

Hopkins, Debbie

From: Charles Grose <charles@groselawfirm.com>
Sent: Wednesday, November 6, 2019 1:33 PM
To: Hopkins, Debbie
Cc: Caroline Scramton; Joseph Perkovich; Lindsey Vann; Emily Paavola; Laura Wingard
Subject: Stanko v. Stirling, 1:19-mc-00380-RMG-SVH
Attachments: Stanko - Motion for Stay & Appointment of Counsel (filed copy).pdf; Stanko - Motion for Stay & Appointment of Counsel, certificate of service (filed copy).pdf; Stanko - IFP Application (filed copy).pdf; Stanko - IFP Application, certificate of service (filed copy).pdf

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Dear Ms. Hopkins,

I wanted to make sure that Court is aware of these filings in the District Court regarding Supreme Court Appellate Case No.2017-002281.

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

Best,
Charles

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S.C. SUPREME COURT

support of this Motion, counsel submit the following facts and argument.⁴

I. RELEVANT PROCEDURAL HISTORY

Mr. Stanko was convicted of murder, two counts of kidnapping, armed robbery, first-degree criminal sexual conduct, and assault and battery with intent to kill and sentenced to death in Horry County in 2009. On February 27, 2013, the South Carolina Supreme Court affirmed the trial court judgment. *State v. Stanko*, 402 S.C. 252, 741 S.E.2d 708 (2013). Mr. Stanko sought rehearing on the denial of his direct appeal, which was denied on April 3, 2013. *State v. Stanko*, No. 2010-154746 (S.C. Apr. 3, 2013). On October 7, 2013, the United States Supreme Court denied Mr. Stanko's petition for writ of certiorari from his direct appeal decision. *Stanko v. South Carolina*, 134 S. Ct. 247 (2013). Ninety-one days later, Mr. Stanko, through his counsel at the time, properly filed his state post-conviction petition for relief, thereby statutorily tolling the one-year federal statute of limitations that had commenced on October 7, 2013 (*supra*). 28 U.S.C. § 2244(d). On October 31, 2019, the South Carolina Supreme Court denied the petition for rehearing of its September 19, 2019 affirmance of the denial of his state post-conviction application. *Stanko v. State*, No. 2017-002281 (S.C. Sept. 19, 2019). Thus, the remaining 274 days of Mr. Stanko's one-year limitations period pursuant to § 2244(d)(1) resumed the following day. *See generally Beatty v. Rawski*, 97 F. Supp.3d 768, 774 (D.S.C. 2015).

II. PETITIONER IS ENTITLED TO COUNSEL

Indigent prisoners under a state-court judgment imposing a sentence of death have the statutory right to qualified counsel for federal habeas corpus proceedings. 18 U.S.C. § 3599

collateral-proceedings, is deficient); *see also Christeson v. Roper*, 135 S. Ct. 891 (2015) (per curiam) (statutory entitlement of conflict-free counsel for capital habeas petitioner).

⁴ Mr. Stanko has completed an Application to Proceed Without Payment of Fees and files it simultaneously with this motion, along with a Motion to Proceed *In Forma Pauperis*, in accordance with Rule 3(a) of the Rules Governing Section 2254 Cases.

(formerly 21 U.S.C. § 848(q)(4)-(10)); *see also* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, PLAN FOR IMPLEMENTING THE CRIMINAL JUSTICE ACT OF 1964, AS AMENDED, 18 U.S.C. SECTION 3006A (Mar. 2, 2018) (hereafter, “2018 CJA PLAN”), XIV. Appointment of Counsel and Case Management in CJA Capital Cases, (F) Appointment and Qualifications of Counsel in Federal Capital Habeas Corpus Proceedings (28 U.S.C. § 2254), sub-paragraph (1). The Supreme Court recognizes the imperatives behind this right, given “the seriousness of the penalty and . . . the unique and complex nature of the litigation.” *McFarland v. Scott*, 512 U.S. 849, 855 (1994) (quoting § 848(q)(7)); *see Martel v. Clair*, 565 U.S. 648, 657 (2012), citing § 3599(a)(2). This right to counsel attaches prior to the filing of a § 2254 petition; otherwise, the right—and the “investigative, expert, or other reasonably necessary services” that accompany it—would be meaningless in the habeas corpus context. Sec. 3599(a)(2); *McFarland*, 512 U.S. at 855.

