

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

WILLIAM O. DICKERSON

Petitioner

v.

STATE OF SOUTH CAROLINA

Respondent

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

William O. Dickerson, Petitioner, asks leave to file the attached Petition for Writ of Certiorari without prepayment of costs and to proceed in forma pauperis.

Petitioner has been deemed indigent by the state and federal courts of South Carolina. Undersigned counsel Charles Grose and Elizabeth A. Franklin-Best were appointed to represent Mr. Dickerson by the Court of Common Pleas for the Ninth Judicial Circuit and represented Mr. Dickerson in his certiorari proceedings before the South Carolina Supreme Court. Undersigned counsel Gerald W. King, Jr. and Gretchen Swift were appointed to represent Mr. Dickerson by the U.S. District Court for the District of South Carolina

Mr. Dickerson remains indigent, as he is currently incarcerated by the South Carolina Department of Corrections under a sentence of death.

The August 22, 2012 Order of the Court of Common Pleas for the Ninth Judicial Circuit appointing Mr. Grose and Ms, Frankin-Best is attached to this

motion. The October 21, 2021 Order of the U.S. District Court for the District of South Carolina granting Mr. Dickerson's motion for leave to proceed in forma pauperis and appointing Ms. Swift, Mr. King, and Mr. Grose is also attached.

/s/ Charles Grose Jr.

E. Charles Grose, Jr.

Dist. Ct. #6072

The Grose Law Firm, LLC

400 Main Street

Greenwood, SC 29646

charles@groselawfirm.com

(864) 538-4466

Gerald W. King, Jr.

Chief, Fourth Circuit Capital Habeas
Unit

Gerald_King@fd.org

Gretchen L. Swift

Assistant Federal Public Defender

Gretchen_Swift@fd.org

Federal Public Defender

Western District of North Carolina

129 W. Trade Street, Suite 300

Charlotte, NC 28202

Tel. (704) 374-0720

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	
William O. Dickerson, #6030)	Cases Number: 2012-CP-10-3216
)	
v.)	
)	
)	Order Appointing Counsel
State of South Carolina,)	
Defendant)	
)	

This matter is before the Court pursuant to S.C. Code §17-27-160(B) to determine whether the Applicant, William O. Dickerson, desires appointed counsel in this capital post-conviction relief (PCR) case. After reviewing the procedural history, the Court makes the following findings of fact and conclusions of law.

Procedural History

Beginning April 23, 2009, the State tried Dickerson for murder, first degree criminal sexual conduct, and kidnapping before the Honorable R. Markley Dennis and a jury. On April 30, 2012, a Charleston County jury convicted Dickerson of all charges. The State sought the death penalty. The penalty phase began on May 4, 2009. On May 7, 2009, the jurors found, as aggravating circumstances, the murder was committed while in the commission of a criminal sexual conduct, kidnapping, and physical torture. S.C. Code §16-30-20(C)(a)(1)(a), (b) and (i). The jurors recommended the death penalty for murder. Judge Dennis sentenced Dickerson to death for murder, thirty (30) years for first degree criminal sexual conduct, and thirty (30) years for kidnapping.

On October 3, 2011, the South Carolina Supreme Court affirmed Dickerson's convictions and sentences. *State v. Dickerson*, 395 S.C. 101, 716 S.E.2d 895 (2011).

1/4 [Signature]

The Supreme Court of the United States denied *certiorari* on April 23, 2012. *Dickerson v. South Carolina*, 132 S.Ct. 1972 (2012).

On May 16, 2012, Dickerson filed a *pro se* PCR application pursuant to S.C. Code §17-27-160.

On June 26, 2012, the Honorable Deadra Jefferson appointed Rodney D. Davis and Laura S. Knobloch to represent Mr. Dickerson.

On July 13, 2012, the South Carolina Supreme Court granted a stay of execution and vested this Court with exclusive jurisdiction to preside over Dickerson's capital PCR.

Findings of Fact

On August 17, 2012, this Court convened a hearing pursuant to S.C. Code §17-27-160(B) to determine whether Dickerson desires representation in this capital PCR. Dickerson informed the Court that he desires representation. Dickerson further requested that E. Charles Grose, Jr. and Elizabeth A. Franklin-Best be appointed to represent him.

