

Post Office Box 6454
Columbia, South Carolina 29260
Voice 803.782.1663
Fax 803.787.0374
Email DianaHolt@utexas.edu

May 1, 2016
The Honorable Daniel E. Shearouse
Clerk of South Carolina Supreme Court
ATTN: Ms. Debbie Hopkins
P.O. Box 11330
Columbia, S.C. 29211-1330

RECEIVED

MAY - 4 2016

SC SUPREME COURT

Re: *Norman E. Starnes v. State*, 2011-CP-32-830

Dear Ms. Hopkins:

The purpose of this letter is to provide the Court with a summary of activity in the above-mentioned case, in the last sixty days. The Court, the Honorable Alexander S. Macaulay presiding, appointed counsel to Mr. Starnes on March 21, 2011, myself and Mr. Micah Leddy. Counsel have conducted several depositions to obtain records and discovery from law enforcement, including SLED and, in Spartanburg, of the Seventh Judicial Circuit Solicitor's office, who prosecuted Mr. Starnes after Mr. Myers was recused due to a conflict.

That Solicitor's office, through Mr. Balsa, has withheld materials from the file and has refused to provide the materials to the Court or a privilege log regarding the same. We anticipate litigation regarding the materials. That office did produce ten boxes of materials that are in the process of being scanned by a Spartanburg service. The service has promised to complete the massive job by May 27, 2011.

The Court set May 21, 2011 as the date for Mr. Starnes to file his first amended application. Mr. Starnes will be forced to request an extension in order to make a meaningful amendment, considering the ten boxes of documents, the nine volumes of ROA, the other information gathered so far during the depositions.

July Update: The copy service completed the replication of over 20,000 items from the State's file. Mr. Balsa provided the previously withheld materials to the PCR Court and the Court has those materials for assessment. Applicant filed his first amended application for post-conviction relief. At the State's request, the PCR Court held a status/scheduling conference. The PCR Court set December 26, 2011 as the deadline for discovery to conclude and ordered that the evidentiary hearing would commence on March 1, 2012.

September Update: Lead counsel has been involved in intense preparation for the retrial of the State v. Ernest Riddle. Still, we have been advancing the investigative effort, both fact and mitigation as diligently as we are able. We are also still processing the twenty thousand documents the prosecutors provided to counsel. With the *Riddle* matter resolved, primary focus will be on advancing discovery and preparing for an evidentiary hearing.

November update: Investigation is ongoing. Applicant is scheduling depositions to commence the second week in December. Former Solicitor Gowdy, who is now a U.S. Congressman, states that he is unable to make time for a deposition in this case until the end of January. The state has filed its first interrogatories and requests to produce, which are still pending. Applicant's counsel are diligently processing information and preparing his case.

January update: Investigation is actively ongoing. We deposed Congressman Gowdy, who provided a great deal of new information, which we will pursue. We have notified Judge Macaulay on behalf of Mr. Starnes that despite our best efforts, we will need to ask the Court to continue the case, with a deadline of August 1, 2012 to complete discovery and a fall merits hearing. We are of the opinion, respectfully, that those dates are very realistic and that justice will be well-served, as will Mr. Starnes. Mr. Simon, on behalf of the State, has declared that it takes no position regarding the suggested schedule. Judge Macaulay is in the process of scheduling a telephonic status conference to discuss scheduling.

April update: The parties scheduled several depositions of prosecutors from various judicial circuits who were involved in the prosecution of Mr. Starnes, which required a great deal of coordination of schedules. Two business days before the depositions were to commence, the state filed a motion to quash as to one prosecutor and a motion for protective order regarding the state's desire to block Applicant from asking questions that go to proving a pattern and practice of misconduct. The depositions had been scheduled for April 2nd and April 9th, but did not go forward. Other discovery is ongoing, as is case preparation. The Court orally set a scheduling order that discovery will commence on August 31st, amended application is due September 5th, and, the evidentiary hearing to commence on October 15, 2012

June update:

Mr. Starnes has continued to seek discovery, as authorized by the trial Court. The state has continued to resist regarding some materials. Mr. Starnes notified the state that he would be scheduling depositions for the last ten days of June and through the first ten days of July.

September Update: Multiple discovery efforts, including numerous depositions and subpoenas to obtain necessary information for preparation of Mr. Starnes' evidentiary hearing. Mr. Starnes requested an extension of time for the hearing and the remainder of the proceedings. The state did not oppose the request. Judge Macaulay submitted a request, which included Mr. Starnes' reasons for the extension, to the Supreme Court. On September 11, The Court conducted a hearing on the Attorney General's request to quash a subpoena directing that office to produce materials.

November (2012) Update: Discovery and case preparation continue with consulting experts assessments of client and issue concerning methamphetamine prevalence in Lexington County, which is unequivocally contrary to State's assertion to the jury at trial, and materials production for the same

January (2013) Update: Counsel for Starnes conducted depositions of assistant solicitors who actively participated and appealed at Mr. Starnes' retrial. The AG's office attended the same. Additional case preparation continues.

