

Hopkins, Debbie

From: Derek Enderlin <derek@rossenderlin.com>
Sent: Thursday, April 28, 2016 4:29 PM
To: Hopkins, Debbie
Cc: Zelenka, Don; Teresa Norris; Betsy Franklin-Best; Robert Dudek
Subject: C. Christopher Williams Federal Stay
Attachments: Motion for Stay and Appointment Habeas FINAL.pdf

I just filed the attached motion for stay of execution and appointment of counsel in the South Carolina District Court. Because it is a shell case, I can not pull up a copy of the electronically filed motion, so a PDF of same is attached. I will forward the filed copy as soon as I have it.

If you have any questions, please let me know.

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

SC SUPREME COURT

CHARLES CHRISTOPHER WILLIAMS)
Petitioner,)

CIVIL ACTION NO. 16-AV-99999

v.)

BRYAN P. STIRLING,)
Director, South Carolina)
Department of Corrections, and)
JOSEPH MCFADDEN, Warden of Lieber)
Correctional Institution,)
Respondents.)

MOTION FOR STAY OF EXECUTION
AND APPOINTMENT OF COUNSEL

THIS IS A CAPITAL CASE.

Petitioner, Charles Christopher Williams is an indigent prisoner under sentence of death imposed by the Greenville County, South Carolina, Court of General Sessions.¹ Through undersigned counsel, Petitioner requests that this Court stay his imminent execution and appoint counsel to represent him in the preparation, presentation, and litigation of his first federal petition for a writ of habeas corpus. Specifically, Petitioner requests that this Court appoint Teresa L. Norris and Elizabeth Franklin-Best of Columbia, South Carolina to represent him.² In support of this Motion, Petitioner submits the following facts and argument.

I. RELEVANT PROCEDURAL HISTORY.

Petitioner was convicted of murder, kidnapping, and possession of a firearm during the commission of a violent crime in connection with the death of his girlfriend, in Greenville County, South Carolina. A jury sentenced Petitioner to death. The South Carolina Supreme Court affirmed his convictions and death sentence on February 8, 2010, and denied rehearing on

¹ A form 240 to proceed without prepayment of costs has been forwarded to the department of corrections for signing and notarization and will be filed with the Court as soon as possible.

² While the undersigned counsel represented Mr. Williams through the state post-conviction proceedings, the undersigned believes that there would be a potential conflict in continuing representation in the federal habeas proceedings because Mr. Williams is entitled to have unconflicted counsel to investigate whether state post-conviction counsel provided ineffective assistance of counsel. *Martinez v. Ryan*, 132 S. Ct. 1309 (2012).

March 25, 2010. *State v. Williams*, 690 S.E.2d 62 (S.C. 2010). The United States Supreme Court denied certiorari on October 4, 2010. *Williams v. South Carolina*, 562 U.S. 899 (2010). Petitioner filed an application for state post-conviction relief on November 30, 2010. He filed amended applications for post-conviction relief on September 30, 2011 and November 20, 2012. After an evidentiary hearing before the Honorable G. Edward Welmaker, the court filed its dismissal order on July 24, 2013. Counsel then filed a motion for reconsideration on August 5, 2013 that was denied on August 9, 2013. A timely notice of intent to appeal was filed on September 12, 2013. Following the timely filing of a petition for writ of certiorari in the South Carolina Supreme Court, the court granted review of one issue. After additional briefing and oral argument, the court dismissed as being improvidently granted on April 13, 2016 (2016-MO-012). Petitioner's habeas petition will be timely if filed on or before **February 15, 2017**.

II. THE COURT MUST ENTER A STAY AND APPOINT COUNSEL TO REPRESENT PETITIONER IN HIS FIRST FEDERAL HABEAS CORPUS PROCEEDING.

Pursuant to 18 U.S.C. § 3599, indigent death-sentenced prisoners are “entitled to the appointment of one or more attorneys” in order to pursue federal habeas corpus remedies.³ The right to counsel conferred by section 3559 attaches prior to the filing of a prisoner's habeas petition. As the Supreme Court has explained, absent this pre-petition right to counsel, condemned prisoners would not have meaningful access to the remedy of habeas corpus:

Congress' provision of a right to counsel under [§3559] reflects a determination that quality legal representation is necessary in capital habeas corpus proceedings in light of “the seriousness of the possible penalty and . . . the unique and complex nature of the litigation.” An attorney's assistance prior to the filing of a capital defendant's habeas corpus petition is crucial because “the complexity of our jurisprudence in this area . . . makes it unlikely

³ This statutory provision was formerly located at 21 U.S.C. § 848(q)(4)(B). Effective October 12, 2008, Congress moved this provision to 18 U.S.C. § 3599.

that capital defendants will be able to file successful petitions for collateral relief without the assistance of persons learned in the law.’

