

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

SIAOSI VANISI,

Appellant,

vs.

RENEE BAKER, WARDEN, and
CATHERINE CORTEZ MASTO,
ATTORNEY GENERAL FOR
THE STATE OF NEVADA,

Respondents.

No. 65774

Volume 26 of 26

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APPELLANT'S APPENDIX

Appeal from Order Denying Petition
for Writ of Habeas Corpus (Post-Conviction)

Second Judicial District Court, Washoe County

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 7th day of January, 2015. Electronic Service of the foregoing Appellant's Appendix shall be made in accordance with the Master Service List as follows:

Terrence P. McCarthy
Washoe County District Attorney
tmccarth@da.washoecounty.us

Felicia Darensbourg
An employee of the Federal Public Defender's Office

1 reasonableness.” 466 U.S. at 687.

2 So, as applied to the instant case, the petitioner would have the burden of demonstrating
3 that the specific acts or omissions of post-conviction counsel fell below some objective standard
4 of reasonableness as measured by prevailing professional norms. That is, the court must
5 determine if Vanisi has proved that professional norms for post-conviction counsel required
6 counsel to make some specific decision to undertake specific forms of investigation. The court
7 finds that Vanisi has proved only that different paths were available, but not that some objective
8 standard required counsel to take that path.

9 Attorney Edwards testified that he was aware that in many cases it would be wise to seek
10 out additional mitigating evidence, to support the claim that trial counsel was ineffective in failing
11 to seek out that same evidence. However, he testified that mitigation was not his priority. Indeed,
12 he testified that he thought such a claim was far from the most attractive claim in this case because
13 the aggravation was so great that it was unlikely that any amount of mitigation would be sufficient
14 to outweigh the aggravation. Thus, he testified, that he and Qualls determined to focus on
15 competency and on legal issues. They expected to prevail on the claim of incompetency and
16 expected to have additional time and resources to devote to less attractive issues. They would have
17 eventually looked at additional mitigating evidence, given sufficient time and resources, but the
18 focus was on competency and legal issues. The court is not persuaded that there is some objective
19 standard that required a different approach. Certainly some other post-conviction counsel could
20 take a different approach, but that is not the standard. In cases of appellate counsel, it seems clear
21 enough that appellate counsel need not present all non-frivolous issues but instead must make a
22 tactical decision on what issues to present. *Hernandez v. State*, 117 Nev. 463, 24 P.3d 767 (2001).
23 The court finds that should apply to post-conviction as well.

24 A claim based on additional mitigating evidence does not automatically lead to relief.
25 Instead, a reviewing court can re-weigh the aggravation and the mitigating evidence, both the old
26 and the new. *See Wiggins v. Smith*, 539 U.S. 510, 123 S.Ct. 2527 (2010). The standard could

1 certainly affect the decision of where counsel should focus their energies. Thus, at the end of the
2 hearing, the court remained unpersuaded that some as yet unidentified objective standard required
3 counsel to take a different approach.

4 Vanisi suggested that some objective standard required counsel to undertake the
5 investigation of mitigating circumstances in order to provide the mitigating information to the
6 mental health professionals to assist them in their efforts in determining whether Vanisi is
7 presently incompetent. The court finds no reason to believe that prevailing professional norms
8 require that approach. Instead, the court agrees with Edwards, who testified that the customary
9 approach is to ask the mental health professionals what information they need to render an
10 opinion about the present competency of the subject. Doctors Bittker and Amazaga apparently
11 were able to render opinions, to their own satisfaction, without the need for additional evidence
12 of the sort described in the various exhibits admitted in the post-conviction hearing. The court is
13 not persuaded that there is some standard, some prevailing professional norm, that required a
14 different approach.

15 Accordingly, the court finds that Vanisi has failed to prove that specific decisions, acts or
16 omissions of post-conviction counsel were deficient. Thus, the alleged deficiency does not
17 overcome the procedural bars. Therefore, the petition is dismissed.

18 DATED this 10 day of April, 2014.

19
20 Connie J. Steinheimer
21 DISTRICT JUDGE
22
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CERTIFICATE OF SERVICE

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 10th day of April, 2014, I filed the attached document with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 Personal delivery to the following: [NONE]

X I electronically filed with the Clerk of the Court, using the ECF which sends an immediate notice of the electronic filing to the following registered e-filers for their review of the document in the ECF system:

Terrence McCarty, Esq.
Chief Deputy District Attorney

Gary Taylor, Esq.
Deputy Federal Public Defender

Tiffani Hurst, Esq.
Deputy Federal Public Defender

X Deposited in the Washoe County mailing system in a sealed envelope for postage and mailing with the United States Postal Service in Reno, Nevada:

Siaosi Vanisi
Inmate no. 63376
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301

 Placing a true copy thereof in a sealed envelope for service via:

 Reno/Carson Messenger Service – [NONE]

 Federal Express or other overnight delivery service [NONE]

 Inter-Office Mail [NONE]

DATED this 10th day of April, 2014.



