

Hopkins, Debbie

From: Zelenka, Don
Sent: Friday, May 25, 2018 4:42 PM
To: Salley Elliott (elliott.salley@doc.sc.gov)
Cc: Trisha Allen; Melody Brown; Hopkins, Debbie; Jeff Young; Robert Kittle
Subject: FW: Capital Case - Quincy J. Allen - Application for Stay of Execution
Attachments: 18-05-25 Application for Stay & Appointment of Counsel.pdf; 18-05-25execution notice.pdf; 18-05-25_PropOrder.pdf; 18-05-25_PropOrder.docx

Importance: High

Salley, et al

Received this application for a stay of execution in the Federal District Court on the Quincy Allen death penalty matter that is currently set for June 22, 2018. Charles Grose has filed the motion dated today to have himself and the Capital Habeas Unit of the Federal Community Defender Office for the Eastern District of Pennsylvania appointed to represent Allen in anticipated federal habeas corpus proceedings. Although Mr. Grose made the application, he indicates that Allen is requesting his appointment although no affidavit from Allen is included. I just checked PACER and it does not indicate the federal judge assigned to the matter at this time nor any docketing. (4:40 Friday).

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From: Charles Grose [mailto:charles@groselawfirm.com]
Sent: Friday, May 25, 2018 4:25 PM
To: filingdocs_ecf_cola@scd.uscourts.gov
Cc: Don Zelenka; Melody Brown; Shawn_Nolan@fd.org; adjoian@gmail.com
Subject: Capital Case - Quincy J. Allen - Application for Stay of Execution
Importance: High

A few minutes ago, using ECF, I filed the attached application for a stay of execution and appointment of counsel, the execution notice, and proposed order. Also attached is a copy of the proposed order in Word format. Please contact me with any questions at this email address or 864-992-3433

Best,
Charles

E. Charles Grose, Jr.
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

QUINCY J. ALLEN,	:	
	:	
Petitioner,	:	CAPITAL CASE
	:	
v.	:	EXECUTION SCHEDULED FOR
	:	JUNE 22, 2018
WILLIE D. DAVIS, WARDEN, KIRKLAND CORRECTIONAL INSTITUTION,	:	
	:	Civil Action No. _____
Respondent.	:	

MOTION FOR STAY OF EXECUTION AND APPOINTMENT OF COUNSEL

Petitioner Quincy Allen is an indigent prisoner under sentence of death imposed by the Court of General Sessions for Richland County, South Carolina. Pursuant to *In re Stays of Execution in Capital Cases*, 471 S.E.2d 140 (S.C. 1996), on May 25, 2018, the Supreme Court of South Carolina issued and served upon Mr. Allen an Execution Notice (attached) setting Mr. Allen's execution for June 22, 2018. Mr. Allen respectfully requests that this Court stay his 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, Mr. Allen respectfully requests that the Court appoint the Federal Community Defender Office for the Eastern District of Pennsylvania and Charles Grose to represent him pursuant to 18 U.S.C. § 3599(a)(2). In support of this request, Petitioner sets forth the following:

1. Quincy Allen is an indigent death-sentenced state prisoner currently being housed in Kirkland Correctional Institution in Columbia, South Carolina.
2. Mr. Allen was indicted in the Court of General Sessions for Richland County during the September 2000 term for two counts of murder, one count of assault and battery with

intent to kill, one count of arson in the second degree, two counts of arson in the third degree, and one count of pointing and presenting a firearm. On February 28, 2005, Mr. Allen entered guilty pleas to each of the seven charges he faced. The Honorable G. Thomas Cooper sentenced Mr. Allen to death on March 18, 2005, following a sentencing hearing.

3. The Supreme Court of South Carolina affirmed Mr. Allen's convictions and sentences on November 16, 2009. *State v. Allen*, 687 S.E.2d 21 (S.C. 2009). Certiorari was denied by the United States Supreme Court on May 24, 2010. *Allen v. South Carolina*, 560 U.S. 929 (2010).

4. Mr. Allen next filed an application for state post-conviction relief on June 2, 2010. Following the filing of amended state post-conviction applications and an evidentiary hearing, state post-conviction relief was denied by the Richland County Court of Common Pleas on December 8, 2015. *Allen v. State*, No. 2010CP4003644 (Richland County Ct. Com. Pl. Dec. 8, 2015) (order denying post-conviction petition). The Supreme Court of South Carolina denied certiorari on April 19, 2018. *Allen v. State*, No. 2016-00722 (S.C. Apr. 19, 2018) (order denying certiorari). A motion to reconsider the denial of certiorari was denied today, May 25, 2018. On this same date, the state scheduled Mr. Allen's execution for the fourth Friday from this date, June 22, 2018.

