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SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Benjamin H. Culbertson, Circuit Court Judge

CA No. 11-CP-01-110
Appellate Case No. 2014-000904

LOUIS MICHAEL WINKLER, JR. *Respondent,*

v.

STATE OF SOUTH CAROLINA *Petitioner*

**THIRD SUPPLEMENTAL
APPENDIX**

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SC Bar No. 77855
Death Penalty Resource & Defense Center
900 Elmwood Ave., Suite 200
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(803)765-1044

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Counsel for Petitioner

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF Horry)
)
 Louis Michael Winkler Jr.)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP 26-03907

EX PARTE
TO BE FILED UNDER SEAL
[PROPOSED] ORDER AUTHORIZING
FUNDS

Mr. Winkler, a death sentenced inmate, has made an *ex parte* application for payment of funds for expert and investigative services. See S.C. Code Ann. § 17-27-160 (West 2011). Specifically, he requests a total of \$24,300 to retain the services of a fact investigator, a mitigation specialist, and a neuropsychologist. This matter comes before me in an *ex parte* proceeding authorized pursuant to S.C. Code Ann. § 17-3-50(B) and *Ex Parte Lexington County*, 314 S.C. 220, 442 S.E.2d 589 (1994), due to the confidential nature of the matters herein. Based on Mr. Winkler's motion setting forth with particularity the reasons for each request and supporting affidavits of Mark Harris, Drucy Glass, and Kristine Herfkens, this Court finds these expenditures appropriate because the services sought are reasonable and necessary. S.C. Code Ann. § 17-27-160(C).

FINDINGS OF FACT

1. Mr. Winkler was convicted and sentenced to death in connection with the March 6, 2006 shooting of Ms. Rebecca Winkler, Mr. Winkler's ex-wife. *State v. Winkler*, 388 S.C. 574, 579, 698 S.E.2d 596, 599 (2010).

2. On direct appeal, the South Carolina Supreme Court affirmed the conviction and sentence. *Id.* at 589.

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 BJK

3. Mr. Winkler moved for a stay of execution to pursue post-conviction relief. The South Carolina Supreme Court issued a stay of execution and assigned the post-conviction relief proceedings to this Court.

4. This Court appointed Emily Paavola and John Mills to represent Mr. Winkler on June 24, 2011. On July 7, 2011 this Court entered a Scheduling Order.

5. Applicant now seeks authorization for expenditure of funds for investigative services. After reviewing S.C. Code Ann. § 17-27-10 and other applicable law, this Court specifically finds that the legislature has provided that death-sentenced applicants for post-conviction relief are entitled to reasonably necessary funds for expert services.

6. Applicant seeks \$6,000 for the services of a fact investigator, to be paid the hourly rate of \$50 per hour. The record reflects that, Jeff Joslin, the person who allegedly gave Mr. Winkler a ride to Mr. Winkler's house on the day she was killed has never been interviewed. Mr. Winkler's defense counsel did not conduct independent testing of the blood relied on by the prosecution to place Mr. Winkler at the scene. Moreover, counsel's initial discussions with Mr. Winkler indicate a number of additional issues that require investigation. Applicant's request for investigative services to pursue these issues is appropriate.

7. Applicant seeks \$9,000 for the services of a mitigation specialist, to be paid at the hourly rate of \$75 per hour, and reasonable travel expenses related to one trip to Ohio and one trip to Florida. The record suggests that while trial counsel interviewed some members of Applicant's family, the interviews did not touch on significant aspects of Applicant's life and were limited to members of his immediate family who live in Ohio and Florida. Likewise, while trial counsel obtained some records concerning Mr. Winkler, these records were largely limited to his adult life. Information concerning Applicant's childhood, interviews of other family members as well

2 / *[Signature]*

as neighbors, church members, childhood friends, or school employees is relevant to Mr. Winkler's complete social history. Applicant's request for a mitigation specialist to pursue these issues is appropriate.

8. Applicant seeks \$9,300 for the services of a neuropsychologist, to be paid at the hourly rate of \$200 per hour. Present counsel's preliminary investigation has uncovered potential neuropsychological impairments, and the record suggests that trial counsel failed to obtain the services of a neuropsychologist. Information related to Applicant's neuropsychological impairments is potentially relevant to Mr. Winkler case in both the guilt phase and is part of a complete psychological history. Applicant's request for a neuropsychologist to pursue this information is appropriate.

9. In sum, after reviewing the relevant statutory provisions, this Court specifically finds: (1) that the legislature has authorized death-sentenced applicants for post-conviction relief to obtain funds for reasonably necessary expert and investigative services; (2) that this Court is empowered to authorize the expenditure of funds if Applicant can show that such expenditure is necessary in this case; and, (3) that the expenditures requested by Applicant are reasonable and necessary.

ORDER

Based on the findings of fact and conclusions of law detailed herein, this Court orders that the Commission on Indigent Defense provide Applicant with state funds to secure the services and assistance set forth below. The Commission on Indigent Defense will disburse the funds to the Applicant after invoices have been submitted to them, and have been approved for payment. The amount listed establishes the maximum amount to be expended in each category without additional authorization from this Court.

3 / *pkc*

Fact Investigator \$6,000
Mitigation Specialist. \$9,000
Neuropsychologist..... \$9,300
TOTAL \$24,300

AND IT IS SO ORDERED.

Benjamin Culbertson

Benjamin Culbertson
Circuit Judge

Sept.
August 9, 2011

Respectfully submitted,



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5/AMC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
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 Louis Michael Winkler Jr.)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP 26-03907

EX PARTE
TO BE FILED UNDER SEAL
APPLICANT'S SECOND MOTION FOR
AUTHORIZING FUNDS

Applicant, Louis Michael Winkler, Jr. is an indigent, death-sentenced inmate. He is seeking post-conviction relief from his convictions and sentence. Applicant respectfully moves this Court to authorize the following amounts: (1) \$7,000 for the services of a paralegal, (2) \$6,500 for neuroimaging and \$14,000 for quantitative analysis of those neuroimages, and (3) \$4,500 for the services of a neurologist.

