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S.C. SUPREME COURT

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

WILLIAM O. DICKERSON,)
Petitioner,)
v.)
BRYAN P. STIRLING, Director,)
South Carolina Department of Corrections,)
And KENNETH NELSON, Warden,)
Broad River Correctional Institution,)
Respondents.)

No. _____
CAPITAL CASE

MOTION FOR STAY OF EXECUTION
AND APPOINTMENT OF COUNSEL

Pursuant to 18 U.S.C. §3599, William O. Dickerson, an indigent prisoner under a sentence of death, respectfully requests that this Honorable Court stay his execution, which is scheduled for November 5, 2021, and appoint him counsel to investigate, prepare and file his first federal petition for a writ of habeas corpus challenging his conviction and sentence of death. In support of this motion, Mr. Dickerson states:

- 1. William Dickerson is incarcerated at Broad River Correctional Institution in Columbia, South Carolina. He is in the custody of Warden Kenneth Nelsen.
2. Mr. Dickerson was convicted in 2009 of murder, kidnapping and first-degree criminal sexual conduct and sentenced to death by the Charleston County Court of General Sessions in Charleston, South Carolina. On October 3, 2011, the South Carolina Supreme Court affirmed his conviction and sentence on direct appeal and denied Mr. Dickerson's motion for rehearing. State v. Dickerson, 395 S.C. 101, 716 S.E.2d 895 (S.C. October 3, 2011); State v. Dickerson, 2011 S.C. LEXIS 375 (Nov. 17, 2011). On April 23, 2012, the United States Supreme Court denied Mr. Dickerson's petition for writ of certiorari. See Dickerson v. South Carolina, 566 U.S. 964, 132 S.Ct. 1972 (2012).

3. Mr. Dickerson properly filed a pro se PCR application on May 16, 2012, thereby statutorily tolling the one-year statute of limitations for filing a petition for writ of federal habeas corpus under the Anti-terrorism and Effective Death Penalty Act (“AEDPA”) that had commenced on April 23, 2012. 28 U.S.C. §2244(d). Following the appointment of counsel, Mr. Dickerson’s PCR application was amended, and the final application was filed on July 15, 2013. Following evidentiary hearings, the PCR court denied post-conviction relief to Mr. Dickerson on June 27, 2018. *Dickerson v. State*, C/A No. 2012-CP-10-3216 (June 27, 2018 Order). Mr. Dickerson filed a timely appeal. On August 6, 2021, the South Carolina Supreme Court denied certiorari, thereby affirming the denial of relief by the PCR court. *Dickerson v. State*, No. 2018-001499 (S.C. August 6, 2021). On August 20, 2021, Mr. Dickerson filed a Petition for Rehearing in the South Carolina Supreme Court. *Id.* On October 13, 2021, the South Carolina Supreme Court denied the Petition for Rehearing. Exhibit 1. The same day, the South Carolina Supreme Court issued an execution notice scheduling Mr. Dickerson’s execution for November 5, 2021. Exhibit 2.

4. Only 23 days of §2244(d)’s one year limitations period had run before Mr. Dickerson filed his PCR application. Thus, when the South Carolina Supreme Court denied Mr. Dickerson’s Petition for Rehearing, he had 342 days remaining to file his federal habeas petition. *See generally, Beatty v. Rawski*, 97 F.Supp.3d 768, 774 (D.S.C. 2015).

5. Because Mr. Dickerson is indigent and unable to afford counsel, he has contemporaneously filed an Application for Permission to Proceed without Payment of Fees and a Motion for Leave to Proceed *in Forma Pauperis*, in accordance with Rule 3(a) of the Rules Governing Section 2254 Cases.

6. 18 U.S.C. §3599(a)(2), formerly codified as 21 U.S.C. § 848(q), provides indigent capital habeas petitioners the right to qualified court-appointed counsel.¹

7. In *McFarland v. Scott*, 512 U.S. 849, 114 S.Ct. 2568 (1994), the United States Supreme Court recognized the importance of the right to counsel in capital cases:

Congress' provision of a right to counsel under § 848(q)(4)(B) [now § 3599] reflects a determination that quality legal representation is necessary in capital habeas corpus proceedings in light of "the seriousness of the possible penalty and ... the unique and complex nature of the litigation." § 848(q)(7).

