenses - As to Respondent's general contention that review of 4 materials not previously presented to the state court is precluded pursuant to *Jn re 5 Waltreus*, 62 Cal.2d 218, 225 (1965), are any specific materials precluded from 6 review, and if so, what materials and as to which claims? Please specifically address 7 this contention as it potentially relates to Claim 10, Claims 36 and/or Claim 37. 8 - Statute_of Limitations/Timeliness - Can the parties confirm their apparent 9 agreement that the non-Almond aspects of Claim 42 are timely? With respect to 10 Claim 43, where in the original Petition did Petitioner raise complaints or concerns 11 about delays in his own case? If none were raised, please address whether and how 12 this claim is timely. With respect to Claim 44/45, does Petitioner assert this claim 13 relates back to any claim or claims contained in the original Petition? If ☐☐☐ which 14 claim or claims? If not, please address whether and how this claim is timely. 15 - Claim 27B and Claim 27E - The claims appear identical as outlined in the operative 16 Petition (ECF No. 100) and as raised in the state habeas petitions, but the substance 17 of these two claims appear to differ in merits briefing. Claim 27B, as outlined in the 18 merits briefing, appears unexhausted. Please address. 19 - Claim 37 - Please discuss the evidence, specifically record citations, supporting the 20 contention Padilla's comments were made in response to inquiry by another juror. 21 22 IT IS SO ORDERED. 23 || Dated: March 27, 2025 © 24 Hon, Anthony J.Battaglia 25 United States District Judge 26 27 28