These funds are necessary to provide Mr. Winkler constitutionally and statutorily adequate resources to pursue his post-conviction relief action. *See, e.g.*, U.S. Const. amends. V, VI, VIII, XIV; S.C. Const. arts. I, III, XIV; S.C. Code Ann. § 17-27-160 (West 2011); *Bailey v. State*, 309 S.C. 455, 424 S.E.2d 503 (1992); S.C. App. Ct. R. 602. Applicant reserves the right to move for additional funds as they become necessary.

This motion is *ex parte* as authorized by state law. S.C. Code Ann. § 17-27-160(B) (West 2011). Mr. Winkler requests that this Court order this motion sealed and not filed in the public record of this proceeding or disclosed in any manner to the State or its attorneys. Although he does not seek a hearing on the motion, Mr. Winkler also moves this Court to conduct any hearings ancillary to this motion outside the presence of the solicitor, the attorney general, law enforcement personnel, state and county officials, news media, and the general

public and to enter an appropriate order under seal. *Ex Parte Lexington County*, 314 S.C. 220, 442 S.E.2d 589 (1994).

The legal and factual bases for this motion are set forth below.

I. LEGAL BASIS FOR AUTHORIZING THE EXPENDITURE OF FUNDS.

The South Carolina legislature has provided that indigents seeking post-conviction relief from capital judgments are entitled to expert assistance. *See* S.C. Code § 17-27-160(B) (incorporating the funding provisions of S.C. Code § 16-3-26 which provides that the court shall order the payment of fees and expenses “[u]pon a finding in ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant”); *see also* Rule 602(g)(6), SCACR (“In post-conviction relief matters, expenses related to representation and fees of appointed counsel may be paid where permitted and as prescribed in these Rules and the Defense of Indigents Act.”).

The right to file an application for post-conviction relief, and the right to the assistance of counsel when doing so, are hollow in the absence of the concomitant right of an indigent applicant to receive funding for expert and investigative services where appropriate. *Williams v. Martin*, 618 F.2d 1021, 1025 (4th Cir. 1980) (explaining that “[t]he quality of representation at trial may be excellent and yet valueless to the defendant if his defense requires . . . the services of a[n] . . . expert and no such services are provided”) (citing ABA Standards, Providing Defense Services, commentary, 22-23 (App. Draft 1968)). The state is required to “provide the ‘basic tools’ for an adequate defense to an indigent defendant.” *Bailey v. State*, 424 S.E.2d 503, 506 (citing *Ake v. Oklahoma*, 470 U.S. 68 (1985)). Namely, it is the state’s duty to “ensure that the defendant has . . . [funding for] the services of experts necessary to a meaningful defense.” *Id.* This duty extends to the post-conviction context as well. Indeed, the United States Supreme

Court specifically recognized that “the right to counsel [in federal habeas corpus proceedings] 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).

The ability to retain the services of experts and investigative assistance in various areas is particularly essential in capital cases. A capital case “is an extraordinary proceeding” where “the attorney is charged with the awesome responsibility of defending a person’s life.” *Bailey*, 424 S.E.2d at 460. An attorney charged with such responsibility must vigorously and thoroughly investigate the facts and circumstances of the alleged crime, which often requires the assistance of various experts. *See id.* (recognizing that unlike the solicitor, the defense attorney does not have “the entire array of state, county, and municipal law enforcement” at his disposal). The expert services of a fact investigator are imperative to assist post-conviction counsel in investigating and presenting Mr. Winkler’s claims for post-conviction relief.

Just as assistance is imperative in the guilt or innocence phase of a capital case, it is equally necessary during the sentencing phase where counsel is challenged by novel and complex issues. *See id.* at 461. Due to the finality and irrevocability of the penalty of death, the United States Supreme Court has stressed the “need for reliability in the determination that death is the appropriate punishment in a specific case.” *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). In order to ensure that the appropriate sentence is chosen, the Court has emphasized the importance of presenting to the sentencing body the fullest information possible concerning the defendant’s life and characteristics. *See Lockett v. Ohio*, 438 U.S. 586, 605 (1978) (plurality opinion) (holding that preventing the sentencer in a capital case from considering the defendant’s characteristics “creates the [unacceptable] risk that the death penalty will be imposed in spite of factors which may call for a less severe penalty”); *see also Jurek v. Texas*, 428 U.S. 262, 271

(1976) (asserting that the sentencing body must have before it all possible relevant information about the individual whose fate it must determine).

Thus, in capital cases, defense counsel has a duty to vigorously investigate and present mitigating evidence. *See Sears v. Upton*, 130 S. Ct. 3259, 3264 (2010); *Williams v. Taylor*, 529 U.S. 362, 393 (2000). This duty requires that counsel’s investigations into mitigating evidence “should comprise efforts to discover all reasonably available mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor.” *Wiggins v. Smith*, 539 U.S. 510, 524 (2003) (quoting ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 11.4.1 (C), p.93 (1989)); *see also Padilla v. Kentucky*, 130 S. Ct. 1473, 1482 (2010) (“We long have recognized that prevailing norms of practice as reflected in American Bar Association standards and the like . . . are guides to determining what is reasonable.” (internal quotation omitted)).

Mitigating evidence encompasses all information about a person’s background and characteristics, not simply information directly related to the offense itself. *See Lockett*, 438 U.S. at 608. Therefore, investigations into mitigating evidence should comprise efforts to discover evidence related to topics including, but not limited to, the defendant’s medical and mental health history, educational history, employment and training history, family and social history, prior adult and juvenile correctional experience, and religious and cultural influences. *See Porter v. McCollum*, 130 S. Ct. 447, 453 (2009) (per curiam); ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 10.7 (A), cmt. at p. 83, 10.11(A), p. 108 (2003). Moreover, counsel must discover all reasonably available evidence to rebut any aggravating evidence that may be introduced by the prosecutor. ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 10.11 (A), p. 108 (2003).