Id. at 2572. See also *Martel v. Clair*, 565 U.S. 648, 657 (2012) (citing § 3599(a)(2)).

8. Thus, "[o]n its face, [§ 848(q)(4)(B), now § 3599] grants indigent capital defendants a mandatory right to qualified counsel and related services in any federal post-conviction proceeding." *McFarland*, 114 S.Ct. at 2571. This right to counsel "necessarily includes a right for that counsel meaningfully to research and present a defendant's habeas claims." *Id.* at 2573.

9. Accordingly, the § 3599 right to counsel attaches even before the filing of a §2254 petition and entitles an indigent capital petitioner to counsel who can research, investigate and prepare the habeas petition for filing. As the United States Supreme Court has made clear:

The language and purposes of § 848(q)(4)(B) [now § 3599] and its related provisions establish that the right to appointed counsel includes the right to legal assistance in the preparation of a habeas corpus application. We therefore conclude that "a post-conviction proceeding" within the meaning of § 848(q)(4)(B) [now §3599] is commenced by the filing of a death row defendant's motion requesting the appointment of counsel for his federal habeas corpus proceeding. *McFarland* filed such a motion and was entitled to the appointment of a lawyer.

McFarland, 114 S.Ct. at 2572-73.

¹ 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. §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).

10. Moreover, as this Court well knows, the AEDPA's one-year statute of limitations period 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 waiving them. *McFarland*, 114 S.Ct. at 2572. "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 that capital defendants will be able to file successful petitions for collateral relief without the assistance of persons learned in the law." *Id.*

11. Thus, because Mr. Dickerson is indigent and has requested counsel in order to challenge his conviction and sentence under § 2254, he is entitled to the appointment of counsel to investigate, research, and prepare his petition for writ of habeas corpus.

12. Section 3599 sets forth the required qualifications for appointed counsel in capital cases, including at least one attorney who has been admitted in a federal court of appeals for five years and had not less than three years of experience appealing felony cases in that court, as well as a second 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(c)-(d).

13. Moreover, the District of South Carolina's plan for implementing the Criminal Justice Act ("CJA Plan") instructs the court to utilize the expert services available through the Administrative Office of the United States ("AO"), which includes capital habeas units ("CHUs"), as well as the CJA panel which includes qualified attorneys. *See In re Amendments to the Plan of the United States District Court for the District of South Carolina for Implementing the Criminal Justice Act*, No. 3:18-mc-00199-CIV (D.S.C. June 1, 2018); CJA Plan § XIV(B)(4).

14. The CJA Plan specifically highlights the importance of “training, commitment, and distinguished prior capital defense experience at the relevant stage of the proceeding” and “sufficient time and resources to devote to the representation taking into account their current caseloads and the extraordinary demands of federal capital cases.” *Id.* at § XIV(B)(6), (7).

15. The counsel seeking appointment in this motion are exactly the type of qualified counsel that the CJA Plan contemplates.

16. Gerald W. King, Jr. is the Chief of the newly-created CHU for the Fourth Circuit, based in the Office of the Federal Defender for the Western District of North Carolina. The CHU provides representation for indigent prisoners in federal habeas proceedings in the United States District Courts within the Fourth Circuit’s appellate jurisdiction, as well as the Fourth Circuit and the United States Supreme Court. Mr. King has more than seventeen years of experience in federal capital habeas proceedings and appeals. He previously served as a staff attorney in the CHU for the Northern District of Georgia and with the Equal Justice Initiative of Alabama. Mr. King also has extensive experience in executive clemency and post-certiorari litigation. Mr. King is admitted to practice in the Supreme Court of the United States, the U.S. Courts of Appeals for the Fourth, Eleventh, and D.C. Circuits, the U.S. District Courts in the Northern and Middle Districts of Georgia and the District of Columbia, and the Supreme Court of Georgia. A motion for admission *pro hac vice*, and accompanying application, are filed with this Court herewith.