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18 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE**
19 **STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE**

20 SIAOSI VANISI,

21 Petitioner,

22 vs.

23 RENEE BAKER, Warden, and
24 CATHERINE CORTÉZ MASTO,
25 Attorney General of the State of
26 Nevada,

27 Respondents.

Case No. CR98-0516

Dept. No. 4

NOTICE OF APPEAL

(Death Penalty Habeas Corpus Case)

28 NOTICE is hereby given that Petitioner, Siaosi Vanisi, appeals to the Nevada Supreme Court from the Findings of Fact, Conclusions of Law and Judgment Dismissing Petition for Writ of Habeas Corpus, dated April 10, 2014 and entered, filed, and served in this action on April 25, 2014, which dismissed Mr. Vanisi's Petition for Writ of Habeas Corpus.

///

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///

1 (Post-Conviction) (Death Penalty Case).

2 The undersigned does hereby affirm that the preceding document does not contain
3 the social security number of any person.

4 DATED this 23rd day of May 2014.

5 RENE L. VALLADARES
6 Federal Public Defender

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**IN THE SECOND JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE**

SIAOSI VANISI,

Petitioner

vs.

RENEE BAKER, Warden, and
CATHERINE CORTEZ MASTO,
Attorney General,

Respondents.

Case No. CR98-0516
Dept No. 4

CASE APPEAL STATEMENT

CASE APPEAL STATEMENT

1. **Name of petitioner filing this case appeal statement:**
Siaosi Vanisi
2. **Identify the judge issuing the order appealed from:**
Honorable Connie J. Steinheimer
3. **All parties to the proceedings in the district court:**
Same as in caption; State of Nevada is real party in interest.
4. **All parties involved in this appeal:**
Same as in caption; State of Nevada is real party in interest.

1 5. **Set forth the name, law firm, address and telephone number of all**
2 **counsel on appeal and party or parties whom they represent:**

3 Rene Valladares
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22 Catherine Cortez Masto
23 Attorney General of Nevada
24 Robert E. Wieland
25 Senior Deputy Attorney General
26 Office of the Nevada Attorney General
27 5420 Kietzke Lane, Suite 202
28 Las Vegas, NV 89511
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 Counsel for Warden and State of Nevada

 6. **Whether petitioner/appellant was represented by appointed or**
 retained counsel in the district court:

 The United States District Court appointed the Federal Public Defender
 for the District of Nevada on August 5, 2010, See Vanisi v. Baker No.
 3:10-cv-00448-MMD-VPC, Docket No.5. The Federal Public
 Defender made their first appearance on behalf of Petitioner/Appellant
 Vanisi in this case on August 13, 2010, Docket No. 7.

 7. **Whether petitioner/appellant was granted leave to proceed in**
 forma pauperis, and the date of entry of the district court order
 granting such leave:

 The United States District Court granted Mr. Vanisi leave to proceed in
 forma pauperis on August 5, 2010. The Nevada courts previously held
 that Mr. Vanisi was indigent.

1 8. **Date proceedings commenced in the district court (e.g., date**
2 **complaint, indictment, information or petition was filed):**

3 Petition for writ of habeas corpus (post-conviction) was filed on August
4 5, 2010, and an amended petition was filed on April 18, 2011.

5 9. **A brief description of the nature of the action and result in the**
6 **district court, including the type of judgment or order being**
7 **appealed and the relief granted by the court: (in accordance with**
8 **Nev. R. App. P. (f)(3)(I))**

9 Mr. Vanisi filed a petition for writ of habeas corpus seeking relief from
10 his first-degree-murder conviction. See Vanisi v. State, 117 Nev. 330, 22
11 P.3d 1164 (2001). The District Court held that Mr. Vanisi's claims were
12 procedurally barred pursuant to NRS 34.810 and dismissed the habeas
13 petition.

14 10. **Whether the case has previously been the subject of an appeal to**
15 **or original writ proceeding in the Supreme Court: (in accordance**
16 **with Nev. R. App. P. (f)(3)(J))**

17 Vanisi v. State, 117 Nev. 330, 22 P.3d 1164 (2001)

18 Vanisi v. State, No. 50607, 2010 WL 3270985 (Nev. April 20, 2010).

19 The undersigned does hereby affirm that the preceding document does not
20 contain the social security number of any person.

21 Respectfully submitted this 23rd day of May, 2014.

22 RENE VALLADARES
23 Federal Public Defender

24 /s/ Tiffani D. Hurst
25 TIFFANI D. HURST
26 Nevada Bar No. 11027C
27 Assistant Federal Public Defender

28 /s/ Gary Taylor
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