Defense counsel in capital cases are charged with the enormous responsibility to investigate and pursue all leads that would reasonably uncover possible mitigating evidence, *see Wiggins*, 539 U.S. at 524, and it is unrealistic to believe that defense counsel can always manage this daunting task on their own. *See Bailey*, 424 S.E.2d at 460, 463-64 (explaining that capital cases require “extraordinary time, effort, and commitment” and noting that unlike solicitors, defense counsel normally does not have investigatory assistance at its disposal); *see also Williams v. Martin*, 618 F.2d 1021, 1025 (4th Cir. 1980) (“The plan (for providing competent counsel to indigents) should provide for investigatory, expert and other services necessary to an adequate defense.”) (quoting ABA Standards, Providing Defense Service, 22-23 (App. Draft 1968)). Even if defense counsel is able to manage this task within the time constraints that they face, defense counsel may require expert assistance because such professionals have specialized knowledge and skill concerning mitigating issues that defense counsel lacks. *Cf. Ake v. Oklahoma*, 470 U.S. 68, 80 (1985) (explaining the essential role experts perform through skills in gathering facts, interviewing, asking probative questions, and analyzing information).

If the accused’s attorney was an ineffective advocate, there is no assurance that the adversarial system produced a just result. *See Strickland v. Washington*, 466 U.S. 668, 686 (1984); *United States v. Cronin*, 466 U.S. 648, 658 (1984) (“[T]he right to effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial.”). If counsel’s decision to end mitigation investigation is either inconsistent with professional standards or unreasonable because known information should have led counsel to investigate further, a capital defendant may have a valid claim of ineffective assistance of counsel. *See Sears*, 130 S.Ct. 3264; *Wiggins*, 539 U.S. at 533-34; *Strickland*, 466 U.S. 688, 690-91 (1984). When evaluating *Strickland* claims, courts “evaluate the totality of the

evidence—“both that adduced at trial, *and the evidence adduced in the habeas proceeding[s].*”
Wiggins, 539 U.S. at 536 (quoting *Williams v. Taylor*, 529 U.S. 362, 397-98 (2000)).

II. FACTS RELEVANT TO MOTION FOR AUTHORIZATION TO EXPEND FUNDS FOR EXPERT SERVICES.

Mr. Winkler was convicted and sentenced to death in connection with the March 6, 2006 shooting of Ms. Rebecca Winkler, Mr. Winkler’s ex-wife. *State v. Winkler*, 388 S.C. 574, 579, 698 S.E2d 596, 599 (2010). On direct appeal, the South Carolina Supreme Court affirmed the conviction and sentence. *Id.* at 589. Mr. Winkler moved for a stay of execution to pursue post-conviction relief. The South Carolina Supreme Court issued a stay of execution and assigned the post-conviction relief proceedings to this Court. This Court appointed the undersigned counsel to represent Mr. Winkler on June 24, 2011. On July 7, 2011 this Court entered a Scheduling Order.

At trial, the defense put on no evidence in the guilt phase. The prosecution presented forensic and eyewitness testimony to demonstrate that Mr. Winkler shot and killed Ms. Winkler in her apartment. Mr. and Ms. Winkler had separated in September of the previous year, and she had a restraining order against him. Ms. Winkler’s son, Jonathan Grainger, testified that Mr. Winkler broke into her apartment and shot Ms. Winkler at close range. The prosecution also presented forensic testimony. The forensic testimony addressed the likely origin of the bullet found in the wall behind where Ms. Winkler was found, the likely range at which she was shot, and DNA evidence identifying blood found at the scene as belonging to Mr. Winkler.

In the penalty phase Mr. Winkler testified that Ms. Winkler’s ex-husband, Roger Grainger, had shot her during an attempt to kill Mr. Winkler.

In the penalty phase, the prosecution put on evidence about Mr. Winkler's past troubled relationships with women. It also put on evidence about an incident in October of 2005 in which Mr. Winkler was arrested for the assault and kidnapping of Ms. Winkler.

The defense presented additional evidence about Mr. Winkler, including evidence deduced from pre-trial competency evaluations, conducted during a multi-week pre-trial mental health hospitalization. It also presented the testimony of a forensic psychiatrist who had evaluated Mr. Winkler for his competence and criminal responsibility. The forensic psychiatrist diagnosed Mr. Winkler with several disorders, relying on her interviews with him, a review of records from the October 2005 and his pretrial incarceration, and conversations with family members. The defense also presented the testimony of a Licensed Social Worker, who had talked to some members of Mr. Winkler's immediate family, interviewed Mr. Winkler, and reviewed some social history records. Finally, the defense presented the testimony of a condo owner from one of the buildings where Mr. Winkler was employed and the testimony of several members of his immediate family.

Counsel's initial interviews with Mr. Winkler, preliminary review of the trial record, preliminary research, document collection, and expert consultation reveal several areas that require both thorough investigation and expert assistance.

A. FACTS RELEVANT TO REQUEST FOR A PARALEGAL.

In every capital case counsel has the responsibility to gather, index, and review numerous potentially relevant documents. These documents include the files of the members of the trial team, the solicitor, and law enforcement agencies as well as files relevant to a competent and adequate social history investigation. ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 1.1 "Counsel must also inspect the evidence and obtain the files

of trial and appellate counsel, again scrutinizing them for what is missing as well as for what is present.”). The files capital counsel must collect may be related to a defendant’s medical history, family and social history, military service, employment and training history, and prior juvenile or adult correctional experience. *See* ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 10.7 cmt. (2003).