Section 17-27-160(B) requires appointment of two lawyers. At least one of the lawyers "must have previously represented a death sentenced inmate in state or federal post-conviction relief proceedings" or be qualified to be lead counsel in a capital trial case plus have attended, within the prior two years, twelve hours of continuing legal education training in the capital appeals or post-conviction. I find Grose has previously represented a death-sentenced inmate in state post-conviction proceedings. *See John Kennedy Hughey v. State*, Abbeville County Case Number 2000-CP-01-212. I further find that Grose has additional capital defense experience in both the trial and appellate courts. *E.g. State v. Bixby*, 388 S.C. 528, 698 S.E.2d 572 (2010); *State v. Steven A. Tinch*, Abbeville County Case Number 2006-GS-01-417, 419; *State v. Domonique O. Brown*,

2/4 

Laurens County Case Number 2007-GS-30-220; *State v. Anthony A. Myers*, Greenwood County Case Number 2000-GS-24-1170; and *State v. Barry L. Ervin*, Greenwood County Case Number 1998-GS-24-1770.

Franklin-Best is a former Assistant Appellate Defender. She is experienced in capital appeals. *E.g. State v. Winkler*, 388 S.C. 574, 698 S.E.2d 596 (2010); *State v. Starnes*, 388 S.C. 590, 698 S.E.2d 604 (2010); and *Vasquez v. State*, 388 S.C. 447, 698 S.E.2d 561 (2010). She has also worked on numerous capital appeals which are still pending before the South Carolina Supreme Court. *See John Weik v. State* (cert petition pending), *Bayan Aleksey v. State* (cert petition pending), *Brad Sigmon v. State* (pending), *State v. Steven Barnes* (direct appeal pending). She is also currently representing a capital defendant, Gary Terry, in his federal habeas proceeding. *See Terry v. Byars*, C.A. No. 4:12-01798-SB-TER.

The Court, therefore, finds that Grose is qualified pursuant to §17-27-160(B) to be lead counsel in this capital PCR. The Court further finds that Franklin-Best has the appropriate experience to be second counsel. Mr. Davis and Ms. Knobloch, accordingly, should be relived as counsel.

Conclusions of Law

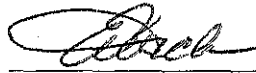
Therefore, it is ordered that Mr. Davis and Ms. Knobloch shall be relived as counsel.

It is further ordered that two lawyers are appointed to represent Dickerson in this capital PCR. E. Charles Grose, Jr. shall be lead counsel. Elizabeth A. Franklin-Best shall be second counsel.

(signature on next page)

3/4 


IT IS SO ORDERED.



Edger W. Dickson
Presiding Judge, Ninth Judicial Circuit
By Special Assignment of the Supreme Court



August ~~20~~, 2012
Orangeburg, South Carolina

4/4 

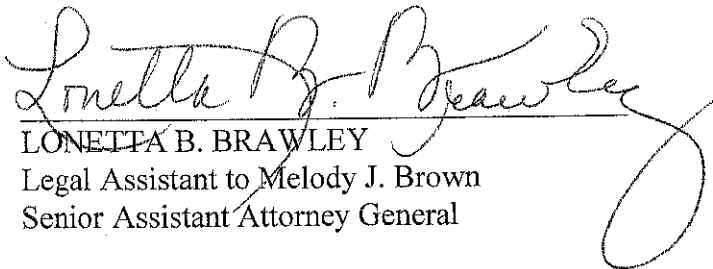
CERTIFICATE OF SERVICE

I, **Lonetta B. Brawley**, hereby certify that I have served the **Order Appointing Counsel** in the foregoing action by depositing copies in the United States mail, postage prepaid, to the following:

E. Charles Grose, Jr., Esquire
The Grose Law Firm
404 Main Street
Greenwood, SC 29646

Elizabeth Franklin-Best, Esquire
Blume Weyble & Norris
900 Elmwood Street, Ste. 101
Columbia, SC 29201

The 22nd day of August, 2012.