McFarland v. Scott, 512 U.S. 849, 855-856 (1994) (quoting *Murray v. Giarratano*, 492 U.S. 1, 14 (1989) (Kennedy, J., joined by O’Connor, J., concurring in the judgment)).

In construing section 3599 to require appointment of counsel prior to the filing of the petition, the Supreme Court explained that Congress provided for investigative and expert resources to be made available to counsel upon request and a showing of need. Since these services “may be critical in the pre-application phase of a habeas corpus proceeding, when possible claims and their factual bases are researched and identified,” Congress clearly intended counsel to be appointed prior to the filing of the habeas petition. *McFarland*, 512 U.S. at 855. It is thus plain that the right to counsel conferred by section 3599 is a right to assistance in identifying, developing, and pleading all available claims for relief, including the record-based claims already raised in the state trial and appeal proceedings, as well as the claims not raised in those proceedings because they are derived from non-record facts which require access to investigative and expert resources.

Moreover, “the right to counsel necessarily includes a right for that counsel meaningfully to research and present a defendant’s habeas claims. Where this opportunity is not afforded, ‘[a]pproving the execution of a defendant before his [petition] is decided on the merits would clearly be improper.’” *Id.* at 858 (quoting *Barefoot v. Estelle*, 463 U.S. 880, 889 (1983)). Accordingly, once a capital defendant invokes his right to appointed counsel, this Court has jurisdiction to enter a stay of execution. *Id.*; see also, *id.* at 857 (“Even if the District Court had granted McFarland’s motion for appointment of counsel and had found an attorney to represent

him, this appointment would have been meaningless unless McFarland's execution also was stayed.").

The appointment provision of 18 U.S.C. § 3599 requires appointment of at least one attorney who has been admitted to practice in the court of appeals for not less than five years and who has not less than three years experience in the handling of appeals in that court in felony cases. §3599(b). Alternatively, for good cause, this Court may appoint counsel "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 litigation." §3599(d).

Teresa L. Norris is on the CJA appointment list for qualified capital counsel. She has been a member in good standing of the South Carolina bar since November 1990 and was admitted to practice before the United States Court of Appeals in 1995. From November 1994 until April 1, 2006, she served as the Senior Staff Attorney and then Director of the Center for Capital Litigation (CCL) in Columbia. The CCL was a private non-profit corporation that, during the time period, provided direct representation to death-sentenced inmates and capital defendants and also consulted with other capital defense attorneys on both a pro bono and retained basis. Currently a partner in the firm Blume Norris & Franklin-Best, LLC, Ms. Norris has directly represented approximately forty-five (45) indigent capital defendants in various stages of court proceedings, including a handful of state capital trials, as well as numerous state post-conviction relief proceedings and federal habeas proceedings in both this Court and the Fourth Circuit. She also routinely serves as a faculty member for state and national capital defense continuing legal education programs.

Elizabeth Franklin-Best is also on the CJA appointment list for qualified capital counsel. She has been a member in good standing of the South Carolina bar since May 2004. She is currently a partner in the firm Blume Norris & Franklin-Best, LLC, and has represented a number of capital defendants on direct appeal, in state post-conviction, and in federal habeas proceedings. She is currently counsel of record in the following capital habeas proceedings: *Bayan Aleksey v. Stirling*, 5:14-cv-3016-JMC-KDW; *Gary Terry v. Byars*, 4:12-cv-1798-SB-TER; *John Wood v. Byars*, 0:12-cv-03532-DCN-PJG; and *James Nathaniel Bryant III v. Stirling*, 1:13-cv-2665-CMC-SVH.

On April 26, 2016, Ms. Norris met with Mr. Williams at the request of the undersigned counsel. Mr. Williams indicated that he desires to pursue federal habeas relief and requests Ms. Norris and Ms. Franklin-Best be appointed to represent him in the federal court proceedings.

III. CONCLUSION.

Wherefore, for the foregoing reasons, this Court should enter an order staying Petitioner's execution, and appointing Teresa L. Norris and Elizabeth Franklin-Best to assist Petitioner in the preparation and filing of a timely petition for habeas relief.

Respectfully submitted,

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Greenville, South Carolina