A paralegal’s services will be invaluable for processing and indexing these files and for assisting in preparing for a hearing. The services of a paralegal will assist counsel in efficiently completing the tasks required to competently represent Mr. Winkler. Ex. 1 (Affidavit of Teresa Norris). Paralegal services are routinely approved in capital cases, and the normal hourly rate is thirty to forty dollars per hour. *Id.*

B. FACTS RELEVANT TO REQUEST FOR NEUROIMAGING AND ANALYSIS.

Neuroimaging and analysis are required for counsel to conduct an adequate investigation, particularly an investigation into any neurological deficits. *See* ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 4.1 cmt. (2003) (“Counsel must . . . obtain a thorough physical and neurological examination.”). Counsel has consulted with a neuropsychologist, and it is her recommendation that counsel conduct neuroimaging and analysis for “further information about Mr. Winkler’s neurologic status.” Ex. 2 (Letter from Kristine Herfkens, Ph.D). Once the neuroimaging is complete, expert assistance to review and analyze the images is required. *Id.*

Additionally, counsel is presently aware of several incidents which may have caused brain damage that a CT, PET, MRI, SPECT or similar scan may detect. Moreover, with the assistance of a qualified neuroscientist, counsel may be able to explain an etiology of Mr. Winkler’s behaviors that trial counsel unreasonably failed to uncover.

Counsel is specifically requesting the services of Dr. Ruben Gur, a Professor of Psychiatry and the Director of the Brain Behavior Research Laboratory at the Maloney Institute of Neurological Sciences at the University of Pennsylvania School of Medicine. His laboratory is the leading laboratory in the United States in the area of the computerized quantitative analysis of MRI and PET scans. Quantitative analysis is by far the most accurate and reliable way in which to determine if an individual has brain abnormalities and minimizes the risk of subjectivity and error by a radiologist in analyzing the MRI and PET images. Additionally, quantitative analysis allows for the comparison of the MRI and PET data in Mr. Winkler's case with data gathered from other imaging studies in persons with both normal and abnormal brains. Funds for Dr. Gur's services have been approved in other South Carolina capital post-conviction cases including *Bobby Wayne Stone v. State*, *Roger Dale Johnson v. State*, and *Andre Rosemond v. State*, as well as in the federal death penalty case in the District of South Carolina, *United States v. Chadrick Fulks*.

Because of trial counsel's failure to adequately investigate Mr. Winkler's neurological deficits, Mr. Winkler has a viable ineffective assistance of counsel claim under *Sears*, *Porter*, *Wiggins*, *Williams*, and *Strickland*. Therefore, neuroimaging and related services are imperative for a competent investigation into Mr. Winkler's neurological deficits.

C. FACTS RELEVANT TO REQUEST FOR A NEUROLOGICAL EVALUATION

A clinical, neurological evaluation is required for counsel to conduct an adequate investigation, particularly an investigation into neurologic disease. ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 4.1 cmt. (2003). Such testing and procedures may assist counsel in confirming or ruling out the presence of a neurological disorder or other medical condition affecting Mr. Winkler's functioning. Counsel have consulted

with a neuropsychologist, and she recommends “consulting with a neurologist or neuropsychiatrist for further information about Mr. Winkler’s neurologic status.” Ex. 2 (Letter from Kristine Herfkens, Ph.D). Moreover, counsel’s interactions with Mr. Winkler suggest he is functioning abnormally. An assessment may allow counsel to explain Mr. Winkler’s deficits that were unreasonably left unexplained by trial counsel. In light of trial counsel’s failure to present evidence of Mr. Winkler’s neurological status, there is a strong possibility that Mr. Winkler has a viable ineffective assistance of counsel claim under *Sears, Porter, Wiggins, Williams*, and *Strickland*. Therefore, a neurological evaluation is required for counsel to conduct a competent investigation.

III. SUMMARY OF REQUESTED EXPENDITURES

For all of the reasons set forth above, Mr. Winkler requests the following expenditures:

Paralegal

To gather, index, and review numerous potentially relevant documents, and to assist post-conviction counsel in preparing for hearing, Mr. Winkler requests authorization for the initial expenditure of seven thousand dollars to retain the services of a paralegal at the hourly rate of thirty-five dollars per hour. Ex. 1.

Neuroimaging and Quantitative Analysis

To obtain information relevant to Mr. Winkler’s potential brain damage and/or dysfunction which is otherwise unavailable to counsel, Mr. Winkler requests authorization for the initial expenditure of \$6,500 to obtain a PET and MRI scan of Mr. Winkler. Ex. 3 (Claim for Neuroimaging Services from Medical University of South Carolina). He further requests \$14,000 for the necessary quantitative analysis of that imaging. Ex. 4 (Estimate Cost of Services of Dr. Ruben Gur).

Neurological Evaluation


To investigate and discover Mr. Winkler's neurological impairments and to assist post-conviction counsel in presenting mitigating evidence about Mr. Winkler's impairments, Mr. Winkler requests authorization for the initial expenditure of \$4,500 and reasonable expenses for one trip from Washington, DC to Ridgeville, SC to retain a neurologist to be paid at the rate of three hundred dollars per hour. Ex. 5 (Curriculum Vitae and Fee Schedule of James R. Merikangas, M.D.).

IV. CONCLUSION

Based on the above statement of facts and arguments, Mr. Winkler respectfully requests the funds requested in this motion for expert services.

