

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Stephen C. Stanko,)
)
Petitioner,)
)
v.)
)
Bryan P. Stirling and Lydell)
Chestnut,¹)
)
Respondents.)
)

No.: 1:24-mc-504-RMG-SVH

RECEIVED

Jul 26 2024

ORDER

S.C. SUPREME COURT

Stephen C. Stanko (“Petitioner”) is a state prisoner sentenced to death. This matter is before the court on Petitioner’s requests for counsel and stay of execution [ECF No. 1] and motion to proceed *in forma pauperis* [ECF No. 4]. Respondents have filed a response [ECF No. 11], and Petitioner has opted not to reply.

I. Motion for Leave to Proceed *In Forma Pauperis*

After a careful review of Petitioner’s motion for leave to proceed *in forma pauperis* and supporting affidavit, the court finds Petitioner should be relieved of the obligation to prepay the full filing fee. Petitioner’s motion is therefore

¹ The caption is modified to reflect Lydell Chestnut, Deputy Warden of Broad River Correctional Secure Facility, as the correct party warden in this matter instead of Associate Warden Joseph Canning III. Deputy Warden Chestnut oversees Death Row, while Associate Warden Canning oversees non-Death Row inmates at the Secure Facility. See ECF No. 11, n.1. Bryan P. Stirling, Commissioner of the South Carolina Department of Corrections, remains as a party defendant.

granted.

II. Motion for Appointment of Counsel

Pursuant to 18 U.S.C. § 3599(a)(2), indigent death-sentenced prisoners are “entitled to the appointment of one or more attorneys” to pursue federal habeas corpus remedies. Further, “the right to counsel necessarily includes a right for that counsel meaningfully to research and present a defendant’s habeas claims.” *McFarland v. Scott*, 512 U.S. 849, 858 (1994). Thus, § 3599 contemplates the appointment of qualified counsel prior to the filing of a petition for writ of habeas corpus. In addition, § 3599 sets forth the required qualifications for appointed counsel in capital cases:

(c) If the appointment is made after judgment, at least one attorney so appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in that court in felony cases.

(d) With respect to subsection[] . . . (c), the court, for good cause, may appoint another attorney whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

18 U.S.C. § 3599(c)–(d).

Further, pursuant to the District of South Carolina’s plan for implementing the Criminal Justice Act (“CJA”), this court maintains a panel of qualified attorneys available to represent indigent defendants. *See In re Amendments to the Plan of the United States District Court for the District of*

South Carolina for Implementing the Criminal Justice Act, No. 3:18-mc-00199-CIV (D.S.C. June 1, 2018) (“CJA Plan”). Recognizing the particular complexity of capital cases, the CJA Plan instructs “[a]ll attorneys appointed in federal capital cases must be well qualified, by virtue of their training, commitment, and distinguished prior capital defense experience at the relevant stage of the proceeding, to serve as counsel in this highly specialized and demanding litigation” and “must have sufficient time and resources to devote to the representation, taking into account their current caseloads and the extraordinary demands of federal capital cases.” *Id.* at § XIV(B)(6), (7).

Regarding appointment of counsel in capital habeas matters, the CJA Plan provides the following guidance:

6. Counsel in capital § 2254 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.
7. When possible, capital § 2254 counsel should have distinguished prior experience in capital § 2254 representations.
8. In evaluating the qualifications of proposed capital § 2254 counsel, consideration should be given to the qualifications standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.
9. In evaluating the qualifications of proposed capital § 2254 counsel, consideration should be given to proposed counsel’s commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to represent effectively the interests of the client.

Id. at § XIV(F).

Petitioner asks the court to appoint attorneys Emily C. Paavola and Lindsey S. Vann, both of Columbia, South Carolina, to represent him. *See* ECF No. 1 at 1. Ms. Paavola and Ms. Vann have competently represented several death-sentenced inmates before this court. *See, e.g., Wood v. Byars*, C/A No. 0:12-03532-DCN; *Owens v. Stirling*, C/A No. 0:16-02512-TLW; *Alkebulanyahh v. Byars*, C/A No. 6:13-00918-TLW; *Bennett v. Stirling*, C/A No. 2:13-03191-RMG; *Moore v. Stirling*, C/A 4:14-04691-MGL. Further, this District previously approved Ms. Paavola as lead counsel and Ms. Vann as second-chair counsel on its CJA Death Penalty Panel Attorney List. The court is confident in their qualifications and ability to effectively represent Petitioner in this matter.

Respondents take no position on whom the court should appoint to represent Petitioner, but flag a potential conflict of interest: Ms. Vann represented Petitioner during his state post-conviction relief (“PCR”) proceedings stemming from the same conviction he challenges in this federal habeas matter and during his related Horry County PCR proceedings. Ms. Paavola also represented Petitioner in his Horry County PCR proceedings, but not in the proceedings directly underlying the conviction challenged here. Because the two matters are so closely related, Respondents “encourage the appointment of ‘qualified, independent counsel’ to assist” in this case. [ECF No. 11 at 4].