Mr. Allen Requests Appointment of Counsel

5. Mr. Allen is entitled to the appointment of counsel under 18 U.S.C. § 3599(a). He has never had his constitutional claims for relief addressed by a federal court and has a statutory right to prepare and present those claims. Pursuant to 18 U.S.C. § 3599(a)(2), indigent death-sentenced prisoners are "entitled to the appointment of one or more attorneys" in order to pursue federal habeas corpus remedies. The right to counsel conferred by § 3599 attaches prior to the

filing of a prisoner's habeas petition. As the Supreme Court has explained, absent this pre-petition right to counsel, death-sentenced prisoners would not have meaningful access to the remedy of habeas corpus. See *McFarland v. Scott*, 512 U.S. 849, 855-56 (1994) (“An attorney’s assistance prior to the filing of a capital defendant’s habeas corpus petition is crucial, because ‘[t]he complexity of our jurisprudence in this area . . . makes it unlikely that capital defendants will be able to file successful petitions for collateral relief without the assistance of persons learned in the law.’”) (quoting *Murray v. Girratano*, 492 U.S. 1, 14 (1989) (Kennedy, J., joined by O’Connor, J., concurring in judgment)) (alterations in original).

6. In construing § 3599 to require appointment of counsel prior to the filing of the petition, the Supreme Court explained that Congress provided for investigative services 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 § 3599 is a right to assistance in identifying, developing, and pleading all available claims for relief.

7. Mr. Allen was represented in state post-conviction proceedings by Elizabeth Franklin-Best and Laura Young. Because a potential conflict of interest may develop in the course of investigating and presenting Mr. Allen’s habeas petition, Mr. Allen seeks new counsel to represent him in these proceedings. See, e.g., *Juniper v. Davis*, 737 F.3d 288, 290 (4th Cir. 2013) (“[I]f a federal habeas petitioner is represented by the same counsel as in state habeas proceedings, and the petitioner requests independent counsel in order to investigate and pursue claims under *Martinez* [*v. Ryan*, 566 U.S. 1 (2012),] in a state where the petitioner may only

raise ineffective assistance claims in an ‘initial-review collateral proceeding,’ qualified and independent counsel is *ethically required.*”) (emphasis in original).

8. Ms. Franklin-Best and Ms. Young have therefore endeavored to locate new, qualified counsel to represent Mr. Allen in his federal habeas proceedings. Ms. Franklin-Best and Ms. Young have identified the Federal Community Defender Office for the Eastern District of Pennsylvania (FCDO) to represent Mr. Allen in his federal habeas proceedings. The FCDO is qualified to represent Mr. Allen and willing to undertake his representation. Ms. Franklin-Best and Ms. Young have further identified Charles Grose, who is a member of the bar of this Court and is willing to serve as local counsel for Mr. Allen pursuant to Local Civil Rules 83.I.04 and 83.I.06.

9. The FCDO is recognized by the Administrative Office of the United States Courts (AO) as a Community Defender Organization pursuant to 18 U.S.C. § 3006(A) of the Criminal Justice Act. *See* Addendum to the Plan for the Implementation of the Criminal Justice Act of 1964, as amended, 18 U.S.C. § 3006A, of the United States District Court for the Eastern District of Pennsylvania. Since 1995, the FCDO has received a sustaining grant from the AO to represent death-sentenced prisoners in federal habeas corpus proceedings and maintains a unit of attorneys and support staff who specialize in capital habeas corpus and post-conviction litigation.

10. Because of its sustaining grant, the FCDO will not request from this Court any funds for attorney fees, investigation or travel expenses, expert witness expenses, or any other expenses.

11. Leigh M. Skipper, the Chief Federal Defender for the Eastern District of Pennsylvania, is willing to accept the appointment for Mr. Allen. He will assign attorneys responsible for Mr. Allen’s representation from the office’s Capital Habeas Unit, which is

supervised by Shawn Nolan. Mr. Nolan has been licensed to practice law in Pennsylvania since 1989 and has exclusively handled capital post-conviction cases for the past fifteen years.