Respectfully submitted,

10/3/11
DATE



JOHN R. MILLS

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EXHIBIT 1

STATE OF MISSISSIPPI

)

COUNTY OF HINDS

)

)

AFFIDAVIT

Teresa L. Norris, who appeared personally before me, affirms and states the following:

1. I, Teresa L. Norris, have served as counsel to approximately 27 persons in their capital cases in South Carolina as well as in another 10 or so capital cases in other jurisdictions in the country. I previously worked at the Center for Capital Litigation in Columbia from November 1994 until April 2006. As Director—and throughout my time at the Center for Capital Litigation—I attempted to monitor all capital postconviction cases in the State of South Carolina.
2. The assistance of a paralegal is essential in all capital cases and in postconviction cases in particular. Collecting, indexing, and reviewing documents are essential to competently prepare a capital case. Postconviction cases have the added challenge of collecting, indexing and reviewing all of the materials from trial in addition to those necessary to collect during the postconviction process. The services of a paralegal are a helpful, efficient way to perform these tasks.
3. In South Carolina, judges in both my trial and postconviction cases have routinely approved paralegal expenses at my request. The normal hourly rate approved for paralegal services in my cases has been \$30-\$40 dollars per hour in recent years.

I affirm, under the penalty of perjury, that the foregoing is true and correct.



 TERESA L. NORRIS

Sworn to and subscribed before me
 This 3rd day of NOV, 2011

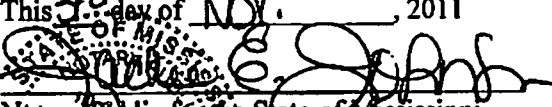

 Notary Public for the State of Mississippi
 My Commission expires: _____
 Commission Expires Oct. 28, 2013
 COPIAH COUNTY

EXHIBIT 2

3310 Croasdaile Dr
Suite 400
Durham, NC 27705
919-384-9682 (Phone)
919-384-9683 (Fax)

Triangle Neuropsychology Services

Fax

To: John Mills From: Kristine Herkeas, Ph.D., ABPP

Fax: 237-9254 Pages: 2

Phone: _____ Date: 11/2/11

Re: _____ CC: _____

Urgent For Review Please Comment Please Reply Please Recycle

- Comments

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TRIANGLE NEUROPSYCHOLOGY SERVICES, PLLC

3310 Croasdaile Drive, Suite 400
Durham, NC 27705

2 November 2011

John. R. Mills
201 W. Main Street
Suite 301
Durham, NC 27701

Dear Mr. Mills:

This letter is in reference to your client, Mr. Louis Michael Winkler. I recommend that you consider consulting with a neurologist or neuropsychiatrist for further information about Mr. Winkler's neurologic status. In addition, it would be very useful to have neuroimaging of Mr. Winkler. A neurologist or neuropsychiatrist would have to refer for and interpret that testing.

If I can provide further information to you, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kristine M. Herfkens'.

Kristine M. Herfkens, PhD, ABPP
Board Certified in Clinical Neuropsychology

EXHIBIT 3

8437923349

PATIENT ACCT

06:33:51 a.m. 08-17-2010 2/2

169 ASHLEY AVENUE
CHARLESTON SC 294035836
8437920916 8437923349

P O BOX 931854
ATLANTA GA 311931854

494569544
001768322032001
57-1098556
STATEMENT COVER PERIOD FROM 070810 TO 070810 10

PATIENT NAME: [REDACTED] PATIENT ADDRESS: 1247 SUMTER STREET COLUMBIA SC 29201

10 BIRTH DATE: 09191985 SEX: M ADMISSION DATE: 070810 09 3 2 23 01

31 CONTRACT NO: [REDACTED] 32 CONTRACT DATE: [REDACTED] 33 CONTRACT CODE: [REDACTED]

34 BLUME WEYBLE NORRIS LLC
1247 SUMTER ST
2ND FL
COLUMBIA, SC 29201

42 INVT NO	43 DESCRIPTION	44 ICD9 PROC	45 ICD9 CODE	46 SERV DATE	47 SERV UNITS	48 UNIT CHARGE	49 NET CONTRACT CHARGE
0300	LABORATORY OR LAB		82948	070810		19 00	
0343	NUC MED/DX RADIOPHARM		A9552	070810	1	540 00	
0404	PET SCAN		78608	070810	1	3823 00	
0611	MRI - BRAIN		70551	070810	1	2106 00	

CORRECTED CLAIM

0001 PAGE 001 OF 001 CREATION DATE 081010 TOTALS 6288 00

50 PATIENT NAME: BLUME WEYBLE NORRIS LLC 51 HEALTH PLAN ID: [REDACTED] 52 FROM PAYMENTS: Y 53 EST. AMOUNT DUE: 2106 00 54 M/N: 1659435840 55 P/B: 571098556007

56 PROVIDER NAME: [REDACTED] 57 NPI: 18 [REDACTED] 58 GROUP NAME: [REDACTED] 59 INSURANCE GROUP NO: 898908

60 TREATMENT AUTHORIZATION CODES: [REDACTED] 61 DOCUMENT CONTING. NUMBER: [REDACTED] 62 EMPLOYER NAME: [REDACTED]

V708	34889						
FORM ID: V708	PRESENT REASON FOR CLAIM:	OTHER PROCEDURE CODES:	OTHER PROCEDURE DATE:	OTHER PROCEDURE CODES:	OTHER PROCEDURE DATE:	OTHER PROCEDURE CODES:	OTHER PROCEDURE DATE:

REMARKS: LATE CHARGES POSTED PC10 83 282N00000X 1043253057 1G 887120 BACHMAN DAVID 1043253057 1G 887120 BACHMAN DAVID 1043253057 1G 887120 BACHMAN DAVID 1043253057 1G 887120 BACHMAN DAVID

EXHIBIT 4



Estimated Cost of Services

Analysis of volumetric MRI and PET with Comprehensive Report Government Fee Schedule