The one-year statute of limitations period under the Anti-terrorism and Effective Death Penalty Act (“AEDPA”) is strict and unforgiving. *See Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005); § 2244(d)(1). Any petitioner must investigate, develop, and present all possible claims to the court within that time frame, or risk waving them. *McFarland*, 512 U.S. at 856. “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 the capital defendants will be able to file successful petitions for collateral relief without the assistance of persons learned in the law.” *Id.* at 855-56 (alterations and internal quotation marks omitted).

The appointment provision of 18 U.S.C. § 3599, requires appointment of at least one attorney and the *Guide to Judiciary Policy* has long underscored the prudence in the appointment of two qualified attorneys for federal capital habeas corpus proceedings. *Guide to Judiciary*

Policy, Guidelines for Administering the CJA and Related Statutes, Vol. 7A, 620.10.20 (“Due to the complex, demanding, and protracted nature of death penalty proceedings, judicial officers should consider appointing at least two attorneys.”); *see also* 2018 CJA PLAN, XIV(F)(2).

Petitioner hereby moves for the appointment of Messrs. Joseph J. Perkovich and E. Charles Grose, Jr.

Mr. Perkovich is a founding principal attorney of Phillips Black, Inc., a nationwide, nonprofit law practice dedicated to the direct representation of individuals facing sentences of death or life without the possibility of parole. He is highly qualified to represent individuals in federal capital habeas proceedings. He is a member in good standing of the New York bar and admitted to practice in various federal courts throughout the country, including the Supreme Court and, since 2008, the Fourth Circuit Court of Appeals.⁵ In recent years, various federal district courts have appointed Mr. Perkovich in habeas corpus proceedings pursuant to 18 U.S.C. § 3599, including pre-petition § 2254 cases in the Southern District of Indiana in October 2019, *Weisheit v. Neal*, 4:19-cv-036-SEB-DML, in the Northern District of Mississippi in February 2018, *Pitchford v. Hall*, 4:18-cv-002-MPM, and the Northern District of Texas in December 2017, *Cade v. Davis*, 3:17-cv-3396-G-BN, in addition to numerous other capital habeas cases.⁶

Among Mr. Perkovich’s federal capital habeas work is *Christeson v. Roper*, 135 S. Ct. 891 (2015) (per curiam), concerning a Missouri prisoner under execution warrant that culminated in a decision extending the “interests of justice” standard under *Clair*, 565 U.S. at

⁵ In addition, Mr. Perkovich is admitted to the circuit courts for the Second, Fifth, Eighth, and Eleventh Circuits.

⁶ *See, e.g., Villanueva v. Davis*, No. 4:02-cv-4122 (S.D. Tex.) (substitution for withdrawn counsel); *Lynch v. Davis*, 3:18-cv-444-EMC (N.D. Cal.); *Davis v. Payne*, No. 16-cv-8000 (W.D. Mo.); *Edwards v. Stephens*, No. 10-cv-6-M (N.D. Tex.), appearance in Fifth Circuit, *In re Edwards*, 865 F.3d 197 (5th Cir. 2017); *Ward v. Norris*, No. 03-cv-201-BSM (E.D. Ark.); *Middleton v. Roper*, No. 03-cv-543-CDP (E.D. Mo.).

663, governing substitution of counsel under § 3599. Last fall, Mr. Perkovich argued in the Arkansas Supreme Court *Ward v. Hutchinson*, 558 S.W.3d 856 (Ark. 2018), which overturned that court's 1994 precedent to invalidate as unconstitutional Arkansas's statutory scheme to determine competency to be executed since *Ford v. Wainwright*, 477 U.S. 399 (1986).

In 2014, Mr. Perkovich co-founded the death penalty clinical curriculum at the Saint Louis University School of Law and in fall 2017 co-founded a post-conviction remedies clinical practicum in the Washington University School of Law, focusing on death penalty cases. Also, in fall 2019, he commenced a teaching partnership with the Georgetown Law Center's inaugural death penalty post-conviction clinic. Mr. Perkovich routinely presents at law schools and seminars and conferences conducted by the Administrative Office of the United States Courts' Habeas Assistance and Training Project. In order to supply highly qualified counsel in these complex cases, this Court's CJA Plan expressly contemplates the appointment of out-of-district counsel, 2018 CJA PLAN, XIV(F)(3), especially counsel with "distinguished prior experience in the area of . . . capital post-conviction proceedings, *id.* (F)(6), (7).

