

NO. _____ (CAPITAL CASE)

IN THE
SUPREME COURT OF THE UNITED STATES

PAUL DAVID STOREY,
Petitioner,

v.

State of Texas,
Respondent.

On Petition for a Writ of Certiorari to
The Court of Criminal Appeals of Texas

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file a Writ of Certiorari without prepayment of costs and to proceed *in forma pauperis*.

The petitioner has previously been granted leave to proceed *in forma pauperis* in the following courts: (1) the United States District Court for the Northern District of Texas, (2) the United States Court of Appeals for the Fifth Circuit and (3) the United States Supreme Court.

Petitioner's affidavit or declaration is not attached because the Court below appointed counsel in the current proceedings and the appointment was made under 18 U.S.C. §3599. A copy of the relevant orders and documents regarding appointment are appended.

/s/ Michael Logan Ware
Michael Logan Ware
Counsel of Record

s/ Keith Hampton
Keith Hampton
Counsel of Record

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

PAUL DAVID STOREY,	§	
Petitioner,	§	
	§	
V.	§	
	§	NO. 4:11-CV-433-Y
RICK THALER, Director,	§	
Texas Department of Criminal	§	(death-penalty case)
Justice, Correctional	§	
Institutions Division,	§	
Respondent.	§	

ORDER APPOINTING COUNSEL
SUBJECT TO FULFILLMENT OF FILING-FEE REQUIREMENT

On June 23, 2011, Paul David Storey ("Petitioner") filed a *Motion and Brief for Appointment of Counsel* and a *Motion for Leave to Proceed In Forma Pauperis* ("IFP") with a supporting affidavit of counsel (docs. 1, 2, and 3). On July 12, 2011, Petitioner also filed an Application to Proceed in District Court Without Prepaying Fees or Costs (doc. 5).

Having reviewed the motion for appointment of counsel and supporting affidavit, the Court finds that Petitioner is entitled to the appointment of counsel under 18 U.S.C. § 3599(a)(2) and that the motion should be granted. See *McFarland v. Scott*, 512 U.S. 849, 855-58 (1994). However, Petitioner has not made the showing necessary to grant his motion for IFP status.

To obtain IFP status in a post-conviction habeas corpus proceeding, a prisoner must show that his inmate trust account and other resources do not exceed \$50. See 28 U.S.C. § 1915(a)(2); Misc. Order No. 13 at ¶ 9 (N.D. Tex. Feb. 1, 1977). Motions to

proceed IFP therefore must be accompanied by a certified copy of the inmate's trust account statement for the preceding six-month period. *Id.* The supporting documents filed by Petitioner do not contain a copy of Petitioner's trust-account statement.

A sufficient motion to proceed IFP must be made or the \$5 filing fee must be paid. Under the circumstances, however, the Court finds that the interest of justice would be served by making an appointment of counsel subject to the prompt fulfillment of the IFP requirement or payment of the \$5 filing fee.

The Court finds that attorney **Michael Ware** of Fort Worth, Texas, 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, and is qualified and willing to accept this appointment as lead counsel. The appointment of Michael Ware is subject to the satisfaction of the IFP requirement **or** payment of the \$5 filing fee within **thirty (30) days** of the date of this order. In the event Petitioner fails to meet this filing-fee requirement, this proceeding shall be terminated and the appointment of counsel rendered null and void.

Subject to the satisfaction of the requirement set out above, appointed counsel is entitled to compensation (currently at the rate of \$178/hour) in accordance with Volume VII, Part A, Chapter 6, of the *Guide to Judiciary Policy*, which counsel is directed to

read along with the instructions for form CJA 30 to ensure proper compensation for counsel's time and expenses. Counsel is also directed to the *Special Procedures for Reviewing Attorney Compensation Requests in Death Penalty Cases* by the Judicial Council of the Fifth Circuit, which provides that attorney-fee requests cumulating more than \$35,000 are presumptively excessive and must be forwarded to the chief judge of the circuit or her designee for determination. Counsel shall be entitled to interim payments for services rendered in this cause. The Court will consider any necessary motions for appointment of co-counsel.

A copy of this order along with form CJA 30 shall be provided to appointed counsel at the following address:

LEAD COUNSEL: **Michael Ware**
1407 Texas St., Suite 102
Ft Worth, TX 76102
Phone: 817-338-4100
email Ware@MikeWareLaw.com

SIGNED August 1, 2011.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

TRM/ks:be

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

PAUL DAVID STOREY,
Petitioner,

V.