Activity	Evaluator	Hours	Rate	Total
MRI: Data review	Dr. Christos Davatzikos	0.5	\$350	\$175
MRI: Image Data handling, format conversion, pre-processing	Dr. Christos Davatzikos	1.5	\$350	\$525
MRI: Template matching procedure for region of interest measurement	Dr. Christos Davatzikos	4	\$350	\$1400
MRI: Statistical analysis of volumetric results, PCA analysis, report preparation	Dr. Christos Davatzikos	6	\$350	\$2100
PET: Image analysis	Dr. Andrew Newberg	5	\$350	\$1750
Consultation with attorneys	Dr. Ruben Gur	3	\$400	\$1350
Extraction of relevant data from MRI analysis	Dr. Ruben Gur	3	\$400	\$1350
Extraction of relevant data from PET analysis	Dr. Ruben Gur	3	\$400	\$1350
Integration of findings	Dr. Ruben Gur	2	\$400	\$900
Preparation of illustrative report	Dr. Ruben Gur	2	\$400	\$900
Administrative Fee (15%):				\$1,770
Total:				\$13,570

Revised 26-Apr-2010

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Louis Michael Winkler Jr.)
 Applicant.)
)
 vs.)
)
 State of South Carolina.)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP 26-03907

EX PARTE
TO BE FILED UNDER SEAL
[PROPOSED] ORDER AUTHORIZING
FUNDS

11 NOV 21 AM 8:15
 CLERK OF COUNTY CLERK

Mr. Winkler, a death sentenced inmate, has made an *ex parte* application for payment of funds for expert and investigative services. See S.C. Code Ann. § 17-27-160 (West 2011). Specifically, he requests a total of \$32,000 to retain the services of a paralegal, neuroimaging and quantitative analysis of those neuroimages, and the services of a neurologist. This matter comes before me in an *ex parte* proceeding authorized pursuant to S.C. Code Ann. § 17-3-50(B) and *Ex Parte Lexington County*, 314 S.C. 220, 442 S.E.2d 589 (1994), due to the confidential nature of the matters herein. Based on Mr. Winkler's motion setting forth with particularity the reasons for each request and supporting exhibits, this Court finds these expenditures appropriate because the services sought are reasonable and necessary. S.C. Code Ann. § 17-27-160(C).

FINDINGS OF FACT

1. Mr. Winkler was convicted and sentenced to death in connection with the March 6, 2006 shooting of Ms. Rebecca Winkler, Mr. Winkler's ex-wife. *State v. Winkler*, 388 S.C. 574, 579, 698 S.E.2d 596, 599 (2010).

2. On direct appeal, the South Carolina Supreme Court affirmed the conviction and sentence. *Id.* at 589.

MHC

3. Mr. Winkler moved for a stay of execution to pursue post-conviction relief. The South Carolina Supreme Court issued a stay of execution and assigned the post-conviction relief proceedings to this Court.

4. This Court appointed Emily Paavola and John Mills to represent Mr. Winkler on June 24, 2011. On July 7, 2011 this Court entered a Scheduling Order.

5. Applicant now seeks authorization for expenditure of funds for expert services. After reviewing S.C. Code Ann. § 17-27-10 and other applicable law, this Court specifically finds that the legislature has provided that death-sentenced applicants for post-conviction relief are entitled to reasonably necessary funds for expert services.

6. Applicant seeks \$7,000 for the services of a paralegal, to be paid the hourly rate of \$35 per hour. The record reflects that such services will enable counsel to efficiently conduct their investigation and prepare for hearing. It also reflects that paralegal services are commonly used in capital postconviction cases. Applicant's request for a paralegal to prepare the case is appropriate.

7. Applicant seeks \$6,500 for neuroimaging of Mr. Winkler's brain. Counsel seeks to obtain a PET and MRI scan of Mr. Winkler. He further requests \$14,000 for the necessary quantitative analysis of that imaging. The record reflects that a neuropsychologist has recommended such imaging, and that it may uncover neurologic impairment or dysfunction that trial counsel failed to discover. Applicant's request for neuroimaging and related quantitative analysis is appropriate.

8. Applicant seeks \$4,500 and reasonable travel expenses for the services of a neurologist, to be paid at the rate of \$300 dollars per hour. The record reflects that a neuropsychologist has recommended consultation with a neurologist because it may uncover "further information about

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MHC

Mr. Winkler's neurologic status." Moreover, information about Applicant's neurological impairments is potentially relevant to Mr. Winkler case in both the guilt phase and is part of a complete psychological history. Applicant's request for a neuropsychologist to pursue this information is appropriate.

9. In sum, after reviewing the relevant statutory provisions, this Court specifically finds: (1) that the legislature has authorized death-sentenced applicants for post-conviction relief to obtain funds for reasonably necessary expert and investigative services; (2) that this Court is empowered to authorize the expenditure of funds if Applicant can show that such expenditure is necessary in this case; and, (3) that the expenditures requested by Applicant are reasonable and necessary.

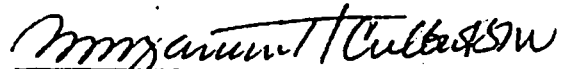
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ORDER

Based on the findings of fact and conclusions of law detailed herein, this Court orders that the Commission on Indigent Defense provide Applicant with state funds to secure the services and assistance set forth below. The Commission on Indigent Defense will disburse the funds to the Applicant after invoices have been submitted to them, and have been approved for payment. The amount listed establishes the maximum amount to be expended in each category without additional authorization from this Court.

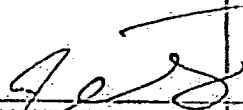
Paralegal.	\$7,000
Neuroimaging.	\$6,500
Quantitative Analysis.	\$14,000
Neurological Evaluation.	\$4,500 and reasonable travel (MRC) expenses
TOTAL.	\$32,000

AND IT IS SO ORDERED.


Benjamin Culbertson
Circuit Judge

November 10, 2011

Respectfully submitted.



