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October 22, 2019

RECEIVED

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S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re: *State of South Carolina v. Luzenski Allen Cottrell*
Case No. Case No. 2018-CP-26-05709
60 Day Status Report

Dear Mr. Shearouse:

This letter is the sixty-day status report pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996). Mr. Cottrell's pre-hearing investigation is ongoing and will require at least eighteen months to complete.

The PCR Court issued an updated scheduling order on June 26, 2019. In accordance with the scheduling order, Mr. Cottrell amended his PCR application on September 2, 2019. With regard to several of the claims in the amended application, Mr. Cottrell informed:

Because of lack of funding and access to investigative and expert services, and due to the accelerated scheduling, Mr. Cottrell is unable to provide facts to support this claim. With access to funding for investigative and expert services, Mr. Cottrell will be able to provide facts sufficient to support this claim. *Hinton v. Alabama*, 571 U.S. 263, 134 S. Ct. 1081, 188 L. Ed. 2d 1 (2014); *Ake v. Oklahoma*, 470 U.S. 68, 105 S. Ct. 1087, 84 L. Ed. 2d 53 (1985); *Winkler v. State*, 418 S.C. 643, 663, 795 S.E.2d 686, 697 (2016) (Circuit Court abused its discretion in denying defendant's second motion for additional time); *Bailey v. State*, 309 S.C. 455, 424 S.E.2d 503 (1992); S.C. Code Ann. §§ 17-3-50 and 17-27-160(B).

The PCR Court denied Mr. Cottrell's first request for a mitigation investigator, without prejudice, on February 13, 2019. On September 9, 2019, Mr. Cottrell submitted his second funding request for a mitigation investigator. On October 10, 2019, the PCR Court, for the first time, authorized funding for a mitigation investigator. Lindsey Vann, who will supervise Mr. Cottrell's newly funded mitigation investigator, states:

In my professional experience, preparation of a mitigation investigation for a capital post-conviction case (including a thorough social history investigation, followed by work with appropriate experts) requires approximately 200 to 400 hours over the course of 18 to 24 months, depending on the complexity of the case.

See Affidavit of Lindsey Vann, a copy of which is attached.

On September 20, Mr. Cottrell submitted a funding request for expert and investigative services associated with the guilt-innocence phase investigation. On October 10, 2019, the PCR Court authorized funding for expert and investigative services associated with the guilt-innocence phase investigation.

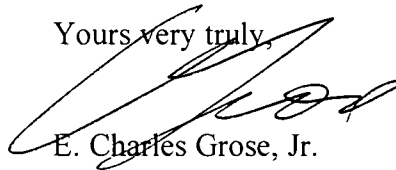
On October 7, 2019, Mr. Cottrell moved to revise the scheduling order and to be allowed additional amendments to his application for post-conviction relief. The State responded on October 17, 2019, and counsel for Mr. Cottrell informed the PCR Court and counsel they would prepare a reply. On October 18, 2019, before Mr. Cottrell had an opportunity to reply, the PCR Court ruled:

After reviewing both the Motion to Revise the Scheduling Order and the Return to Motion to Revise Scheduling Order, the parties shall prepare for a hearing on the original date set, January 21, 2020. Should circumstances warrant upon a future filing, the Court reserves the right to adjust the scheduling order.

Thank you for your attention to this matter. Please let me know if you have any questions or require additional information.

With kindest regards, I am

Yours very truly,

A handwritten signature in black ink, appearing to read "E. Charles Grose, Jr.", written over the typed name.

E. Charles Grose, Jr.

cc: The Honorable Steven H. John
Brie Russell, Esquire
Melody J. Brown, Esquire
Joe Maye, Esquire

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS FOR
COUNTY OF HORRY)	THE FIFTEENTH JUDICIAL CIRCUIT
)	
)	
Luzenski Allen Cottrell,)	
)	Case No. 2018-CP-26-05709
Applicant)	
v.)	
)	
State of South Carolina)	
Respondent.)	
)	

AFFIDAVIT OF LINDSEY S. VANN

Lindsey S. Vann, who appeared personally before me, affirms and states the following:

Background and Qualifications

1. I, Lindsey S. Vann, am an attorney licensed in South Carolina and Virginia. I am the Executive Director of Justice 360, an organization devoted to representing individuals facing a death sentence in South Carolina. I received a B.S. from Cornell University in 2005 and a J.D. from the University of Richmond School of Law in 2012. After law school, I served as a law clerk to the Honorable James R. Spencer, United States District Court for the Eastern District of Virginia. In 2013, I began working for Justice 360 where my practice is devoted to representing individuals in South Carolina facing a death sentence in their trial and post-conviction proceedings.
2. Since 2013, I have been appointed as counsel or served as a mitigation investigator in more than fifteen capital cases at both the trial and post-conviction levels in state and federal courts. For each of the cases in which I have been appointed as capital post-conviction counsel, I have retained and worked with mitigation specialists to assist in preparing claims for presentation to the post-conviction court.

