

Hopkins, Debbie

From: Jill Abernethy <jill@blumelaw.com>
Sent: Monday, January 22, 2018 9:20 AM
To: Hopkins, Debbie
Subject: FW: Anthony Woods - Motion for Stay of Execution
Attachments: show_temp.pdf

The Stay is attached.

From: Lindsey S. Vann [mailto:lindsey@justice360sc.org]
Sent: Monday, January 22, 2018 9:16 AM
To: Jill Abernethy <jill@blumelaw.com>
Subject: Fwd: Anthony Woods - Motion for Stay of Execution

RECEIVED

JAN 22 2018

S.C. SUPREME COURT

Lindsey S. Vann
Executive Director, Justice 360
900 Elmwood Avenue, Suite 200
Columbia, SC 29201 | (803) 765-1044

----- Forwarded message -----

From: Lindsey S. Vann <lindsey@justice360sc.org>
Date: Fri, Jan 12, 2018 at 3:48 PM
Subject: Re: Anthony Woods - Motion for Stay of Execution
To: "Bryan Stirling (C055056)" <Stirling.Bryan@doc.sc.gov>, "Barton Vincent (C028988)" <Vincent.Barton@doc.sc.gov>, Ed Salter <ESalter@scag.gov>, Emily Paavola <emily@justice360sc.org>

Dear All,

A stay was issued in Woods today. It is attached. Please let me know if you need anything further.

Lindsey

Lindsey S. Vann
Executive Director, Justice 360
900 Elmwood Avenue, Suite 200
Columbia, SC 29201
(803) 765-1044

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JAN 22 2018

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

S.C. SUPREME COURT

Anthony Woods,)
)
Petitioner,)
)
vs.)
)
Bryan P. Stirling, Director, South Carolina)
Department of Corrections, and Willie D.)
Davis, Warden, Kirkland Reception and)
Evaluation Center,)
)
Respondents.)
_____)

Case No.: 5:17-mc-00491-DCN-KDW

ORDER

The petitioner, Anthony Woods (“Woods”), is a state prisoner sentenced to death. This matter is before the court on Woods’s motion for stay of execution and appointment of counsel, ECF No. 1, and motion for leave to proceed in forma pauperis, ECF No. 2. Respondents filed a response on January 2, 2018, ECF No. 6, and Woods replied on January 3, 2018, ECF No. 8. These motions are ripe for review.

Motion for Leave to Proceed In Forma Pauperis

Woods has filed a motion for leave to proceed in forma pauperis, together with an application to proceed in district court without prepaying fees or costs, Form AO-240. ECF Nos. 2 and 2-1. The court has reviewed these submissions and finds that Woods has shown that he is indigent and qualifies to proceed in forma pauperis in this case. Accordingly, the court grants Woods’s motion.

Motion for Appointment of Counsel

Pursuant to 18 U.S.C. § 3599(a)(2), indigent prisoners seeking to vacate a death sentence 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(b)–(c).

Further, the District of South Carolina has adopted a plan for implementing the Criminal Justice Act, which also governs the qualifications for appointed counsel in these types of cases. See In re Amendments to the Plan of the U.S. Dist. Ct. for the Dist. of S.C. for Implementing the Criminal Justice Act, No. 3:10-mc-5005-CIV (D.S.C. May 5, 2010) (“CJA Plan”). Pursuant to the CJA Plan, this district maintains a list of attorneys who have been approved to represent capital habeas corpus petitioners. The CJA Plan requires that “[a]t least one attorney appointed must have been admitted to practice in the District of South Carolina for at least five (5) years or must be on the court’s first-tier death penalty list.” CJA Plan § VII(A)(1). Further, in appointing counsel for death-sentenced state prisoners, the court is to give “consideration . . . to attorneys who are members of the first-tier of the death penalty CJA panel.” Id. § VII(A)(2). “However, the Court shall not be precluded from making appointments from the second-tier death

penalty CJA panel or from the general CJA panel.” Id.