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STATE OF SOUTH CAROLINA)
)
)
 COUNTY OF HORRY)
)
 Louis Michael Winkler Jr.)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP 26-03907

**MOTION TO ALTER
 PCR SCHEDULING ORDER**

Applicant, Louis M. Winkler, through counsel, respectfully moves this Court to alter the scheduling order entered in this case, upon his showing of good cause. *See* S.C. Code Ann. § 17-27-160(C) (West 2011). The current scheduling order requires Mr. Winkler to file an Initial Amended Application for Post-Conviction Relief (hereafter, “PCR application”) by December 1, 2011. Despite efforts to diligently investigate this case, undersigned counsel are not in a position to formulate, in good faith, any specific claims for post-conviction relief by the December 1st deadline. For the reasons stated below, Mr. Winkler requests a continuance of ninety (90) days to file his initial amended PCR application, and adjustments to the other scheduled dates accordingly.

FACTS AND PROCEDURAL HISTORY

On June 24, 2011, this Court appointed undersigned counsel to represent Mr. Winkler in his post-conviction relief proceedings. This Court entered a scheduling order requiring Mr. Winkler to file and serve an initial amended PCR application by December 1, 2011. At the scheduling conference, the parties discussed including this benchmark to allow sufficient time to begin and complete discovery by a deadline of June 1, 2012, before an evidentiary hearing now scheduled for June 18, 2012.

Since appointment, undersigned counsel have diligently pursued an investigation. Counsel have collected, reviewed and indexed the files of trial counsel, members of the trial team, and the solicitor. Counsel have met with Mr. Winkler numerous times, collected a comprehensive set of Mr. Winkler's social history records, and initiated a social history investigation. Counsel have assembled a team of investigators and consulted with experts about the investigation, including one investigator who has traveled to Ohio, where Mr. Winkler lived until his early adult years. Finally, counsel have also begun an investigation into the facts of the crime and the events of Mr. Winkler's trial. Despite these efforts, however, undersigned counsel are not currently aware of any specific claim for post-conviction relief. Moreover, counsel are not in a position to begin producing materials in response to any discovery requests in the near future, since no specific claims have yet developed.

Counsel's efforts have, however, resulted in leads that will require additional investigation and more time for development. In particular, counsel has consulted with an expert who has recommended additional testing, as well as expert analysis of that testing, before any conclusive determinations can be made about Mr. Winkler's mental health and cognitive functioning. This Court has recently signed an *ex parte* order approving funding for additional testing by a local doctor, as well as further analysis by an out-of-state expert.¹ Undersigned counsel has begun the process of having these tests ordered by the local expert, but has been advised that it will take approximately 4 to 6 weeks before the initial testing can be completed, and approximately 6 weeks after that before additional analysis can be conducted by the out-of-state expert.

¹ Undersigned counsel is reluctant to discuss this information in greater detail in this motion, given the confidential nature of these matters. However, counsel will be happy to answer any *ex parte* questions from the Court about the nature of these expert services.

Moreover, the social history investigation has recently produced information suggesting that Mr. Winkler may suffer from one or more mental health disorders with an etiology originating on his father's side of the family. Based on this information, undersigned counsel requires time to collect and review information related to the mental health of Mr. Winkler's paternal family. Counsel's efforts in this regard are complicated because the overwhelming majority of Mr. Winkler's paternal family is now deceased. Furthermore, before their death, many of the paternal family members moved to other states scattered throughout the country. Thus, obtaining information and collecting records related this topic is more time consuming than it would be otherwise. Mr. Winkler requests ninety (90) days to continue investigating and preparing his case for hearing.

ARGUMENT

Upon a showing of good cause, a capital post-conviction applicant is entitled to a continuance to investigate his case and prepare it for hearing. S.C. Code Ann. § 17-27-160(C) (West 2011).

Competence requires counsel to make "inquiry into and analysis of the factual and legal elements" of each claim. S.C. Rule of Professional Conduct R. 1.1, cmt.; *see also Williams v. Taylor*, 529 U.S. 420 (2000) (holding that federal law barring review of certain claims did not apply to a capital petitioner because, through no fault of his own, he was unable to develop facts in state court); ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 10.7(B) (2003).

As explained in the South Carolina Rules of Professional conduct, because of "what is at stake"—Mr. Winkler's life—competence in this case requires greater diligence than in "matters of lesser consequence." S.C. Rule of Professional Conduct R. 1.1 cmt. The U.S. Supreme Court

has consistently required the same: greater diligence in capital cases. In these cases, the heightened “need for reliability in the determination that death is the appropriate punishment” (*Woodson v. North Carolina*, 428 U.S. 280, 305 (1976)) requires that the sentencing body receive the fullest information possible concerning the defendant’s life and characteristics. See *Lockett v. Ohio*, 438 U.S. 586, 605 (1978 (plurality opinion) (holding that preventing the sentencer in a capital case from considering the defendant’s characteristics “creates the [unacceptable] risk that the death penalty will be imposed in spite of factors which may call for a lesser severe penalty.”).

Thus, capital defense counsel have a duty to vigorously investigate and present mitigating evidence, including investigation into “all reasonably available evidence to rebut any aggravating evidence that may be introduced by the prosecutor.” *Wiggins v. Smith*, 539 U.S. 510, 524 (2003); see also *Sears v. Upton*, 130 S. Ct. 4259, 3264 (2010); *Williams v. Taylor*, 529 U.S. 362, 393 (2000). Mitigating evidence includes all information about a person’s background and characteristics. See *Lockett*, 438 U.S. at 608. Thus, mitigation investigation requires inquiry into a wide array of topics, including, but not limited to, the defendant’s medical and mental health history, educational history, and family and social history. See *Porter v. McCollum*, 130 S. Ct. 447, 553 (2009) (per curiam); ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 10.7(A), cmt., 10.11(A) (2003).