LONETTA B. BRAWLEY
Legal Assistant to Melody J. Brown
Senior Assistant Attorney General

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

William O. Dickerson,)	Case No. 9:21-mc-00618-SAL-MHC
)	
Petitioner,)	
)	
v.)	AMENDED ORDER
)	
Bryan P. Stirling, <i>Director, South Carolina</i>)	
<i>Department of Corrections</i> , and Lydell)	
Chestnut, <i>Deputy Warden of Broad River</i>)	
<i>Correctional Secure Facility</i> ,)	
)	
Respondents.)	
)	

William O. Dickerson (“Petitioner”), is a state prisoner sentenced to death. This matter is before the court on Petitioner’s request for counsel (ECF No. 1) and motion to proceed in forma pauperis (ECF No. 2).¹ Respondents have filed a response (ECF No. 12), to which Petitioner replied (ECF No. 14).²

I. Motion for Leave to Proceed *In Forma Pauperis*

After a careful review of Petitioner’s motion for leave to proceed *in forma pauperis* and supporting affidavit, the court finds Petitioner should be relieved of the obligation to prepay the full filing fee. Petitioner’s motion is therefore GRANTED.

II. Motion for Appointment of Counsel

Pursuant to 18 U.S.C. § 3599(a)(2), indigent death-sentenced prisoners are “entitled to the

* This Amended Order replaces the original Order, which listed, in Section III, an incorrect dollar amount for the capital rate approved by the Administrative Office of the U.S. Courts for court-appointed counsel. Section III of the Amended Order now reads, “Counsel shall be compensated at the current capital rate approved by the Administrative Office of the U.S. Courts.” *See infra*. This Amended Order is dated the same date as the original Order, such that all time frames referenced herein run from the date of the original Order.

¹Petitioner also moved to stay his execution. (ECF No. 1). The court granted that motion by separate order filed October 21, 2021. (ECF No. 16).

² Petitioner originally filed his reply on October 19, 2021 (ECF No. 13), then filed an amended reply on October 20, 2021 (ECF No. 14) to correct his statute of limitations calculation.

appointment of one or more attorneys” to pursue federal habeas corpus remedies. Further, “the right to counsel necessarily includes a right for that counsel meaningfully to research and present a defendant’s habeas claims.” *McFarland v. Scott*, 512 U.S. 849, 858 (1994). Thus, § 3599 contemplates the appointment of qualified counsel prior to the filing of a petition for writ of habeas corpus and sets forth the required qualifications:

- (c) If the appointment is made after judgment, at least one 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.
- (d) With respect to subsection[] . . . (c), the court, for good cause, may appoint another 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).

In addition, pursuant to the District of South Carolina’s plan for implementing the Criminal Justice Act (“CJA”), this court maintains a panel of qualified attorneys available to represent indigent defendants. *See Standing Orders – Amended CJA Plan for the District of South Carolina*, Case No. 3:20-mc-00027 (Jan. 22, 2020) (“CJA Plan”). Recognizing the particular complexity of capital cases, the CJA Plan instructs the court to utilize the expert services available through the Administrative Office of the United States (“AO”), which include capital habeas units and federal community defender offices, where appropriate. CJA Plan § XIII(B)(4). Further, “[a]ll attorneys appointed in federal capital cases must be well qualified, by virtue of their training, commitment, and distinguished prior capital defense experience at the relevant stage of the proceeding, to serve as counsel in this highly specialized and demanding litigation” and “must have sufficient time and resources to devote to the representation, taking into account their current caseloads and the extraordinary demands of federal capital cases.” *Id.* § XIII(B)(6), (7).

Specifically regarding appointment of counsel in capital habeas matters, the CJA Plan

provides the following guidance:

3. Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment as co-counsel in capital § 2254 cases to achieve cost and other efficiencies together with high quality representation.
-
6. Counsel in capital § 2254 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.
7. When possible, capital § 2254 counsel should have distinguished prior experience in capital § 2254 representations.
8. In evaluating the qualifications of proposed capital § 2254 counsel, consideration should be given to the qualifications standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.
9. In evaluating the qualifications of proposed capital § 2254 counsel, consideration should be given to proposed counsel’s commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to represent effectively the interests of the client.

CJA Plan § XIII(F).

Petitioner requests the court appoint E. Charles Grose, Jr., of Greenwood, South Carolina, and Gerald W. King, Jr. and Gretchen Swift of the Fourth Circuit Capital Habeas Unit (“CHU”).

Mr. Grose 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. He met the requirements for lead counsel on this court’s former CJA Death Penalty Panel Attorney List³ and is certified by the South Carolina Supreme Court to serve as lead counsel in capital cases. In addition, Mr. Grose regularly attends death penalty training seminars.