LORI DAVIS, Director, Texas
Department of Criminal Justice, Cor-
rectional Institutions Division,
Respondent.

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Civil Action No. 4:11-CV-433-O
(death-penalty case)

ORDER GRANTING MOTION TO APPOINT CO-COUNSEL KEITH HAMPTON

Before the Court is *Petitioner's Motion to Appoint Co-Counsel Keith Hampton*, filed by Paul David Storey on January 12, 2017. [Doc. 52]. The motion states that Respondent takes no position on the motion and reserves opposition to a request for an extension or stay based on the appointment.

Having reviewed the motion and the supporting affidavit of Keith Hampton, the Court finds that Storey is entitled to the appointment of co-counsel under 18 U.S.C. § 3599(a)(2), that Mr. Hampton is qualified and willing to accept this appointment, and that the motion should be granted.

The Court GRANTS Storey's motion to appoint Keith Hampton as co-counsel.

SO ORDERED on this 13th day of January, 2017.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

PAUL DAVID STOREY,
Petitioner,

V.

**LORI DAVIS, Director, Texas
Department of Criminal Justice, Cor-
rectional Institutions Division,
Respondent.**

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**Civil Action No. 4:11-CV-433-O
(death-penalty case)**

ORDER DIRECTING RESPONSE

Petitioner Paul David Storey was convicted and sentenced to death for the 2006 robbery and murder of Jonas Cherry. *State v. Storey*, Cause No. 1042204D (Crim. Dist. Ct. No. 3, Tarrant Co., Tex. Sept. 15, 2008) (judgment). Storey pursued a direct appeal and a writ of habeas corpus in state court. *Storey v. State*, No. AP-76018, 2010 WL 3901416 (Tex. Crim. App. Oct. 6, 2010); *Ex parte Storey*, No. WR-75828-01, 2011 WL 2420707 (Tex. Crim. App. June 15, 2011). He then filed a federal application for habeas corpus relief, which this Court denied. *Storey v. Stephens*, No. 4:11-CV-433-O (N.D. Tex. June 9, 2014). The Court of Appeals denied a certificate of appealability, and the Supreme Court denied his subsequent petition for certiorari. *Storey v. Stephens*, 606 Fed. Appx. 192 (Mar. 18, 2015), *cert. denied*, 136 S. Ct. 132 (2015). An execution date is now scheduled for April 12, 2017. *State v. Storey*, No. 1042204D (Crim. Dist. Ct. No. 3, Tarrant Co., Tex. Sept. 27, 2016) (order).

In 2011, attorney Michael Logan Ware was appointed by the Court pursuant to the provisions in 18 U.S.C. § 3599(a)(2) to represent Storey in these federal habeas proceedings. [Doc. 7]. The statute also provides that, unless replaced, an attorney so appointed “shall represent the defendant throughout every subsequent stage of the available judicial proceedings,” including state proceedings. § 3599(e);

see Harbison v. Bell, 556 U.S. 180, 194 (2009) (holding that attorneys appointed under § 3599 are obligated to represent their clients in state clemency proceedings); *see also Battaglia v. Stephens*, 824 F.3d 470, 474 (5th Cir. 2016) (holding that state prisoner abandoned by his counsel is entitled to federal counsel to pursue competency-to-be-executed claim in state court).

The Court has attempted to contact appointed counsel and his paralegal by email to confirm counsel's continued representation in this case, with no success. In an abundance of caution and to prevent any critical lapses in Storey's legal representation, therefore, the Court **confirms** that Michael Ware remains the appointed counsel for purposes of § 3599, and **directs** Mr. Ware to file an acknowledgment of his understanding of same on or before **Friday, October 21, 2016**.

SO ORDERED on this 17th day of October, 2016.


Reed O'Connor
UNITED STATES DISTRICT JUDGE

Respectfully submitted,

Michael Logan Ware
300 Burnett Street, Suite 160
Fort Worth, Texas 76102
Phone: (817) 338-4100
Fax: (817) 698-0000
ware@mikewarelaw.com

BY: /s/ Michael Logan Ware
MICHAEL LOGAN WARE
State Bar No. 20864200
Attorney for Paul David Storey

CERTIFICATE OF SERVICE

I certify that on the 18th day of October, 2016, I served a copy using the CM/ECF system for the Northern District of Texas. I received a "Notice of Electronic Filing" that this Response was forwarded to all parties.

BY: /s/ Michael Logan Ware
MICHAEL LOGAN WARE