

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

**DAVID SANTIAGO RENTERIA,
TDCJ # 999460,
Petitioner,** §
§
§

V.

EP-15-CV-62-FM

**WILLIAM STEPHENS,
Director, Texas Department of
Criminal Justice, Correctional
Institutions Division,
Respondent.**

ORDER APPOINTING COUNSEL AND SETTING DEADLINES

Before the Court are Petitioner David Santiago Renteria’s application to proceed *in forma pauperis* (ECF No. 1) (“Application”) and motion for appointment of counsel (ECF No. 1-1) (“Motion”). Petitioner seeks leave to prosecute, without prepaying costs or fees, a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He also seeks the appointment of counsel, pursuant to 18 U.S.C. § 3599, to represent him. After due consideration, the Court finds that it should grant Petitioner’s Application and Motion, and appoint counsel to represent him in the above-captioned federal habeas proceeding.

BACKGROUND

On November 18, 2001, a five-year-old girl disappeared from a Wal-Mart store in El Paso, Texas, where she had been shopping with her parents. The next day, her nude, partially burned body with a plastic bag over her head was discovered in an alley. Petitioner's palm print matched a latent print lifted from the plastic bag. A search of Petitioner's van revealed blood stains containing the victim's DNA. Petitioner and his van had been at the Wal-Mart when the victim disappeared. A Wal-Mart security guard briefly spoke to Petitioner, and Wal-Mart surveillance cameras showed a man walking out of the store with the victim.

In October 2003, Petitioner was convicted of capital murder and, based upon the jury's answers to the special issues set forth in Texas Code of Criminal Procedure Article 37.071, the 41st District Court in El Paso County set Petitioner's punishment at death. On direct appeal, the Texas Court of Criminal Appeals affirmed Petitioner's conviction, but vacated his sentence. *Renteria v. State*, 206 S.W.3d 689 (Tex. Crim. App. 2006). The trial court re-sentenced Petitioner to death, and on May 4, 2011, the Court of Criminal Appeals affirmed the judgment. *Renteria v. State*, 2011 WL 1734067 (2011). On December 17, 2014, the Court of Criminal Appeals denied Petitioner's three pending state applications for writs of habeas corpus. *Ex parte Renteria*, WR-65, 627-01 (filed August 28, 2006), -02 (filed August 1, 2012), -03 (filed August 7, 2014).

INDIGENCE

Petitioner asks the Court for leave to proceed without prepaying costs. A declaration submitted by Petitioner establishes that he has limited financial resources. The Court accordingly finds that Petitioner does not have sufficient assets to pay the filing fee at the outset of this proceeding and concludes that it should grant his Application.

MOTION FOR APPOINTMENT OF COUNSEL

Petitioner has also asked the Court to appoint counsel to represent him. As noted by the Supreme Court in *McFarland v. Scott*, 512 U.S. 849, 855–58 (1994), a state prisoner facing a death sentence has a qualified statutory right to appointed counsel in connection with a federal habeas corpus proceeding challenging his criminal conviction and death sentence.¹ According to 18 U.S.C. § 3599(c), “[i]f 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,

¹ *Sterling v. Scott*, 57 F.3d 451, 454 (5th Cir. 1995), *cert. denied*, 516 U.S. 1050 (1996).

and must have had not less than three years experience in the handling of appeals in that court in felony cases.”²

Michael Wiseman (“Wiseman”), 1211 Locust Street, Philadelphia, Pennsylvania 19107, telephone number (215) 450-0903, Wiseman_Law@comcast.net, has agreed to represent Petitioner. Wiseman has been licensed to practice law in the Commonwealth of Pennsylvania since 1995, and has been admitted to practice before the Supreme Court and the Second and Third Circuit Courts of Appeal. His law practice focuses on capital and criminal defense at trial, on appeal, and in post-conviction proceedings. He has capably represented state death row inmates in numerous cases, including *Rompilla v. Beard*, 575 U.S. 374 (2005); *Wilson v. Beard*, 589 F.3d 651 (3d Cir. 2009); *Hardcastle v. Horn*, 332 F. App’x 764 (3rd Cir. 2009); and *Appel v. Horn*, 250 F.3d 203 (3rd Cir. 2001). The Court therefore finds that Wiseman fully qualifies for appointment as lead counsel for federal habeas corpus actions attacking state sentences of death under the criteria set forth in 18 U.S.C. § 3599.

Melissa Ann Franklin (“Franklin”), P.O. Box 1766, Austin, Texas, 78767-1766, telephone number (865) 599-5082, mfranklinlegal@gmail.com, has also agreed to assist with the representation of Petitioner. Franklin has been licensed to practice law in the State of Tennessee since 2007, was a Regional Public Defender for capital cases in Wichita Falls, Texas, from January 2013 until March of 2014, and currently represents clients in capital habeas proceedings in federal courts.

The Court accordingly enters the following orders:

1. The Court **GRANTS** Petitioner’s Application.
2. The Court **GRANTS** Petitioner’s Motion and, in accordance with 18 U.S.C. § 3599,

² 18 U.S.C. § 3599(c) (2012).

