

No. 21-

IN THE SUPREME COURT OF THE UNITED STATES

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LEON TOLLETTE,  
Petitioner,

-v-

BENJAMIN FORD, Warden,  
Georgia Diagnostic and Classification Prison,  
Respondent

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**MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

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Petitioner Leon Tollette, through undersigned counsel, moves pursuant to Supreme Court Rule 39.1 for leave to proceed *in forma pauperis* in his concurrently filed Petition for Writ of Certiorari. Mr. Tollette is indigent and has been appointed counsel in state and federal court.

As to his federal proceedings, the United States District Court for the Middle District of Georgia issued an order appointing counsel pursuant to 18 U.S.C. § 3599. *See* attached Order, at Appendix A. The Eleventh Circuit Court of Appeals likewise issued an order appointing counsel pursuant to 18 U.S.C. § 3599. *See* attached Order, at Appendix B.

Undersigned counsel hereby certify that Mr. Tollette remains indigent. Mr. Tollette requests that this Court allow him to proceed *in forma pauperis*.

Respectfully submitted,

/s/ Anna M. Arceneaux

Anna M. Arceneaux (Ga. 401554)\*

\* *Counsel of Record*

Vanessa J. Carroll (Ga. 993425)

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COUNSEL FOR PETITIONER

# APPENDIX A

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION

LEON TOLLETTE,	:	
	:	
Petitioner,	:	
	:	
VS.	:	
	:	CASE NO. 4:14-CV-110 (CDL)
WARDEN, GDCP,	:	
	:	
Respondent.	:	

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**ORDER**

Petitioner, **LEON TOLLETTE**, has filed a Motion for Appointment of Counsel pursuant to 18 U.S.C. § 3599. (ECF No. 3).

**I. PROCEDURAL HISTORY**

Petitioner filed his motion for appointment of counsel along with his Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. (ECF Nos. 1, 3). According to his federal habeas corpus petition, on November 3, 1997, Petitioner pled guilty in the Superior Court of Muscogee County to malice murder, armed robbery, two counts of aggravated assault, possession of a firearm by a convicted felon, and possession of a firearm during the commission of a crime. (ECF No. 1 at 6). At the conclusion of his sentencing trial, the jury sentenced him to death on the charge of malice murder. (ECF No. 1 at 6); *Tollette v. State*, 280 Ga. 100, 100-01 (2005). In addition to the death sentence, Petitioner received a concurrent life sentence for armed robbery; two concurrent 20-year sentences for the two counts of aggravated assault; a concurrent 5-year sentence for

possession of a firearm by a convicted felon; and a second concurrent 5-year sentence for possession of a firearm during the commission of a crime. (ECF No. 1 at 6-7)

New counsel was appointed and filed a motion for new trial, which was denied on January 28, 1999.

New counsel was appointed for the direct appeal and the Georgia Supreme Court affirmed his conviction and sentence on November 5, 2005 and denied his motion for reconsideration on December 2, 2005. *Tollette*, 280 Ga. at 10; (ECF No. 1 at 7).

Following a denial of certiorari by the United States Supreme Court on October 2, 2006, Petitioner filed a habeas corpus petition in the Butts County Superior Court on August 7, 2007. (ECF No. 1 at 8). After an evidentiary hearing, the court denied the writ on February 18, 2013. (ECF No. 1 at 8).

Petitioner applied to the Georgia Supreme Court for an extension of time in which to file his Application for a Certificate of Probable Cause to Appeal. The court granted the extension on February 27, 2013. (ECF No. 1 at 8). Petitioner filed his Application for a Certificate of Probable Cause to Appeal on May 20, 2013 and the court denied the application on March 28, 2014. (ECF No. 1 at 8) His motion for reconsideration was denied on April 22, 2014. (ECF No. 1 at 8).

On May 6, 2014, Petitioner filed his federal habeas petition in this Court. (ECF No. 1).

**II. APPOINTMENT OF COUNSEL**

18 U.S.C. § 3599(a)(2) provides as follows:

In any post conviction proceeding under section 2254 or 2255 of Title 28, United States Code, seeking to vacate or set aside a death sentence, any defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services shall be entitled to the appointment of one or more attorneys and the furnishing of such other services in accordance with subsection (b) through (f).

In this case, Petitioner has filed a Motion for Appointment of Counsel, Motion for Leave to Proceed *In Forma Pauperis*,<sup>1</sup> and a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254.

Petitioner's filings show that he is "financially unable to obtain adequate representation." 18 U.S.C § 3599(a)(2). Under these circumstances, Petitioner is entitled to appointment of counsel.