Mr. King is the Chief of the Fourth Circuit’s CHU, based in the Office of the Federal Public Defender for the Western District of North Carolina. He has more than seventeen years of

³ Under the amended CJA Plan, the court no longer maintains a separate death penalty panel.

experience litigating capital habeas proceedings and appeals, including as a staff attorney for the Northern District of Georgia's CHU and the Equal Justice Initiative of Alabama. In addition, Mr. King has extensive experience in executive clemency and post-certiorari litigation. The court has granted his motion to appear *pro hac vice* in this matter. (ECF No. 9).

Ms. Swift is an Assistant Public Defender in the Fourth Circuit CHU. She has over eighteen years of experience litigating federal capital habeas proceedings and appeals, including as a Assistant Federal Public Defender for the Middle District of Tennessee's CHU. The court has granted her motion to appear *pro hac vice* in this matter. (ECF No. 9).

Based on the foregoing, the court finds Mr. Grose, Mr. King, and Ms. Swift qualified to represent Petitioner under § 3599 and GRANTS petitioner's motion to appoint counsel (ECF No. 1).

Respondents do not oppose appointment of Petitioner's requested counsel but note a potential issue under *Juniper v. Davis*, 737 F.3d 288 (4th Cir. 2013),⁴ because Mr. Grose also served as Petitioner's state post-conviction relief ("PCR") counsel. (ECF No. 12 at 7 n.9). Respondents also admit the appointment of Mr. King and Ms. Swift along with Mr. Grose apparently mitigates any potential conflict. *Id.* (citing *Fowler v. Joyner*, 753 F.3d 446, 463–65 (4th Cir. 2014) (finding *Juniper* satisfied where petitioner was represented in federal habeas action by state postconviction counsel and an additional independent attorney)). However, to further assuage the issue, the court instructs Mr. King and Ms. Swift to conduct any *Martinez* investigation independent of Mr. Grose.

Counsel are reminded that by accepting appointment they are indicating their willingness and availability to represent Petitioner to the full extent of their professional ability in all phases

⁴ In *Juniper*, the Fourth Circuit held that a capital habeas petitioner is entitled to the appointment of qualified, independent counsel for the purpose of investigating any potential claims pursuant to *Martinez v. Ryan*, 566 U.S. 1 (2012), if his counsel also represented him in state PCR proceedings.

of this litigation. Counsel should advise the court immediately if their current caseload does not permit this level of representation.

III. Cost Containment and Budgeting

Counsel shall file an ex parte confidential proposed litigation budget within thirty days of this order. In preparing their budget, counsel should consult with Larry M. Dash, Fourth Circuit Case Budgeting Attorney. The court cautions counsel to avoid duplication of efforts and unnecessary attorney time.

Mr. Grose shall submit interim payment vouchers every sixty days to Claire Woodward O'Donnell, Panel Administrator, Federal Public Defender's Office, for payment consideration and so that costs and fees can be monitored. Counsel shall be compensated at the current capital rate approved by the Administrative Office of the U.S. Courts.

IV. State Court Record

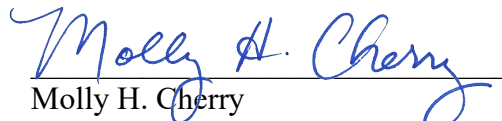
Counsel for Respondents are directed to file a complete record of all state court proceedings to date in connection with this matter within thirty days of this order. Additionally, counsel shall provide one courtesy copy to the assigned District Judge and one courtesy copy to "Death Penalty Law Clerk" at the Matthew J. Perry Courthouse in Columbia. Further, for ease of reference, the parties shall cite to the filed version of the record and use the ECF docket and page number, rather than the state court appendix number.

V. Petition and Scheduling

In accordance with 28 U.S.C. § 2251(a)(3), Petitioner shall file a petition for a writ of habeas corpus within ninety days of this order appointing counsel. Petitioner shall then have until the expiration of the one-year limitation period prescribed by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") to amend his petition. *See* 28 U.S.C. § 2244(d). The court will enter a scheduling order regarding responsive briefing after Petitioner amends his petition or

the time to do so expires.

IT IS SO ORDERED.


Molly H. Cherry
United States Magistrate Judge

October 21, 2021
Charleston, South Carolina