Role of the Mitigation Specialist

3. The role of the mitigation specialist is to assist attorneys in many areas related to the preparation of evidence for the penalty phase of a capital trial or in support of a capital petitioner’s claims for post-conviction relief. The primary role of the mitigation specialist in a capital murder case is to assist the attorneys by conducting a thorough social history investigation (through record collection and witness interviews). This investigation by a mitigation specialist requires the following:
 - a. Multi-generational record collection from all aspects of the client’s life including birth, childhood, and all medical records, educational records, employment records, mental health and psychiatric records, etc.

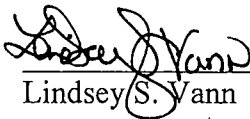
- b. Identifying and interviewing all potential penalty phase witnesses including multi-generational family members, friends, neighbors, physicians, mental health and social service personnel, co-workers, employers, wives, ex-wives, girlfriends, former girlfriends, teachers, coaches, past attorneys, police and sheriff personnel, corrections officers, etc.
 - c. Further investigation of pertinent information discovered in collected records and interviews.
 - d. Providing background materials, information, and documentation to experts to enable them to perform competent and reliable evaluations.
 - e. Ongoing contact and communication with the client and his family during the entire process.
4. The importance of a mitigation investigation flows from the constitutional requirement that an individual charged with capital murder is entitled to an individualized determination of the appropriate sentence. In making the determination, the judge and jury are required to consider not only the circumstances of the offense, but also all aspects of the client's life, both good and bad. In post-conviction, when there is an allegation of ineffective assistance at the sentencing phase of trial, the mitigation investigator's role is to identify and help the attorneys present that information.
5. For several reasons, locating and interviewing lay witnesses, especially family members is a sensitive endeavor, which requires exceptional time and patience. A primary reason is that, as with the client, family members frequently suffer from multiple impairments, including mental retardation, mental illness, and substance abuse. In addition, there are usually problems obtaining the trust of witnesses. In many cases lay witnesses are initially suspicious of talking to anyone about the client because it is assumed the purpose is to incarcerate or in other ways hurt the family members. Others are reluctant to reveal possibly painful and embarrassing facts regarding family history to a stranger. Consequently, a significant amount of time must be spent not only effectively evaluating and overcoming various impairments, but also in demonstrating one's sincere commitment to assisting the client. The limitations of the witnesses, combined with the length of the time between childhood and the time of the offense and trial (or post-conviction investigation or re-trial) necessitates the lay witnesses be interviewed on more than one occasion in order to obtain valid and reliable information.
6. In post-conviction proceedings, the mitigation investigation can be informed, but not limited by, the investigation conducted at the trial level. In my experience, post-conviction mitigation investigation often uncovers significant mitigation evidence trial counsel (with the assistance of mitigation investigators) failed to develop and present. Thus, mitigation investigation is an integral part of preparation in capital post-conviction proceedings. *See* ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 10.15.1(E)(4) (requiring capital post-conviction counsel to "continue an aggressive investigation of all aspects of the case"); *see also id.* 10.15.1(E)(4) commentary


("[C]ollateral counsel cannot rely on the previously compiled record but must conduct a thorough, independent investigation.").

Conclusion

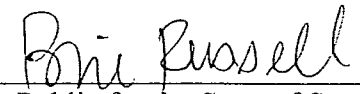
- 7. In my professional experience, preparation of a mitigation investigation for a capital post-conviction case (including a thorough social history investigation, followed by work with appropriate experts) requires approximately 200 to 400 hours over the course of 18 to 24 months, depending on the complexity of the case.
- 8. I am not available (due to other case commitments) to serve as a mitigation specialist in Mr. Cottrell's case. However, I am the supervisor of attorney Hannah Lyon Freedman who is available and willing to serve as the mitigation specialist for Mr. Cottrell's post-conviction relief case if she is provided adequate time and resources to do so.

I affirm, under the penalty of perjury, that the foregoing is true and correct to the best of my knowledge.


Lindsey S. Vann


Date

Sworn to and subscribed before me
this 6th day of September 2019.


Notary Public for the State of South Carolina

My commission expires: 3/24/27