Ms. Paavola and Ms. Vann acknowledge the potential conflict. [ECF No. 1 at 7]. Counsel argue *Shinn v. Ramirez*, 142 S. Ct. 1718 (2022), has lessened the need for independent counsel by limiting the scope of federal habeas claims brought pursuant to *Martinez v. Ryan*, 566 U.S. 1 (2012). *Id.* Counsel assure the court Ms. Paavola can independently assess any potential *Martinez* claims and emphasize the benefits of appointing counsel already familiar with the record and issues in this case. *Id.* at 6–7. The court agrees continuity of counsel would not only promote judicial economy, but serve Petitioner’s best interests, especially given the procedural complexity of this particular case. However, Ms. Paavola is instructed to inform the court immediately if she finds herself unable to conduct an independent review.

Based on the foregoing, the court finds Ms. Paavola and Ms. Vann qualified to represent Petitioner under § 3599 and appoints Ms. Paavola as lead counsel and Ms. Vann as second-chair counsel. Counsel are reminded that by accepting the appointment, they are indicating their willingness and availability to represent Petitioner to the full extent of their professional ability in all phases of this litigation. Counsel should advise the court if their current caseload does not permit this level of representation.

III. Motion to Stay Execution

Petitioner further requests a stay of execution pending the resolution of his federal habeas corpus proceedings. [ECF No. 1 at 7]. A federal court has

jurisdiction to stay state court proceedings when a state prisoner sentenced to death applies for appointment of counsel pursuant to 28 U.S.C. § 3599. *See* 28 U.S.C. § 2251(a)(3); *McFarland v. Scott*, 512 U.S. 849, 858 (1994) (“[O]nce a capital defendant invokes his right to appointed counsel, a federal court also has jurisdiction under § 2251 to enter a stay of execution.”). Petitioner has requested the appointment of counsel, and the court grants his request by this order. Accordingly, this court has the authority to grant a stay of execution. Section 2251(a)(3) provides the stay “shall terminate” not more than 90 days after the appointment of counsel or after the application for appointment is withdrawn or denied.

Having carefully reviewed the relevant authority, the court finds Petitioner should be granted a stay of execution. Pursuant to 28 U.S.C. § 2251(a)(3), the stay shall terminate 90 days hereafter, on October 22, 2024. Once Petitioner files his habeas petition, he may move for an indefinite stay pending the outcome of his habeas proceeding under § 2251(a)(1).

IV. Cost Containment and Budgeting

Counsel is directed to file an ex parte confidential proposed litigation budget by August 23, 2024. In preparing their budget, counsel should consult with Larry M. Dash, Fourth Circuit Case Budgeting Attorney. The court cautions counsel to avoid duplication of efforts and unnecessary attorney time.

Counsel is directed to submit interim payment vouchers every 60 days

to Claire Woodward O'Donnell, Panel Administrator, Federal Public Defender's Office, for payment consideration and so costs and fees can be monitored. Counsel will be compensated at the capital rate approved by the Administrative Office of the United States Courts.

V. State Court Record

For the court's reference and for case management purposes, counsel for Respondents are directed to file a complete record of all state court proceedings to date in connection with this matter by August 23, 2024. Additionally, counsel is directed to provide courtesy copies of the filed record with the printed ECF headings to the assigned District Judge and to the Magistrate Judge. Further, the parties are directed to cite in their briefing to the filed version of the record using the ECF docket and page numbers, rather than the state court appendix numbers.

VI. Petition and Scheduling

Pursuant to 28 U.S.C. § 2251(a)(3), Petitioner is directed to file a petition for a writ of habeas corpus within 90 days of this order appointing counsel, i.e., by October 22, 2024. Petitioner will then have until the expiration of the one-year limitation period prescribed by the Antiterrorism and Effective Death Penalty Act of 1996 to amend his petition. *See* 28 U.S.C. § 2244(d). The court will enter a scheduling order governing responsive briefing after Petitioner

amends his petition or the time to do so expires.

VII. Conclusion

The court grants Petitioner's Motion for Stay of Execution and Appointment of Counsel [ECF No. 1] and Motion to Proceed *In Forma Pauperis* [ECF No. 4]. The Clerk of Court will assign a civil action number to this case, and pursuant to the directive of the presiding District Judge, it will remain referred to the undersigned Magistrate Judge for all preliminary proceedings.

IT IS SO ORDERED.

July 24, 2024
Columbia, South Carolina



Shiva V. Hodges
United States Magistrate Judge