

CAPITAL CASE

No. ____

**IN THE
SUPREME COURT OF THE UNITED STATES**

OSCAR SMITH,

Petitioner,

vs.

STATE OF TENNESSEE,

Respondent.

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Oscar Smith, by counsel, pursuant to Supreme Court Rule 39, hereby requests leave of this Court to proceed *in forma pauperis* in connection with the attached Petition for Writ of Certiorari. Mr. Smith is a Tennessee death row inmate. He is indigent and without income or assets. He was represented by appointed counsel and was permitted to proceed *in forma pauperis* in the Court below. A copy of the appointment order is Attached. Attachment A. Counsel were appointed pursuant 18 U.S.C. § 3599 and authorized by that same court to represent Mr. Smith in these proceedings.

Respectfully submitted,

AMY D. HARWELL
Assistant Chief, Capital Habeas Unit
*Counsel of Record

KATHERINE M. DIX
Assistant Federal Defender

ASHLEY WEST THOMPSON
Research & Writing Attorney

FEDERAL PUBLIC DEFENDER
Middle District of Tennessee
Capital Habeas Unit
810 Broadway, Suite 200
Nashville, TN 37203
(615) 736-5047
Amy_Harwell@fd.org

Counsel for Petitioner

BY: 
Counsel for Oscar Smith

CERTIFICATE OF SERVICE

Pursuant to Supreme Court Rule 29.5(a), I certify a copy of the document was sent via Federal Express to the U.S. Supreme Court and via U.S. Mail to Samantha Simpson, counsel for the Respondent, Office of the Attorney General, 425 Fifth Avenue North, Nashville, Tennessee, 37243 on May 3, 2021.



Amy D. Harwell

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IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

AUG 10 1999

Federal Public Defender's Office
Nashville, Tennessee

OSCAR SMITH,)
Petitioner-Applicant,)
v.) No. 890-0734
RICKY BELL, Warden, Riverbend)
Maximum Security Institution,)
Respondent.)

JUDGE TRAUGER

ORDER

On July 23, 1999, petitioner Oscar Smith filed a Motion to Proceed *in Forma Pauperis* and a document titled, "Pro Se Initial Unamended Petition for Writ of Habeas Corpus and Motion for Appointment of Counsel/ and Motion for Time for Counsel, Following Appointment, to Investigate and Present All Available Claims for Relief In Petition for Writ of Habeas Corpus." This matter was assigned to the undersigned on August 4, 1999.

The petitioner is a prisoner at Riverbend Maximum Security Institution, having been sentenced to death for first degree murder in the Criminal Court of Davidson County, Tennessee. His conviction and sentence were affirmed by the Tennessee Supreme Court on November 18, 1993 (*State v. Smith*, 868 S.W.2d 561 (Tenn. 1993)). His Petition for Writ of Certiorari to the United States Supreme Court was denied on June 21, 1999. (*Smith v. Tennessee*, 119 S.Ct. 2375 (1999)). His papers do not contain his scheduled execution date and do not request a stay of execution.

Motion to Proceed *in Forma Pauperis*

The petitioner has filed the affidavit required by 28 U.S.C. §1915(a) but not the certified copy of his trust fund account statement required by subsection (2). It appears from the Motion
This document was entered on
the docket in compliance with
Rule 58 and/or Rule 79(e)

ERCF on 8-5-99 by DPC

(3)

and Affidavit that the petitioner is indigent and is entitled to pauper's status. However, the Motion to Proceed *in Forma Pauperis* is GRANTED, conditioned upon the filing of the required trust fund account statement. Upon that filing, the Court will require payment of the filing fee as mandated in 28 U.S.C. §1915(b).

Motion for Appointment of Counsel

Federal law mandates the appointment of counsel for capital habeas corpus petitioners who are financially unable to obtain adequate representation. 21 U.S.C. §848(q)(4). This has been interpreted by the Supreme Court to mean that these petitioners have the right to appointed counsel to assist in the preparation of a proper habeas corpus petition. *McFarland v. Scott*, 512 U.S. 849, 856-857, 114 S.Ct. 2568, 129 L.Ed.2d 666 (1994). The Court finds that petitioner is financially unable to obtain adequate representation to investigate and prosecute his habeas corpus petition and hereby GRANTS his motion for the appointment of counsel. The Federal Public Defender for the Middle District of Tennessee is hereby appointed to represent this petitioner.

Application of the Antiterrorism and Effective Death Penalty Act of 1996

The Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. §2261-66, only applies in capital habeas corpus proceedings if the state which has imposed the death penalty has put in place a mechanism for the appointment, compensation, and reimbursement of counsel for post-conviction proceedings brought by indigent prisoners with capital sentences that satisfies 28 U.S.C. §2261(b) and (c). This Court shall presume that the State of Tennessee has not satisfied these provisions and that, therefore, this Act does not apply to this case unless, within ten (10) days of the entry of this Order, the Tennessee State Attorney General's office files a motion

requesting the application of the Act, with documentation showing its satisfaction of the necessary conditions.

Filing of Petition

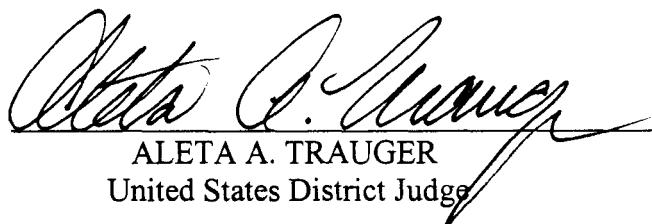
Within thirty (30) days of the entry of this Order, the Federal Public Defender or his designee shall file a formal, legally sufficient habeas corpus petition that is in conformance with Rule 2 of the Rules Governing Section 2254 Cases in the United States District Courts ("Rules"). If the petition does not require summary dismissal, the Court shall order the filing of an answer and enter a scheduling order. *See* Rule 4 of Rules.

Service

The clerk is hereby ORDERED to serve a copy of this Order and the petitioner's filings upon the Tennessee Attorney General and the Federal Public Defender for the Middle District of Tennessee immediately upon entry by facsimile and also by regular mail service.

It is so ORDERED.

Enter this 5th day of August, 1999.


ALETA A. TRAUGER
United States District Judge

Case: 3:99-cv-00731

Henry Alan Martin, Esq.
Federal Public Defender's Office
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**Federal Public Defender's Office
Nashville, Tennessee**