12. Capital post-conviction litigation requires specialized knowledge and experience. *See, e.g.*, 18 U.S.C. § 3599(d) (acknowledging the unique and complex nature of capital habeas litigation); *McFarland*, 512 U.S. at 856 (“[T]his Court’s death penalty jurisprudence unquestionably is difficult even for a trained lawyer to master.”) (quoting *Murray*, 492 U.S. at 28) (Stevens, J., joined by Brennan, Marshall, and Blackmun, JJ., dissenting)). FCDO attorneys possess such specialized knowledge and experience. Since 1995, the FCDO has represented scores of death-sentenced prisoners in federal district courts, the Courts of Appeals, and the United States Supreme Court. It has litigated five cases before the United States Supreme Court. *See Sattazahn v. Pennsylvania*, 537 U.S. 101 (2003); *Rompilla v. Beard*, 545 U.S. 374 (2005); *Pace v. Diguglielmo*, 544 U.S. 408 (2005); *Beard v. Kindler*, 558 U.S. 53 (2009); and *Williams v. Pennsylvania*, 136 S. Ct. 1899 (2016). Its lawyers have served on the faculties of death penalty and/or habeas corpus training seminars for numerous organizations and entities including, *inter alia*, the Administrative Office of the United States Courts Habeas Corpus Training and Assistance Project, the National Institute for Trial Advocacy, the NAACP Legal Defense & Educational Fund, the American Bar Association Death Penalty Representation Project, the Pennsylvania Bar Institute, the National Association of Criminal Defense Lawyers, and the Pennsylvania Association of Criminal Defense Lawyers.

13. The FCDO has been appointed to one capital § 2255 case in this Court, as well as several additional capital § 2254 and § 2255 cases in the United States District Courts located within the appellate jurisdiction of the United States Court of Appeals for the Fourth Circuit, and the Fourth Circuit itself. *See United States v. Fulks*, No. 4:02-CR-00992-JFA (D.S.C.); *see also*

United States v. Roane, No. 09-8 (4th Cir.); *Lawlor v. Zook*, No. 2:15-CV-00113-MSD-LRL (E.D. Va.); *Winston v. Kelly*, No. 7:07-CV-00364-SGW (W.D. Va.); *United States v. Jackson*, No. 1:00-CR-00074-MR (W.D.N.C.); *United States v. Higgs*, No. 8:98-CR-00520-PJM (D. Md.).

14. As with all out-of-district appointments, and in accordance with protocol, the FCDO has requested pre-approval to seek an appointment in this case from the AO, Defender Services Office. On this date, May 25, 2018, the AO approved the FCDO's request to seek an appointment to represent Mr. Allen. Pursuant to the Defender Services Office's protocol regarding requests to seek out-of-district appointments, Chief Judge Roger L. Gregory of the United States Court of Appeals for the Fourth Circuit was notified of the potential appointment of the FCDO and interposed no objection.

15. The qualifications of attorneys of the FCDO's Capital Habeas Unit meet the qualifications for counsel outlined in 18 U.S.C. § 3599(c) and (d), and they are willing to accept an appointment in this case. Mr. Nolan's contact information is as follows:

Shawn Nolan
Chief, Capital Habeas Unit
Federal Community Defender Office
Eastern District of Pennsylvania
601 Walnut Street, Suite 545-West
(215) 928-0520
shawn_nolan@fd.org

16. Mr. Grose represented John Kennedy Hughey in his capital post-conviction relief case, subsequent appeals, and resentencing to life imprisonment. *Hughey v. State*, Abbeville County Case No. 1996-GS-01-220 and 2000-CP-01-210 and *Hughey v. State*, (S.C.S.Ct. Op. No. 2015-UP-029) (Filed May 13, 2015) *cert. denied South Carolina v. Hughey*, 136 S.Ct. 1659 (2016). In addition to Mr. Hughey's capital post-conviction relief case, Mr. Grose's is currently