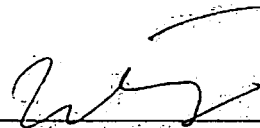
Here, undersigned counsel have been diligent in pursuing investigation in Mr. Winkler’s case, but are unable to presently make a good faith allegation of any specific claim. For the reasons stated above, counsel request that this Court continue the scheduled dates by ninety (90) days. A revised proposed scheduling order is attached to this motion. The PCR hearing in this matter has not previously been continued, and the additional time is necessary in order to permit

counsel for Mr. Winkler to fully develop and be prepared to present evidence relevant to all potentially meritorious grounds for post-conviction relief.

CONCLUSION

Mr. Winkler has shown good cause to continue the scheduling order by ninety days.

Respectfully submitted,



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State of South Carolina
The Circuit Court of the Fifteenth Judicial Circuit

Benjamin H. Culbertson
Resident Circuit Judge

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December 8, 2011

Via Email and U.S. Mail Delivery

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RE: *Louis Michael Winkler, Jr. v. State of South Carolina*
Case Number: 2011-CP-26-03907

Dear Attorneys:

Please find enclosed a copy of the Amended Scheduling Order which partially grants and partially denies the applicant's motion to alter the scheduling order in the above referenced case. Since the only relief granted was the extension of time for the applicant to file an Initial Amended Application for Post-Conviction Relief, I ruled on this motion prior to the respondent's deadline to submit a brief in opposition to the motion.

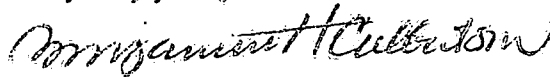
Emily C. Paavola, Esquire
John R. Mills, Esquire
Alphonzo Simon, Jr., Asst. Attorney General
J. Gregory Hembree, Solicitor

December 8, 2011
Page Two

By copy of this letter and the original order, I am forwarding this Amended Scheduling Order to the Clerk of Court for filing.

With kindest regards, I remain

Very truly yours,



Benjamin H. Culbertson

BHC/bhc

Enclosure (a/s)

pc: The Honorable Melanie Huggins-Ward
Horry County Clerk of Court
P.O. Box 677
Conway, SC 29528

Louis Michael Winkler, Jr., SCDC #00006027
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF Horry)	CASE NUMBER: 2011-CP-26-03907
)	
Louis Michael Winkler, Jr.,)	
)	
Petitioner,)	
)	
vs.)	AMENDED SCHEDULING ORDER
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

Pursuant to the Order of the South Carolina Supreme Court dated 5/25/2011 and Code of Laws of South Carolina 1976 §17-27-160(C), a status conference was convened in this case on 7/7/2011 at 10:00 a.m. in the chambers of the undersigned judge at the Georgetown County Judicial Center, 333 Cleland Street, Georgetown, South Carolina. Attorneys Emily C. Paavola and John R. Mills appeared on behalf of the petitioner and Assistant Attorney General Alphonzo Simon, Jr. appeared on behalf of the respondent. At this status conference, a Scheduling Order dated 7/7/2011 was issued in this case.

Currently before the court is a motion by the applicant's attorneys to alter the Scheduling Order dated 7/7/2011. For the reasons set forth in the applicant's motion the Motion to Alter the Scheduling Order is **PARTIALLY GRANTED** and **PARTIALLY DENIED** as set forth below.¹

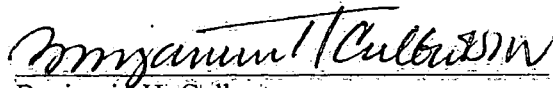
The following schedule is hereby set in this case:

1. Petitioner shall file and serve his Initial Amended Application for Post-Conviction Relief, if any, by no later than 2/2/2012. Should petitioner not file an Initial Amended Application for Post-Conviction Relief, petitioner shall be barred from filing any subsequent Amended Application for Post-Conviction Relief without prior order of the court authorizing such filing.

¹ This motion was decided without oral arguments.

2. Petitioner shall file and serve his Final Amended Application for Post-Conviction Relief, if any, by 5/1/2012.
3. Respondent shall file and serve its Return to Amended Applications for Post-Conviction Relief within 30 days of receipt of the amended application.
4. The parties shall complete discovery by 6/1/2012. Any party desiring discovery shall serve discovery requests and/or notice of depositions within sufficient time to allow the opposing party to comply with the said discovery by 6/1/2012.
5. Any and all motions regarding discovery in this case shall be filed with a supporting brief and simultaneously submitted to the undersigned judge and served on opposing counsel. Opposing counsel may file/submit/serve a brief in opposition to the motion within 14 days of receipt of the motion. All motions regarding discovery shall be decided on briefs without oral arguments.
6. Any and all pre-trial motions, saving and excepting motions regarding discovery, shall be filed with a supporting brief and simultaneously submitted to the undersigned judge and served on opposing counsel. Opposing counsel may file/submit/serve a brief in opposition to the motion within 14 days of receipt of the motion. All pre-trial motions subject to this section shall be decided on briefs without oral arguments unless a party requests a hearing for oral arguments at the time the party files/serves/submits his brief.
7. The merits hearing in this case is scheduled for 6/18/2012. The merits hearing in this case is continued beyond the 180-day scheduling requirements set forth in Code §17-27-160(C) for the following good causes:
 - a. Petition is originally from another state and petitioner's attorneys are not sure whether a social history investigation was performed. If not, petitioner's attorneys need additional time to conduct a social history investigation.
 - b. Several pre-trial hearings were conducted prior to the trial of this case that are not included in the Record On Appeal. Petitioner's attorneys need additional time to research and investigate these pre-trial hearings.
 - c. Experience of petitioner's attorneys has shown that a case of this magnitude cannot be investigated, researched and prepared for hearing within 180 days.

AND IT IS SO ORDERED.


Benjamin H. Culbertson
Presiding Judge

December 8, 2011
Georgetown, SC