

Hopkins, Debbie

From: Shealy, Brenda
Sent: Monday, April 06, 2015 12:25 PM
To: Hopkins, Debbie
Subject: FW: Tyree Roberts update

From: Al Simon [mailto:asimon@scag.gov]
Sent: Friday, April 03, 2015 9:45 AM
To: Shealy, Brenda
Cc: Zelenka, Don
Subject: Tyree Roberts update

Good morning Ms. Shealy.

Mr. Zelenka forwarded me your email requesting an update on Tyree Roberts/Abdiyyah Ben Alkebulanyahh's cases. Please find a summary of his two pending cases (one in the Beaufort County Court of Common Pleas, one in United States District Court for District of South Carolina) below.

2014 PCR Action (Beaufort County Court of Common Pleas, the Honorable R. Knox McMahon, Circuit Court Judge)

In the 2014 PCR action, an appointment of counsel hearing was held by Judge McMahon on January 16, 2015. At that hearing, the Applicant indicated that he did not want counsel appointed, and he agreed with the appointment of Emily Paavola, Esq. and Lindsey Vann, Esq. On February 4, 2015, Judge McMahon filed an Order appointing Ms. Paavola and Ms. Vann. Also in that Order, he noted that at the hearing, Applicant's counsel were served with the Respondent's Return and Motion to Dismiss, and he set the response deadline to the Motion to Dismiss for thirty days, and allowed Respondent to reply within ten days. Judge McMahon also scheduled an evidentiary hearing date for Friday, July 10, 2015 at a location to be determined later.

Counsel for Applicant served the Response in Opposition to Motion to Dismiss, which included a Motion for a Stay, on February 16, 2015. Applicant also served an Amended Application for Post-Conviction Relief on that date. Respondent served its Reply to Response in Opposition to Motion to Dismiss on February 26, 2015. Respondent also served its Return to Amended Application for Post-Conviction Relief and Motion to Dismiss on March 18, 2015. Applicant did serve a Reply in Support of Motion to Stay on March 12, 2015.

Altogether, the Respondent's Motion to Dismiss and the Applicant's Motion for a Stay are pending before Judge McMahon.

Federal Habeas Action (United States District Court for District of South Carolina, the Honorable Terry L. Wooten, Chief United States District Judge and the Honorable Kevin F. McDonald, United States Magistrate Judge)

In the federal habeas action, Mr. Roberts is currently represented by Ms. Paavola and Ms. Vann. An Order substituting Ms. Vann for John H. Blume, Esq. was filed by the Honorable Terry L. Wooten, Chief United States District Judge for the District of South Carolina, was filed on February 2, 2015. In this action, Roberts filed his federal habeas petition on February 14, 2014. The Respondents filed their Return and a Motion for Summary Judgment on April 16, 2014. Petitioner filed his Traverse and Memorandum of Law in Opposition to Summary Judgment on June 20, 2014. Respondents filed their Reply to Response in Opposition to Motion for Summary Judgment on July 14, 2014.

On November 5, 2014, the Honorable Kevin F. McDonald, United States Magistrate Judge, issued a Report and Recommendation recommending that the district court grant Respondents Motion for Summary Judgment. In the

Report and Recommendation, Judge McDonald recommended that all of the claims should be found procedurally defaulted, but if they were not found to be defaulted, summary judgment should be granted on all but one claim (a claim that Petitioner was deprived of a fair trial because of an improper extraneous influence upon a juror who allegedly consulted with her minister regarding sentencing). He further recommended that a limited evidentiary hearing may be necessary for that one claim. Both parties filed objections to the Report and Recommendation. Petitioner also filed a Motion to Stay Proceedings Pending Exhaustion of State Remedies on November 21, 2014. Respondents filed a Response in Opposition to the Motion, and Petitioner filed a Reply and a Supplement to the Motion.

On December 8, 2014, Judge Wooten filed an Order requesting Petitioner submit an affidavit from the juror at issue in the claim that Judge McDonald had indicated may need a limited evidentiary hearing. Petitioner submitted an affidavit on December 19, 2014.

On January 7, 2015, Judge McDonald set an evidentiary hearing pursuant to Remmer v. U.S., 347 U.S. 227 (1954), for January 29, 2015. The hearing was held at the United States District Court in Greenville, SC. Petitioner was represented by Ms. Paavola and Ms. Vann. Respondents were represented by Alphonso Simon and W. Edgar Salter. After receipt of the transcript from the hearing, both parties filed post-hearing briefs. On March 3, 2015, Judge McDonald issued a supplemental Report and Recommendation recommending that summary judgment also be granted on the juror claim. Petitioner filed an Objection to the Supplemental Report and Recommendation on March 20, 2015.

Altogether, Report and Recommendation, Supplemental Report and Recommendation, the Objections to both, and the Motion to Stay are all before Judge Wooten for review at this time.

Please let me know if you have any questions or if you need a copy of any of the documents mentioned above.

Sincerely,

Al Simon

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