

No. _____ (CAPITAL CASE)

IN THE SUPREME COURT OF THE UNITED STATES

ROBERT ALAN FRATTA

Petitioner,

v.

STATE OF TEXAS

Respondent.

On Petition for Writ of Certiorari
To the Texas Court of Criminal Appeals

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

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* *Counsel of Record*

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Petitioner, Robert Alan Fratta, seeks leave to file the enclosed Petition for Writ of Certiorari without prepayment of costs and to proceed *in forma pauperis* in accordance with Supreme Court Rule 39, and 18 U.S.C. § 3006A(d)(6).

The United States District Court for the Southern District of Texas found Mr. Fratta could not proceed *in forma pauperis* because petitioner had sufficient funds to pay the five-dollar filing fee. The District Court authorized Mr. Fratta to proceed *in forma pauperis* on January 21, 2014. App. A. The District Court appointed counsel pursuant to 18 U.S.C. § 3599(a)(2) Hilder & Associates, P.C., on December 4, 2013. App. B. The Federal Public Defender for the Western District of Texas entered an appearance as co-counsel on December 10, 2018. App. C.

The filing of this petition is the continuation of counsel's representation of Mr. Fratta under the 18 U.S.C. § 3599(a)(2) appointment. *See* 18 U.S.C. § 3599(e) (“[e]ach attorney so appointed shall represent the defendant throughout every subsequent stage of available judicial proceedings, including ... applications for writ of certiorari to the Supreme Court of the United States”). In accordance with Supreme Court Rule 39, no affidavit declaring Mr. Fratta's indigency is required.

WHEREFORE, Petitioner, Robert Alan Fratta, seeks leave to proceed *in forma pauperis*.

Respectfully submitted this 6th day of January 2023,

MAUREEN FRANCO
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Western District of Texas
TIVON SCHARDL
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APPENDIX

- A. Order Granting Motion to Proceed *In Forma Pauperis*, Jan. 21, 2014
- B. Order Appointing Counsel, Dec. 4, 2013
- C. Order Appointing Co-Counsel, Dec. 10, 2018

Appendix A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROBERT ALAN FRATTA,

Petitioner,

VS.

WILLIAM STEPHENS,

Respondent.

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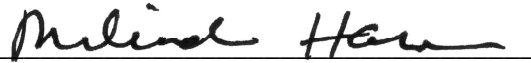
CIVIL ACTION NO. 4:13-CV-3438

ORDER

The Court **GRANTS** Robert Alan Fratta’s motion to proceed *in forma pauperis*. (Instrument No. 4). Fratta will continue to proceed *in forma pauperis* and with appointed counsel throughout the remainder of his federal habeas proceedings.

The Clerk will deliver a copy of this Order to the parties.

SIGNED at Houston, Texas, this 21st day of January, 2014.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE

Appendix B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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|---------------------|---|-------------------------------|
| ROBERT ALAN FRATTA, | § | |
| | § | |
| Petitioner, | § | |
| VS. | § | CIVIL ACTION NO. 4:13-CV-3438 |
| | § | |
| WILLIAM STEPHENS, | § | |
| | § | |
| Respondent. | § | |

ORDER APPOINTING COUNSEL

Robert Alan Fratta, an inmate on Texas' death row, has filed a *pro se* motion for the appointment of counsel. (Docket Entry No. 1). Under 18 U.S.C. § 3599(a)(2), "any [capital habeas petitioner] who is or becomes financially unable to obtain adequate representation . . . shall be entitled to the appointment of one or more attorneys." Fratta, however, has not yet filed an *in forma pauperis* application indicating his indigence and, therefore, his entitlement to appointed counsel.

This Court conditionally finds that federal law entitles Fratta to the appointment of federal habeas counsel. The Court conditionally authorizes Fratta to proceed in federal court without the payment of fees. The Court **APPOINTS** the following law firm to represent Fratta throughout his federal habeas proceedings:

Hilder & Associates, P.C.

819 Lovett Blvd.

Houston, Texas 77006-3905

Telephone: (713) 655-9111

Facsimile: (713) 655-9112

E-mail: philip@hilderlaw.com; james@hilderlaw.com

Counsel will be compensated at the rate of \$178 per hour, pursuant to 18 U.S.C. § 3599(g)(1).
Counsel may submit requests for interim payment for his work.

Fratta can fulfill the conditions of this appointment by filing a motion to proceed *in forma pauperis* with an accompanying showing of indigency within thirty (30) days of the entry of this Order.

SIGNED at Houston, Texas, this 4th day of December, 2013.



MELINDA HARMON

UNITED STATES DISTRICT JUDGE

Appendix C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ENTERED
December 10, 2018
David J. Bradley, Clerk

ROBERT ALAN FRATTA,

Petitioner,

VS.

LORIE DAVIS,

Respondent.

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CIVIL ACTION NO. 4:13-CV-3438

ORDER

On September 18, 2017, this Court denied Robert Alan Fratta’s federal petition for a writ of habeas corpus. (Docket Entry No. 80). Fratta is currently seeking appellate relief. Federal law guarantees an inmate sentenced to death representation by “one or more attorneys.” 18 U.S.C. § 3599(a)(2). On December 4, 2013, this Court appointed Mr. James Rytting to represent Fratta. (Docket Entry No. 3). No other attorneys now represent him.

Fratta moves for the appointment of co-counsel. (Docket Entry Nos. 95, 96, 98). The Court **GRANTS** Fratta’s motions and **APPOINTS** as co-counsel **Maureen Scott Franco**, Federal Public Defender - Western District of Texas, 504 Lavaca Street, Suite 960, Austin, TX 78701. **Tivon Schardl**, Supervisory Assistant Federal Public Defender for the Capital Habeas Unit (telephone 512-916-5035; email: *Tivon_Schardl@fd.org*), will be assigned this case and will be the attorney to be noticed.

Fratta has filed letters with the Court indicating that he would like Mr. Rytting to withdraw from representation. (Docket Nos. 99, 100). Under federal law, a capital habeas attorney “shall **represent** the [inmate] throughout every subsequent stage of available judicial proceedings” unless removed by the Court “upon the attorney’s own motion or upon motion of the defendant” 18 U.S.C. § 3599(2)(e). A court may only substitute counsel for capital

inmates when “in the interests of justice.” *Martel v. Clair*, 565 U.S. 648, 659-60 (2012). This is not the first time that Fratta has complained about his attorneys’ representation. The Court has previously found that removing Mr. Rytting would not be in the interests of justice. (Docket Entry Nos. 13, 27). Nothing in Fratta’s recent letters suggests that the circumstances have changed or that Mr. Rytting cannot competently represent him. Mr. Rytting will continue to serve as lead counsel throughout the course of federal proceedings.

SIGNED at Houston, Texas this 10th day of December, 2018.



ANDREW S. HANEN
UNITED STATES DISTRICT JUDGE