APPOINTS Wiseman as counsel for Petitioner. The Court also **APPOINTS** Franklin to assist Wiseman as counsel for Petitioner. The Court shall compensate Wiseman and Franklin (collectively “Counsel”) in accordance with 18 U.S.C. § 3599(g)(1). Additionally, pursuant to 18 U.S.C. § 3599(f), the Court may authorize Counsel, if they submit a proper request, to obtain investigative, expert, or other services which are reasonably necessary for Petitioner’s representation. Fees and expenses for investigative, expert, and other reasonably necessary services shall be paid in accordance with 18 U.S.C. § 3599(g)(2). The Court **ADVISES** Counsel that they are eligible to receive interim payments from this Court in connection with their representation of Petitioner. The Court reminds Counsel that, in the present budgetary environment, cost-efficiency is at a premium. The Court therefore **DIRECTS** Counsel to make reasonable efforts to minimize costs, provided those efforts do not compromise their ability to thoroughly investigate Petitioner’s cause and mount a vigorous defense on his behalf. The Court **FURTHER ADVISES** Counsel that it may not recommend approval of the expenditure of funds in this matter unless Counsel first submit, and the Court approves, a budget.

3. The Court **ORDERS** the District Clerk to send Wiseman all forms and vouchers necessary to permit him to comply with all requirements for obtaining reimbursement for expenses and payment for attorneys fees for services rendered in connection with this cause.

4. **Petition**. On or before **Friday, July 24, 2015**, Petitioner shall file with the Clerk of this Court, and serve Respondent William Stephens—through his counsel, the Attorney General of Texas, Attention: Jay Clendenin, Criminal Appeals Division, P.O. Box 12548, Capitol Station Austin, Texas 78711-2548, telephone number (512) 463-1416—his federal habeas corpus petition. The petition shall conform to the requirements of Rule 2 of the Rules Governing Section 2254 Cases in the United States District Courts.

5. **Answer**. Respondent shall file his answer to Petitioner’s federal habeas corpus

petition or other responsive pleading on or before sixty days after receipt of a copy of Petitioner's federal habeas petition. Respondent's answer or other responsive pleading shall conform to the requirements of Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts and Rule 12 of the Federal Rules of Civil Procedure. Respondent shall serve Petitioner's Counsel with a copy of said answer or other responsive pleading in accordance with the provisions of Rule 5(b) of the Federal Rules of Civil Procedure.

6. **Exhaustion and Procedural Bar Issues.** Respondent shall clearly and directly respond to the issue of whether Petitioner has exhausted available state remedies with regard to each of the grounds for federal habeas corpus relief set forth in Petitioner's pleadings filed in this cause as of this date. If Respondent denies that Petitioner has exhausted available state remedies with regard to each ground for federal habeas relief set forth in Petitioner's pleadings, Respondent shall explain, in detail, those state remedies still available to Petitioner with regard to each unexhausted claim. In the event that Respondent wishes to assert the defense that the Petitioner has procedurally defaulted on any claim for relief contained in Petitioner's federal habeas corpus petition, Respondent shall explicitly assert that defense and identify with specificity which of the Petitioner's claims the Respondent contends are procedurally barred from consideration by this Court.

7. **Abuse of the Writ.** In the event that Respondent wishes to assert the defense that Petitioner has abused the writ, Respondent shall explicitly assert that defense and identify with specificity which of Petitioner's claims were either included in a prior federal habeas corpus petition by Petitioner or could, with the exercise of diligence on Petitioner's part, have been included in an earlier federal habeas petition by Petitioner.

8. **Second or Successive Petition.** In the event that Respondent wishes to assert the defense that this is a second or successive petition filed by Petitioner attacking the same state

criminal proceeding and that Petitioner has failed to comply with the requirements of 28 U.S.C. § 2244, Respondent shall explicitly assert that defense.

9. **Limitations.** In the event that Respondent wishes to assert the defense that Petitioner has failed to file this federal habeas corpus action within the one-year statute of limitations set forth in 28 U.S.C. § 2244(d), Respondent shall explicitly assert that defense and identify with specificity the date on which the one-year limitations period began to run and all time periods during which that limitations period was tolled.

10. **State Court Records.** On or before thirty days after the date Respondent files his answer or other responsive pleading in this cause, Respondent shall submit to the Clerk of this Court true and correct copies of all pertinent state court records from Petitioner's state court proceedings.

11. **Petitioner's Reply.** On or before twenty days after the date Respondent serves Petitioner's Counsel with a copy of Respondent's answer or other responsive pleading, Petitioner shall file with the Clerk of this Court and serve on Respondent's counsel any reply he wishes to make to Respondent's answer or other responsive pleading.

12. Petitioner's Counsel shall immediately transmit a copy of this Order to Petitioner.

13. Any party seeking an extension on any of the foregoing deadlines shall file a written motion requesting such extension prior to the expiration of the deadline in question and shall set forth in such motion a detailed description of the reasons why that party, despite the exercise of due diligence, will be unable to comply with the applicable deadline.

14. Petitioner is advised his court-appointed counsel are not required to accept collect telephone calls from Petitioner or any person acting on Petitioner's behalf, and that his Counsel are not required to expend their own funds to investigate any claim or potential claim in this cause.

15. The Clerk shall send a copy of this Order via first class mail with a receipt acknowledgment card enclosed to (1) Petitioner's Counsel, and (2) the Attorney General of Texas, Attention: Chief, Criminal Appeals Division, P.O. Box 12548, Capitol Station Austin, Texas 78711-2548.

SO ORDERED.

SIGNED this 30th day of March 2015.


Frank Montalvo
FRANK MONTALVO
UNITED STATES DISTRICT JUDGE