Woods requests that this court appoint Emily C. Paavola and Lindsey S. Vann, of Columbia, South Carolina, to represent him. Both are attorneys at Justice 360 and have vast experience representing death-sentenced inmates in capital habeas proceedings. Significantly, Ms. Paavola and Ms. Vann are members of this court’s CJA Death Penalty Panel Attorney List—Ms. Paavola as approved Lead Counsel and Ms. Vann as approved Second-Chair Counsel. Further, Ms. Paavola and Ms. Vann have represented that they did not have any involvement in Woods’s state post-conviction proceedings. See Martinez v. Ryan, 566 U.S. 1 (2012), Juniper v. Davis, 737 F.3d 288 (4th Cir. 2013) (requiring appointment of independent counsel to investigate claims under Martinez). Respondents do not object to the appointment of counsel and take no position as to whom the court should appoint in this matter. ECF No. 6 at 18. Thus, the court finds that Ms. Paavola and Ms. Vann are qualified to represent Woods under § 3599 and appoints Emily C. Paavola as lead counsel and Lindsey S. Vann as second-chair counsel in this matter.

Motion to Stay Execution

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.”). As discussed above, Woods has requested the appointment of counsel and, by this order, the court grants that request. Accordingly, this court has the authority to grant a stay of execution. Section 2251(a)(3) provides that the stay “shall terminate” not more than ninety (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 that Woods should be granted a stay of execution. The stay shall terminate ninety (90) days after the date of this order appointing counsel, as required by 28 U.S.C. § 2251(a)(3). Once Woods files his habeas petition, he may move for an indefinite stay pending the outcome of his habeas proceeding under § 2251(a)(1).

Cost Containment and Budgeting

The court cautions counsel that duplication of efforts and unnecessary attorney time are to be avoided. Toward that end, counsel shall submit a confidential proposed litigation budget within 30 days of their appointment to Claire Woodward O'Donnell, Panel Administrator, Federal Public Defender's Office. The proposed budget shall estimate the number of hours counsel anticipates expending for the following stages of the litigation: (1) preparation and filing of the petition for habeas corpus; (2) preparation of legal memoranda in opposition to the respondent's return; and (3) evidentiary hearing, if one is sought. The proposed budget shall also contain cost estimates for investigative, expert, or other services, including law clerks and paralegals, if any. A copy of the proposed budget shall be submitted to this court. Additionally, counsel shall submit interim payment vouchers every sixty days to Ms. O'Donnell for payment consideration and so that costs and fees may be monitored.

State Court Record

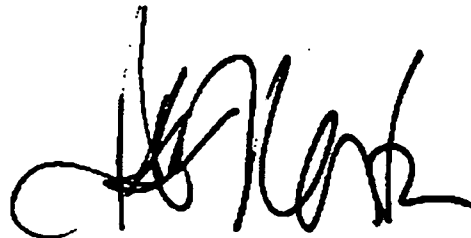
For the court's reference and for case management purposes, counsel for respondents are directed to file a complete record of all state court proceedings to date in connection with this matter within thirty (30) days of this order. Additionally, counsel

shall provide one courtesy copy each to the assigned District Judge and Magistrate Judge.

Accordingly, the court orders the following:

- (1) Woods's motion for stay of Execution and appointment of Counsel (ECF No. 1) is **GRANTED**;
- (2) Woods's motion to proceed in forma pauperis (ECF No. 2) is **GRANTED**;
- (3) Woods's counsel shall submit a confidential proposed litigation budget within thirty (30) days of this order;
- (4) Respondents' counsel shall file a complete record of state court proceedings related to this matter within thirty (30) days of this order;
- (5) The Clerk of Court shall assign a civil action number to this case;
- (6) The Clerk of Court shall notify the undersigned to review the stay of execution twenty (20) days prior to the expiration of the ninety (90) day limit;
and
- (7) This matter is referred to the assigned United States Magistrate Judge for all preliminary proceedings.

AND IT IS SO ORDERED.



DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

January 12, 2018
Charleston, South Carolina