

No. _____

IN THE
Supreme Court of the United States

DAVID FREEMAN,

Petitioner,

v.

COMMISSIONER, ALABAMA DEPARTMENT OF
CORRECTIONS,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

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

JON M. SANDS
Federal Public Defender
District of Arizona

CHRISTINE A. FREEMAN
Executive Director
Federal Defenders for the Middle
District of Alabama

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**Counsel of Record*

February 21, 2023

Counsel for Petitioner

Petitioner David Freeman respectfully asks leave to file the attached petition for writ of certiorari without prepayment of costs and to proceed in forma pauperis.

Petitioner is an indigent prisoner incarcerated in Alabama sentenced to death. He has previously been granted leave to proceed in forma pauperis and in February 13, 2006, the Federal Public Defender was appointed by the U.S. District Court for the Middle District of Alabama to represent him in his habeas proceedings. *See* attached Appointment Order. Counsel's appointment is authorized under 18 U.S.C. § 3599(e) and 18 U.S.C. 3006A.

Respectfully submitted: February 21, 2023.

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*Counsel of record

s/ John A. Palombi
JOHN A. PALOMBI
ASSISTANT FEDERAL DEFENDER

Counsel for Petitioner

Attachment

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

DAVID FREEMAN,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 2:06CV122-MHT-VPM
)	
DONAL CAMPBELL, Commissioner)	
Alabama Department of Corrections,)	
)	
Respondent.)	
)	

ORDER

This matter is pending before the court on Petitioner’s Motion for Appointment of Counsel (Doc. # 1) and Motion to Proceed *In Forma Pauperis* (Doc. # 2) and Motion for Pro Hac Admission (Doc. # 3), which were all filed in this court on February 8, 2006. In his Motion for Appointment of Counsel, the petitioner requests that this court appoint Keir M. Weyble of Columbia, South Carolina and Christopher Seeds of New York, New York to represent him in preparing and filing a petition for habeas corpus relief from his sentence of death imposed by the Circuit Court of Montgomery County, Alabama and that their appointment be made *nunc pro tunc* to January 20, 2006.

Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 [“AEDPA”], 21 U.S.C. § 848q, “any defendant who is or becomes financially unable to obtain adequate representation . . . shall be entitled to the appointment of one or more attorneys.” Petitioner

has cited this court to *McFarland v. Scott*, 512 U.S. 849, 855-856 (1994) as support for his position that counsel be appointed to represent petitioner prior to the filing of the petition for habeas corpus. Accordingly on the authority of *McFarland*, this court concludes that petitioner's motion for appointment of counsel should be granted to the extent that Keir Weyble shall be appointed as counsel for the petitioner.¹ The court will defer consideration of counsel's motion for *nunc pro tunc* appointment until such time as counsel files pursuant to the court's procedure a statement of such services performed for his client. Furthermore, the court has reviewed Weyble's motion for *pro hac vice* admission to this court and concludes that it is due to be granted.

Accordingly, it is

ORDERED that Petitioner's motion to appoint counsel (Doc. # 1) be and hereby is GRANTED to the extent that Keir Weyble shall be appointed as counsel of record for the petitioner pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 ["AEDPA"], 21 U.S.C. § 848q. It is further

ORDERED that Keir Weyble's motion for *pro hac vice* admission (Doc. # 3) be and hereby is GRANTED.

¹ The court declines to appoint Christopher Seeds at this time because he has not yet filed a motion for *pro hac vice* admission and because it is the policy of this court to appoint only one lawyer in a capital habeas case who resides outside this district and to require appointment of local co-counsel from the Federal Defenders Office in the Middle District of Alabama.

Counsel is CAUTIONED that the court does not construe either the motions filed on February 8, 2006 or this Order as a petition for habeas corpus relief from the sentence of death. By counsel's own admission, the statute of limitations for filing this action will expire on Tuesday, February 21, 2006. Accordingly, Counsel is INSTRUCTED to file the petition for habeas corpus relief on behalf of his client on or before February 21, 2006.

In conjunction with these motions the Petitioner has filed a Motion to Proceed *In Forma Pauperis* and a declaration in support thereof (Doc. # 2). In the declaration sworn on January 31, 2006, the Petitioner attests that he is unable to pay fees or costs, or give security for this proceeding, and that he owns no real estate, stocks, bonds, notes, automobiles or other valuable property. Petitioner's prison account statement shows that on January 31, 2006 he had the sum of \$2.08 on account. Accordingly, the court concludes that petitioner is unable to pay the \$5.00 filing fee associated with filing a habeas petition in this court. Accordingly, it is

ORDERED that Petitioner's Motion to Proceed *In Forma Pauperis* (#2) is hereby GRANTED.

DONE this 13th day of February, 2006.

/s/ Vanzetta Penn McPherson
VANZETTA PENN MCPHERSON
UNITED STATES MAGISTRATE JUDGE