The Court must next determine whether 18 U.S.C. § 3599 permits it to appoint Petitioner's requested counsel—Brian S. Kammer, who is the Executive Director of the Georgia Appellate Practice and Education Resource Center ("Georgia Resource Center") and Kirsten Salchow, a Staff Attorney at the Georgia Resource Center. Because of the seriousness of the death penalty and the unique and complex nature of this kind of litigation, counsel must have a certain level of experience before being eligible for appointment under § 3599. For post-judgment appointments, as in this case, "at least one

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<sup>1</sup> To the extent Petitioner seeks leave to proceed without prepayment of the filing fee (ECF No. 2), his motion to proceed *in forma pauperis* is moot because he paid the \$5.00 filing fee.

attorney so appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in that court in felony cases." 18 U.S.C. § 3599(c). Based on the affidavit submitted by Kammer, it appears that he has the appropriate experience to qualify for appointment under § 3599(c). (ECF No. 3-1). 18 U.S.C. § 3599(d) provides the Court may, "for good cause" appoint another attorney whose "background, knowledge, or experience would . . . enable . . . her to properly represent the defendant." The Court appoints Salchow pursuant to § 3599(d). Moreover, it appears that both Kammer and Salchow are familiar with the facts and procedural history of Petitioner's case because the Georgia Resource Center has represented Petitioner since 2007. Given this, Petitioner's Motion for Appointment of Counsel is **GRANTED**.

The next issue that must be determined is the rate at which counsel will be compensated. The Administrative Office of the United States Courts has approved \$180.00 an hour, for both in-court and out-of-court time. Therefore, the Court finds that it is appropriate to compensate Kammer and Salchow at a rate of \$180.00 per hour.

Counsel is reminded that they may obtain investigative, expert, or other services that are reasonably necessary for representation of Petitioner; but they must obtain prior approval from the Court for such services. 18 U.S.C. § 3599(f). *Ex parte* requests for payment of fees and expenses under § 3599(f) may not be considered

unless Petitioner makes a proper showing of the need for confidentiality. *Id.* Fees and expenses for such services are limited to \$7,500.00 unless the Court certifies that a larger amount is necessary and the Chief Judge of the Eleventh Circuit approves the larger amount. See 18 U.S.C § 3599(g)(2).

The following procedures for interim payments and reimbursement of expenses shall apply during the course of this case:

A. Submission of Vouchers

Counsel shall submit to the Clerk's Office in Macon, Georgia, once every month, an interim voucher on CJA Form 30, "Death Penalty Proceedings: Appointment of and Authority to Pay Court Appointed Counsel." Compensation earned and reimbursable fees and expenses incurred for each calendar month shall be claimed on an interim voucher submitted no later than the fifth day of each subsequent month, or the first business day thereafter if the fifth day of the month is a Saturday, Sunday, or holiday. Each interim voucher shall be numbered sequentially and shall include the time period covered. Interim vouchers shall be submitted in accordance with this schedule and procedure even if little or no compensation, fees, or expenses are claimed for the time period covered. All interim vouchers shall be supported by detailed and itemized statements of time expended and fees and expenses incurred.

After an interim voucher is submitted to the Clerk's Office in Macon, Georgia, the Deputy Clerk assigned to this case will submit it to the Court for approval. The Court will then review the voucher,



particularly the amount of time claimed, and will authorize compensation for the approved number of hours and for all reimbursable fees and expenses reasonably incurred. The Court will endeavor to review and act on each voucher within 30 days of submission.

At the conclusion of the representation, counsel shall submit a final voucher for payment of time expended and fees and expenses incurred during the final interim time period. The final voucher shall also set forth in detail, with supporting documentation, the time expended and fees and expenses incurred for the entire case. The final voucher shall also reflect all compensation and reimbursement previously received on the appropriate line of the form.

B. Reimbursable Out-of-Pocket Expenses

Counsel may be reimbursed for out-of-pocket expenses (not including fees or expenses relating to investigative, expert, or other services that are reasonably necessary for the representation) reasonably incurred during the representation. Although neither § 3599 nor the applicable rules and regulations limit the amount of out-of-pocket expenses that may be incurred, counsel should not incur a single out-of-pocket expense in excess of \$500.00 without prior approval of the Court. Approval may be sought by filing an application with the Court stating (1) the nature of the expense, (2) the estimated cost, and (3) the reason the expense is necessary to the representation. Recurring out-of-pocket expenses, such as

the cost of telephone toll calls, telegrams, photocopies, facsimiles, and photographs, that total more than \$500.00 on one or more interim vouchers are not considered single expenses requiring prior approval of the Court.

