

Capital Case

Case No.

October Term, 2022

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

JAMES MAMMONE III, PETITIONER

VS.

CHARLOTTE JENKINS, RESPONDENT

**PETITIONER'S MOTION FOR LEAVE TO PROCEED *IN FORMA
PAUPERIS***

Petitioner James Mammone moves this Court for leave to proceed *in forma pauperis* under Rule 39 so that he may file a Petition for Writ of Certiorari. Mr. Mammone is indigent, and he is incarcerated on Ohio's death row. Counsel was appointed for him for federal habeas review under The Criminal Justice Act, 18 U.S.C. 3599.

Respectfully submitted,

/s/ Sharon A. Hicks

SHARON A. HICKS (0076187)

Assistant Federal Public Defender

Office of the Federal Public Defender, NDOH

1660 West Second Street, Suite 750

Cleveland, Ohio 44113

(216) 522-4856; (216) 522-1951

Sharon.Hicks@fd.org

Counsel for Petitioner James Mammone

Motion Granted.

So Ordered.

s/James G. Carr
Sr. U.S. District Judge
JAMES MAMMONE,

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

Petitioner,

v.

CHARLOTTE JENKINS, WARDEN,

Respondent.

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Case No. 5:16-cv-00900

Judge:

CAPITAL HABEAS CASE

PETITIONER MAMMONE'S MOTION FOR THE APPOINTMENT OF COUNSEL

Now comes Petitioner James Mammone, by and through the undersigned counsel, and moves this Court to appoint counsel on his behalf. Mr. Mammone was convicted of aggravated murder and sentenced to death in the State of Ohio.

Mr. Mammone is now before this Court seeking the appointment of counsel to represent him in his federal habeas corpus proceedings. Mr. Mammone has contemporaneously filed a Notice of Intention to File a Habeas Petition and a Motion to Proceed In Forma Pauperis.

Respectfully submitted,

/s/ Vicki Ruth Adams Werneke
VICKI RUTH ADAMS WERNEKE (0088560)
Assistant Federal Public Defender
Office of the Federal Public Defender,
Northern District of Ohio
1660 W. 2nd Street, Suite 750
Cleveland, Ohio 44113
(216) 522-4656
(216) 522-1951(f)
vicki_werneke@fd.org

/s/ William S. Lazarow
WILLIAM S. LAZAROW (0014625)
Attorney at Law
400 S. Fifth Street, Suite 301
Columbus, Ohio 43215
(614) 228-9058
(614) 221-8601(fax)
BillLazarow@aol.com

MEMORANDUM IN SUPPORT

I. INTRODUCTION

James Mammone is now before this Court seeking the appointment of counsel pursuant to 18 U.S.C. §3599(a)(2) and 18 U.S.C. §3006A.

Mr. Mammone was indicted by a Stark County Grand Jury and charged with aggravated murder with capital specifications. He was convicted and sentenced to death. On appeal to the state appellate courts, Mr. Mammone's convictions and sentences were affirmed. Mr. Mammone sought state post-conviction relief under Ohio Rev. Code Ann. §2953.21, which was denied and affirmed on appeal.

Mr. Mammone will now need to litigate his petition for writ of habeas corpus before this Court. However, as reflected in Mr. Mammone's Financial Application to proceed *in forma pauperis*, filed contemporaneously with this Motion, he must depend upon this Court to appoint qualified counsel to represent him in the ensuing litigation.

II. THIS COURT HAS THE AUTHORITY TO APPOINT COUNSEL

The United States District Court for the Northern District of Ohio, the Administrative Office of the United States Courts, and Congress have all recognized that a financially eligible person, who was sentenced to death by the state courts and who seeks federal habeas corpus relief, is entitled to the appointment of qualified counsel.

Section 3599 of Title 18 of the United States Code provides, in pertinent part, that:

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 subsections (b) through (f).

18 U.S.C. § 3599(a)(2). Pursuant to the statute, this Court must ensure that persons who have been sentenced to death, and who are financially eligible, have adequate legal representation in proceedings brought under 28 U.S.C. § 2254.

The appointment standards contained in 18 U.S.C. § 3599, 18 U.S.C. 3006A, the guidelines promulgated by the Administrative Office of the United States Courts, and the guidelines adopted by the Northern District, all provide for, or strongly suggest, the appointment of more than one counsel in a capital habeas corpus proceeding. These guidelines and standards are based upon the premise that all appointed counsel should not only be qualified, but also prepared to represent the death sentenced individual once they are appointed.

Under the standards established by Congress and outlined in *McFarland v. Scott*, 512 U.S. 849 (1994), it is necessary for counsel to become familiar with the lengthy record and to ascertain if any additional investigation will be necessary. This task will be time consuming, and appointed counsel should begin the necessary review immediately. Petitioner would request the Court to act forthwith on the request for counsel.

III. UNDERSIGNED COUNSEL IS QUALIFIED TO BE APPOINTED

Undersigned lead counsel, Vicki Ruth Adams Werneke, with the Capital Habeas Unit of the Office of the Federal Public Defender, Northern District, and William S. Lazarow, Attorney at Law, are members in good standing of the Ohio Bar. They are licensed to practice before the United States Supreme Court, Sixth Circuit Court of Appeals and the Northern District of Ohio. Undersigned counsel have represented death-sentenced individuals in both state and federal courts.

Mr. Mammone has indicated his desire to be represented by attorneys with the Capital Habeas Unit of the Northern District of Ohio, as well as William S. Lazarow. Ms. Werneke has

established a rapport with Mr. Mammone and has received the case materials from state post-conviction counsel to obtain the case materials. Mr. Lazarow has established a rapport with Mr. Mammone from when he represented him in state court on the application to reopen the direct appeal.

IV. CONCLUSION

Mr. Mammone requests this Court appoint two attorneys due to “the seriousness of the possible penalty and to the unique and complex nature of the litigation.” 18 U.S.C. § 3599(d). Mr. Mammone asks this Court to appoint two attorneys who have experience in 28 U.S.C. § 2254 cases and/or federal civil litigation. Mr. Mammone requests that this Court appoint as lead counsel Ms. Werneke with the Capital Habeas Unit with the Office of the Federal Public Defender, and William S. Lazarow to serve as counsel in these proceedings.

Respectfully submitted,

/s/ Vicki Ruth Adams Werneke

VICKI RUTH ADAMS WERNEKE (0088560)
Assistant Federal Public Defender
Office of the Federal Public Defender,
Northern District of Ohio
1660 W. 2nd Street, Suite 750
Cleveland, Ohio 44113
(216) 522-4656
(216) 522-1951(f)
vicki_werneke@fd.org

/s/ William S. Lazarow

WILLIAM S. LAZAROW (0014625)
Attorney at Law
400 S. Fifth Street, Suite 301
Columbus, Ohio 43215
(614) 228-9058
(614) 221-8601(fax)
BillLazarow@aol.com

CERTIFICATE OF SERVICE

A copy of the foregoing Motion for the Appointment of Counsel was mailed to the Office of the Ohio Attorney General, Capital Crimes Section, 150 E. Gay Street, 16th Floor, Columbus, Ohio 43215 by regular U.S. Mail on this 15th day of April, 2016.

/s/ Vicki Ruth Adams Werneke
Vicki Ruth Adams Werneke