

South Dakota Casetracker – as of May 2015

BERGET, RODNEY

GENERAL INFORMATION

DOB: May 5 1962
Race: White
Gender: Male

CRIME AND TRIAL

County of conviction: Minnehaha
Number of counts: 1
Race of victim: White
Gender of victim: Male
Date of crime: April 12, 2011
Date of sentencing: February 6, 2012 (on first sentencing)
May 7, 2013 (second sentencing)

TRIAL COUNSEL:

Jeff Larson

LEGAL STATUS:

State habeas corpus pending

LAST JUDICIAL DECISION RELATING TO CONVICTION OR SENTENCE

Execution date of May 3, 2015, vacated by trial court on April 23, 2015

CURRENT PROCEEDINGS:

State habeas corpus petition pending in Minnehaha County

CURRENT COUNSEL:

Jeff Larson
400 North Main Avenue, #207
Sioux Falls, SD 57104
605-275-4529
jeff@jefflarsonlaw.net

Cheri Scharffenberg
Olson, Waltner, & Scharffenberg
801 East Ryan Drive, #B
Tea, SD 57064
605-498-0120
cheri@owslaw.com

REPORTED OPINIONS:

—Death sentence affirmed after re-sentencing. *See State v. Berget*, 853 N.W.2d 45 (S.D. 2014), *cert. denied*, 135 S. Ct. 1505 (2015)

—Death sentence reversed on direct appeal by *State v. Berget*, 826 N.W.2d 1 (S.D. 2013)

SIGNIFICANT LEGAL ISSUES:

—Constitutionality, under the Eighth Amendment, of remand order that effectively excluded mitigating evidence developed after the first sentencing hearing, and which limited the record to the evidence at the first hearing (while omitting a report that was erroneously admitted)

—Mr. Berget's absence from the re-sentencing proceedings (which were conducted entirely on paper), and inability to offer allocution before the sentencing judge

—Initial death sentence vacated because the sentencing court impermissibly used Mr. Berget's unwarned statement to a psychiatrist during a pretrial competency examination to weigh against the mitigating evidence

—State Supreme Court's interference and improper participation in trial court proceedings

PIPER, BRILEY

GENERAL INFORMATION

DOB: 1981
Race: White
Gender: Male

CRIME AND TRIAL

County of conviction: Lawrence
Number of counts: 1
Race of victim: White
Gender of victim: Male
Date of crime: March 13, 2000
Date of sentencing: January 19, 2001 (first trial)
July 29, 2011 (on resentencing)

TRIAL COUNSEL:

Tim Rensch and Patrick Duffy (first trial)
Michael Stonefield and Robert Van Norman (on resentencing)

LEGAL STATUS:

Habeas corpus pending in Lawrence County

LAST JUDICIAL DECISION RELATING TO CONVICTION OR SENTENCE

Death sentence affirmed on direct appeal after new penalty phase trial. *See State v. Piper*, 842 N.W.2d 338 (S.D. 2014)

CURRENT PROCEEDINGS:

Habeas corpus pending in Lawrence County

CURRENT COUNSEL:

Matthew J. Kinney
121 West Hudson Street
Spearfish, SD
605-642-2147
matt@kinney-law.com

REPORTED OPINIONS:

—Death sentence affirmed on direct appeal after new penalty phase trial. *See State v. Piper*, 842 N.W.2d 338 (S.D. 2014)

—Denial of habeas corpus reversed, and death sentence vacated, by *Piper v. Weber*, 771 N.W.2d 352 (S.D. 2009)

—Conviction and sentence affirmed on direct appeal by *State v. Piper*, 709 N.W.2d 783 (S.D. 2006)

SIGNIFICANT LEGAL ISSUES:

—Validity of guilty plea, which did not include a waiver of the right for a jury to determine Mr. Piper's sentence (state habeas relief granted on this ground, but only as to penalty)

—Proportionality of Mr. Piper's death sentence in comparison to life sentence given to accomplice who testified for the prosecution (and who struck the fatal blows)

—*Brady* claim stemming from early release of prison snitch just four days after Mr. Piper was sentenced to death (snitch had testified during the penalty phase that Mr. Piper had said he was planning to kill prison guards and escape)

RHINES, CHARLES RUSSELL

GENERAL INFORMATION

DOB: July 11, 1956
Race: White
Gender: Male

CRIME AND TRIAL

County of conviction: Pennington
Number of counts: 1
Race of victim: White
Gender of victim: Male
Date of crime: March 8, 1992
Date of sentencing: January 29, 1993

TRIAL COUNSEL:

Wayne Gilbert and Joseph Butler

LEGAL STATUS:

Federal habeas pending in D.S.D.

LAST JUDICIAL DECISION RELATING TO CONVICTION OR SENTENCE

Certificate of probable cause denied by South Dakota Supreme Court following circuit court's denial of Mr. Rhines' second petition for writ of habeas corpus (order issued July 18, 2013)

CURRENT PROCEEDINGS:

Petition for writ of habeas corpus pending in U.S. District Court, No. 5:00-cv-05020-KES

CURRENT COUNSEL:

Carol R. Camp
Death Penalty Litigation Clinic
6155 Oak Street, Suite C
Kansas City, MO 64113
816-363-2795
ccamp@dplclinic.com

Jason J. Tupman
Timothy J. Langley
Federal Public Defender's Office
200 West 10th Street #200
Sioux Falls, SD 57104
605-330-4489
Jason_Tupman@fd.org
timothy_langley@fd.org

REPORTED OPINIONS:

—Habeas claims stayed pending exhaustion of state court remedies. *See Rhines v. Weber*, 408 F.Supp.2d 844 (D.S.D. 2005)

—Remand by Eighth Circuit to allow district court to consider stay-and-abeyance remedy following Supreme Court's opinion. *See Rhines v. Weber*, 409 F.3d 982 (8th Cir. 2005)

—Reversal of Eighth Circuit's opinion vacating district court's order staying federal habeas petition and holding case in abeyance pending exhaustion of state court remedies vacated by Eighth Circuit. *See Rhines v. Weber*, 544 U.S. 269 (2005) (reversing *Rhines v. Webber*, 346 F.3d 799 (8th Cir. 2003))

—Denial of state habeas corpus affirmed by *Rhines v. Weber*, 608 N.W.2d 303 (S.D. 2000)

—Conviction and sentence affirmed on direct appeal by *State v. Rhines*, 548 N.W.2d 415 (S.D.), *cert. denied*, 519 U.S. 1013 (1996)

SIGNIFICANT LEGAL ISSUES:

—South Dakota Supreme Court's affirmance of Mr. Rhines' death sentence despite its holding that the "depravity of mind" aggravating circumstance is unconstitutional

—Adequacy of trial counsels' investigation and presentation of mitigating evidence, including a history of ADHD and a sensory processing disorder, as well as the impacts of Mr. Rhines' limitations on his confessions to the police

—Adequacy of *Miranda* warnings given to Mr. Rhines before his incriminating statements to police