With respect to travel outside Atlanta for the purposes of consulting with Petitioner or his former counsel, interviewing witnesses, etc., the \$500.00 rule shall be applied in the following manner: Travel expenses, such as airfare, mileage, parking fees, meals, and lodging, may be claimed as itemized expenses. Therefore, if the total out-of-pocket expenses for a single trip will exceed \$500.00, the travel shall require prior approval of the Court. Case-related travel by privately owned automobile shall be claimed at the rate authorized by the government for business-related travel by federal judiciary employees, plus parking fees, ferry fares, and bridge, road, and tunnel tolls. For information regarding the current mileage rate for federal judiciary employees, counsel should consult the Clerk's Office in Macon, Georgia. Transportation other than by privately owned automobile should be claimed on an actual-expense basis. First-class air travel is prohibited.

Actual expenses incurred for meals and lodging while traveling outside Atlanta, Georgia for case-related purposes must conform to the prevailing limitations placed upon travel and subsistence expenses for federal judiciary employees in accordance with existing government travel regulations. For information regarding per diem rates for federal judiciary employees, as well as for specific

details concerning high-cost areas, counsel should consult the Clerk's Office in Macon, Georgia.

The cost of telephone toll calls, telegrams, photocopies, facsimiles, and photographs may be reimbursable out-of-pocket expenses if they are reasonably incurred. However, general office overhead (such as rent, secretarial assistance, and telephone service) is not reimbursable; nor are items of a personal nature.

Finally, expenses for service of subpoenas on fact witnesses are not reimbursable out-of-pocket expenses and should not be included on any voucher. Instead, such expenses will be paid by the United States Marshals Service, but only upon prior approval by the Court. Payment of such expenses shall be governed by 28 U.S.C. § 1825.

**SO ORDERED**, this 7<sup>th</sup> day of May, 2014.

s/Clay D. Land  
CLAY D. LAND  
UNITED STATES DISTRICT JUDGE

# APPENDIX B

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

David J. Smith  
Clerk of Court

For rules and forms visit  
[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov)

October 04, 2019

Vanessa Judith Carroll  
Georgia Resource Center  
303 ELIZABETH ST. NE  
ATLANTA, GA 30307

Appeal Number: 16-17149-P  
Case Style: Leon Tollette v. Warden  
District Court Docket No: 4:14-cv-00110-CDL

Party To Be Represented: Leon Tollette

Dear Counsel:

We are pleased to advise that you have been appointed to represent on appeal the indigent litigant named above. This work is comparable to work performed pro bono publico. The fee you will receive likely will be less than your customary one due to limitations on the hourly rate of compensation contained in the Criminal Justice Act (18 U.S.C. § 3006A), and consideration of the factors contained in Addendum Four § (g)(1) of the Eleventh Circuit Rules.

Supporting documentation and a link to the CJA eVoucher application are available on the internet at <http://www.ca11.uscourts.gov/attorney-info/criminal-justice-act>. **For questions concerning CJA eVoucher please contact our CJA Team by email at [cja\\_evoucher@ca11.uscourts.gov](mailto:cja_evoucher@ca11.uscourts.gov) or phone 404-335-6167.** For all other questions, please call the "Reply To" number shown below.

Every motion, petition, brief, answer, response and reply filed must contain a Certificate of Interested Persons and Corporate Disclosure Statement (CIP). Appellants/Petitioners must file a CIP within 14 days after the date the case or appeal is docketed in this court; Appellees/Respondents/Intervenors/Other Parties must file a CIP within 28 days after the case or appeal is docketed in this court, regardless of whether appellants/petitioners have filed a CIP. See FRAP 26.1 and 11th Cir. R. 26.1-1.

On the same day a party or amicus curiae first files its paper or e-filed CIP, that filer must also complete the court's web-based CIP at the [Web-Based CIP](#) link on the court's website. Pro se

filers (except attorneys appearing in particular cases as pro se parties) are **not required or authorized** to complete the web-based CIP.

Your claim for compensation under the Act should be submitted within 60 days after issuance of mandate or filing of a certiorari petition. We request that you enclose with your completed CJA Voucher one additional copy of each brief, petition for rehearing, and certiorari petition which you have filed. Please ensure that your voucher includes a detailed description of the work you performed. Thank you for accepting this appointment under the Criminal Justice Act.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: David L. Thomas  
Phone #: (404) 335-6171

CJA-1 Appointment of Counsel Letter

No. 21-

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Petitioner,

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**PROOF OF SERVICE**

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I declare that on January 8, 2021, pursuant to Supreme Court Rule 29, I served the Motion for Leave to Proceed *In Forma Pauperis* on Respondent's counsel by filing a copy of the documents with this Court's electronic filing system and by directing that the documents be placed in an envelope and deposited with the United States Postal Service for delivery to:

Sabrina D. Graham, Esp.  
Senior Assistant Attorney General  
40 Capitol Square, SW  
Atlanta, GA 30334

Respectfully submitted,

/s/ Anna M. Arceneaux  
Anna M. Arceneaux (Ga. 401554)\*