capital post-conviction relief counsel in *William O. Dickerson, Jr. v. State*, Charleston County Cases Number 2012-CP-10-3216, *Jerry Buck Inman v. State*, Pickens County Case Number 2012-CP-39-00918, *Stephen Cory Bryant v. State*, Sumter County Case No. 2016-CP-43-828, and *Ricky Blackwell v. State*, Spartanburg County Case Number 2018-CP-42-00928. He is counsel in *Donald Jones v. State*, Lancaster County Case No. 2001-CP-29-1030, a competency to be executed proceeding. Mr. Grose is *habeas* counsel in *Stephen Corey Bryant v. Sterling et. al.*, Case No. 9:15-mc-00217-DCN-BM and *Mikal Deen Mahdi v. Sterling, et. al.*, Case No. 8:16-cv-03911-TMC-JDA. Mr. Grose has received significant death penalty training, including but not limited to federal habeas training, through the Annual National Federal *Habeas Corpus* Seminar, (2017, 2015, 2014, 2013, and 2011); NAACP Legal Defense & Educational Fund, Inc.'s Annual Capital Punishment Training Conference, Airlie Conference Center, Warrenton, VA (2012, 2010, and 2005); and Capital Case Initiative, sponsored by South Carolina Commission on Indigent Defense (2013, 2012, 2011, and 2010).

17. Mr. Allen has been deemed indigent by the state courts and entitled to appointed counsel, and he remains so. He has been continuously incarcerated since his arrest in this matter and without access to funds to hire an attorney. Mr. Allen has requested that the FCDO and Mr. Grose be appointed to represent him.

Mr. Allen Requests a Stay of Execution

18. 28 U.S.C. § 2251 empowers a federal court to stay an execution during the pendency of a habeas corpus proceeding. Under the United States Supreme Court's decision in *McFarland v. Scott*, 512 U.S. 849 (1994), Petitioner is entitled both to the appointment of counsel to assist in the preparation and filing of a petition for habeas corpus, and to a stay of

execution that allows the petitioner the opportunity for counsel to investigate, prepare and present his habeas petition.

19. In *McFarland*, the Court held that the right to counsel embodied in section 21 U.S.C. § 848(q)(4)(B) (now 28 U.S.C. § 3599) “necessarily includes a right for that counsel meaningfully to research and present a defendant’s habeas claims.” *McFarland*, 512 U.S. at 858. The Court cautioned that, “[w]here 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.* (quoting *Barefoot v. Estelle*, 463 U.S. 880, 889 (1983)) (second and third alterations in original).

20. Thus, the Court determined that the federal’s court’s authority to issue a stay cannot be viewed in isolation from section 848(q)(4)(B), which granted the right to counsel. *Id.* at 857-58. Reading these provisions together, the Court wrote:

We thus conclude that the two statutes must be read *in pari materia* to provide that once a capital defendant invokes his right to appointed counsel, a federal court also has jurisdiction under §2241 to enter a stay of execution.

Id. at 858.

21. Obviously, the execution of a defendant who has initiated habeas corpus review but has not had an opportunity for his habeas claims to be adjudicated violates his federal statutory right to such review, and would suspend the writ of habeas corpus in his case in violation of the federal constitution.

22. As Petitioner has not previously filed a federal petition for habeas corpus relief in this or any other court, he is entitled to a stay of execution to permit him to do so and to avoid state interference in the preparation and litigation of his petition for writ of habeas corpus. Likewise, he is entitled to the appointment of counsel to assist him in that endeavor.

WHEREFORE, for the foregoing reasons, Mr. Allen respectfully requests that the Court enter an order staying Mr. Allen's imminent execution and appointing the Capital Habeas Unit of the Federal Community Defender Office for the Eastern District of Pennsylvania and Charles Grose to represent him in federal habeas corpus proceedings pursuant to 18 U.S.C. § 3599(a)(2). A proposed order is attached.

Respectfully Submitted,

s/ E. Charles Grose, Jr.

E. Charles Grose, Jr.

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Federal Court ID: 6072

May 25, 2018.

CERTIFICATE OF SERVICE

I certify that I have served a copy of this pleading on the State of South Carolina by email, on the date reflected below, addressed to

Donald J. Zelenka
S.C. Attorney General's Office

Melody J. Brown, Esquire
S.C. Attorney General's Office
MBrown@scag.gov

Respectfully Submitted,

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Federal Court ID: 6072

May 25, 2018.

Community Defender Office for the Eastern District of Pennsylvania is hereby appointed as lead counsel for Petitioner pursuant to 18 U.S.C. § 3599. The Court further finds that Charles Grose, Esq., likewise possesses the background, knowledge, and experience to enable him to represent Petitioner with due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation. Charles Grose, Esq., is hereby appointed as local counsel for Petitioner pursuant to 18 U.S.C. § 3599 and Local Civil Rules 83.I.04 and 83.I.06.

4. Petitioner is directed to file a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 within the time limit set forth in 28 U.S.C. § 2244(d).

By the Court:

United States District Judge