Charles Grose was admitted to practice in South Carolina in 1993 and the United States District Court for South Carolina in 1994. After serving from 1993 to 1996 as an associate with Grimball & Cabanis P.A. in Charleston, he became an Assistant Public Defender in Orangeburg County, South Carolina, becoming the Deputy Public Defender in 1998. He then served as the Chief Public Defender for Greenwood and Abbeville Counties from 1999 to 2008. Upon implementation of the Indigent Defense Act of 2007, he was appointed the Circuit Public Defender for the Eighth Judicial Circuit (Abbeville, Greenwood, Laurens, and Newberry Counties), serving a term from August 2008 to August 2012. In 2016, the United States District

Court for the District of South Carolina appointed Mr. Grose First Chair on the CJA Death Penalty Attorney List.

Mr. Grose is federal habeas counsel in *Stephen Corey Bryant v. Sterling et. al.*, Case No. 9:16-cv-01423-DCN-BM, *Mikal Deen Mahdi v. Sterling, et. al.*, Case No. 8:16-cv-03911-TMC-JDA (which is currently on appeal to the Fourth Circuit Court of Appeals, Case No. 19-3), and *Quincy Allen v. Davis*, Case No. 0:18-cv-01544-DCC-PJG. This distinguished experience in federal capital post-conviction proceedings amply qualifies Mr. Grose under this Court's CJA Plan. 2018 CJA PLAN, XIV(F)(6), (7). In addition, Mr. Grose's state-court post-conviction advocacy deepens his qualification for this appointment. He represented John Kennedy Hughey in his capital post-conviction relief case, subsequent appeals, and resentencing to life imprisonment. *State v. Hughey*, Abbeville County Case No. 1996-GS-01-220, *Hughey v. State*, Abbeville County Case No. 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). Mr. Grose's represented William Dickerson in his capital post-conviction relief case, which was completed in 2018. *William O. Dickerson, Jr. v. State*, Charleston County Cases Number 2012-CP-10-3216. Mr. Grose is currently post-conviction relief counsel in *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 S.C. Supreme Court Appellate Case No. 2019-0006120, *Rickey Blackwell v. State*, Spartanburg County Case No. 2018-CP-42-00928, Luzenski Allen Cottrell, Horry County Case No. 2018-CP-26-05709, and *Bobby Stone v. State*, Sumter County Case No. 2018-CP-43-001025. He is counsel in *Donald Jones v. State*, Lancaster County Case No. 2001-CP-29-1030, a competency to be executed proceeding.

Mr. Grose has received significant death penalty training, including but not limited to federal *habeas* training, through the Annual National Federal *Habeas Corpus* Seminar, (2018, 2017, 2015, 2014, 2013, and 2011); NAACP Legal Defense & Educational Fund, Inc.'s Annual Capital Punishment Training Conference (2012, 2010, and 2005); and Capital Case Initiative, sponsored by South Carolina Commission on Indigent Defense (2013, 2012, 2011, and 2010).

In order to advance Mr. Stanko's representation in a cost-effective yet zealous manner meeting the prevailing standard of care, the undersigned counsel also contemplate using specific attorneys associated with Phillips Black, the public interest nonprofit organization to which Mr. Perkovich belongs. The Administrative Office of the U.S. Courts Guide to Judiciary Policies and Procedures Provides "an appointed counsel may claim compensation for services furnished by a partner or associate . . . separately identifying the provider of each service." Guide to Judiciary Policy, Guidelines for Administering the CJA and Related Statutes, Vol. 7A, § 230.53.10(b). Associated counsel would be engaged only as warranted, billing at a steeply reduced rate from \$190, the prevailing hourly figure in this district for a § 3599 appointment. The associates would carry out certain indispensable services, including, *e.g.*, (a) the systematic but expedited review and digesting of the trial, appellate, and post-conviction records, and vital elements of prior counsel's files, (b) legal research, and (c) drafting support encompassing editing and cite checking.

Mr. Stanko's current state post-conviction counsel, Ms. Lindsey Vann and Ms. Emily Paavola, have conferred with him concerning the appointment of his federal counsel and Mr. Stanko has expressed his support for the appointment of Messrs. Perkovich and Grose in his federal habeas proceedings.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, this Court should enter an order (i) preempting the issuance of an execution warrant and (ii) appointing Joseph J. Perkovich and Charles Grose to represent Mr. Stanko pursuant to 18 U.S.C. § 3599.

Respectfully submitted,

s/ Joseph J. Perkovich

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