17. Similarly, Gretchen Swift is an Assistant Federal Public Defender in the newly-created Fourth Circuit CHU, and has more than eighteen years of experience in federal capital habeas proceedings and appeals. She previously served as an Assistant Federal Public Defender in the CHU for the Middle District of Tennessee. Ms. Swift is admitted to practice in the Supreme Court of the United States, the U.S. Courts of Appeals for the Fourth and Sixth Circuits, the U.S. District

Courts in the Western and Middle Districts of Tennessee and the Tennessee Supreme Court. A motion for admission *pro hac vice*, and accompanying application, are filed with this Court herewith.

18. Charles Grose of Greenwood, South Carolina, has been licensed to practice before this court since 1994 and is currently counsel on four other federal capital habeas matters and several state capital post-conviction relief matters.² Mr. Grose meets the requirements for lead counsel on this court's former CJA Death Penalty Panel Attorney List and is certified by the South Carolina Supreme Court to serve as lead counsel in capital cases.

19. Mr. Dickerson's current state post-conviction counsel, Ms. Betsy Franklin-Best and Charles Grose, have conferred with him concerning the appointment of federal counsel and Mr. Dickerson has expressed his support for the appointment of Mr. King and Ms. Swift from the Fourth Circuit CHU, along with Mr. Grose.

20. Finally, this Court should enter a stay to allow Mr. Dickerson, along with newly appointed counsel, to investigate, prepare, and file his federal habeas petition. 28 U.S.C. § 2251 expressly states that “[a] justice or judge of the United States before whom a habeas corpus proceeding is pending, may, before final judgment or after final judgment of discharge, or pending appeal, stay any proceeding against the person detained in any State court or by or under the authority

² Mr. Grose is federal habeas counsel in *Stephen Corey Bryant v. Sterling et. al.*, No. 9:16-cv-01423-DCN-BM; *Mikal Deen Mahdi v. Sterling, et. al.*, No. 8:16-cv-03911-TMCJDA (currently on appeal to the Fourth Circuit, No. 19-3); *Quincy Allen v. Davis*, No. 0:18-cv-01544-DCC-PJG (currently on appeal to the Fourth Circuit, No. 20-6); and *Stanko v. Sterling*, No. 19-cv-00380-RMG-SVH. In addition, Mr. Grose represented numerous petitioners in state capital post-conviction proceedings, including *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); *Jerry Buck Inman v. State*, Pickens County Case Number 2012-CP-39-00918 and S.C. Supreme Court Appellate Case No. 2020-000881; *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 v. State*, Horry County Case No. 2018-CP-26-05709; and *Bobby Stone v. State*, Sumter County Case No. 2018-CP-43-001025.

of any State for any matter involved in the habeas corpus proceeding.” *Id*; *McFarland*, 512 U.S. 849, 858 (1994) (“Because § 2251 expressly authorizes federal courts to stay state court proceedings ‘for any matter involved in the habeas corpus proceeding,’ the exercise of this authority is not barred by the Anti-Injunction Act,” 28 U.S.C. § 2283).

21. Therefore, just as this Court has done in numerous other federal capital habeas proceedings, this Court should enter an order staying Mr. Dickerson’s execution so that he may timely file his federal habeas corpus petition. *See e.g.*, *Allen v. Davis*, Case No. 0:18-cv-01544-DCC-PJG, ECF No. 8 (granting stay for 90 days); *Mahdi v. Stirling*, Case No. 8:16-cv-03911-TMC, ECF No. 12 (granting stay for 90 days); *Owens v. Stirling*, Case No. 16-cv-02512-TLW, ECF Nos. 9 (granting stay for 90 days), 30 (granting stay for 90 days), 37 (granting stay for 90 days), 69 (granting stay for 90 days).

Conclusion

WHEREFORE, for the foregoing reasons, this Court should enter an order (i) appointing Gerald King and Gretchen Swift of the Fourth Circuit Capital Habeas Unit and Charles Grose to represent Mr. Dickerson pursuant to 18 U.S.C. § 3599 and (ii) staying Mr. Dickerson’s execution.

Respectfully submitted,

/s/E. Charles Grose, Jr.

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Dist Ct. # 6072

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*Applications for Pro Hac Vice Admission pending.