March (2013) Update: Investigation and preparation continue, including family court history and witness interviews. One of the tasks results in the realization that Counsel Leddy has a potential conflict of interest and requires substitution of mitigation investigator and attorney Kathy LaMotte to replace Mr. Leddy as counsel, who is relieved of his appointment to Mr. Starnes' case.

May (2013) Update: Intense research and development of family tree and history, including legal service to obtain family adoption records. This effort is heightened by what is believed to be the impending death of Jerry Wood, the client's only known living maternal uncle.

July (2013) Update: Discontinue services of Va family court attorney. With no mitigation investigator, I continue family history research and search to identify birth family. Counsel LaMotte passes NC bar and moves to NC. Minor complication: Maternal uncle passes away.

September (2013) Update: Litigation concerning records maintained by Lexington County Sheriff's department. Case preparation continues.

November (2013): High activity in other cases. Attempts to get K. LaMotte to engage in work.

January (2014): Intense research leads to identification of birth family at long last. Locate several members of birth family for future interviews and to collect additional information and documentation.

March (2014) Update: Hearing preparation continue with focus on state misconduct and

Honorable Daniel E. Shearouse

May 1, 2016

Page 4

record citations. K. LaMotte is largely unavailable. Mitigation investigator is grounded from investigation trips due to last trimester of pregnancy.

May (2014) Update: Copying and storage issues concerning files. Research state misconduct continues.

July (2014) Update: Plan trip and travel to VA for meetings with client's mother's birth family. Mitigation investigator gives birth in June.

September (2014) Update: Request that the Court hold status conference pursuant to client's request to set PCR evidentiary hearing date. Navigate removal of LaMotte as counsel, process pro hac vice motion concerning substitution of J. Christopher Jensen as counsel, all in coordination with SCCOID. Court conducted scheduling conference concerning PCR hearing.

November (2014) Update: Parties confer on tentative mutually agreeable hearing date of May 18, 2015. Court finalizes substitution of Jensen in place of LaMotte. Hearing preparation continues.

January/February (2015) Update: Counsel Holt requests a continuance of the evidentiary hearing based on a personal matter and a hiatus. The state opposed. The Court granted the request. This impacted two other capital PCR cases, as well. Tentative PCR hearing target date is September, 2015.

June (2015) Update: Investigation. and hearing efforts reinvigorate with mitigation investigator and Holt travel extensively, developing case. Conference with expert.

August (2015) Update: Key witness contact and investigation. Preparation continues.

October (2015) Update: Mitigation travels continue at a hectic pace in three capital PCRs as mitigation investigator, who is on all three with me as well, nears the third trimester of her second pregnancy and restricted travel.

December (2015)/January(2016) Update: Sudden death of client's father necessitates numerous hours of time related to his death.

May 1, 2015 Update: State requested a status conference which the Court had scheduled for March 4, 2016 in Walhalla. The day prior to the scheduled hearing, undersigned counsel learned, while on the way to hearing in another capital PCR before Judge Macaulay, that her father was diagnosed with throat cancer. The Court continued the hearing until further notice. Mr. Zelenka and the Court have been informed of the severity of the squamous cell cancer, an ulcerated T4 tumor that involves tongue, tonsil and voice box. Undersigned has spent a great deal of time in San Antonio, Texas, navigating the the complex twists and turns of securing an accurate diagnosis, managing multiple oncologists, and making sure pain and nutrition are properly managed. Undersigned had to secure an apartment in San Antonio. Chemotherapy and radiation are finally to commence on Tuesday, May 3, 2016. The bulk of undersigned's time will be spent in Texas for the

Honorable Daniel E. Shearouse

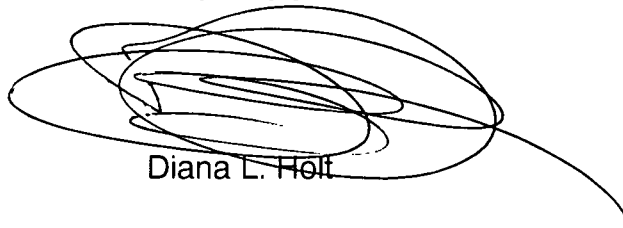
May 1, 2016

Page 5

duration, for many reasons, including that undersigned is the only family her father has.

With highest personal regards, I remain

Very truly yours,

A handwritten signature in black ink, appearing to be "Diana L. Holt", enclosed within a large, loopy oval scribble. A long, thin line extends from the right side of the scribble.

Diana L. Holt

(CC recipients electronically only)

cc: The Honorable Alexander S. Macaulay, presiding Judge by special order of this Court. (AmacaulayJ@sccourts.org) Courtesy copy
Al Simon, Jr., Esq. (Asimon@scag.gov)
Ed Salter, III, Esq. (AgedSalter@scag.gov)
J. Christopher Jensen, Esq. (JCJ@CLL.com)