

No. 18-

IN THE
Supreme Court of the United States

ABU-ALI ABDUR'RAHMAN, *et al.*,
Petitioners,

v.

TONY PARKER, *et al.*,
Respondents.

**On Petition for a Writ of Certiorari to the
Supreme Court of Tennessee**

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

**EXECUTION SCHEDULED
FOR MAY 16, 2019**

KELLEY J. HENRY	ROBERT N. HOCHMAN *
AMY D. HARWELL	KELLY HUGGINS
RICHARD TENNENT	EMILY A. ROSENBERG
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March 7, 2019

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COME NOW Petitioners Abu Ali Abdur'Rahman, John Michael Bane, Byron Black, Andre Bland, Kevin Burns, Tony Carruthers, Tyrone Chalmers, James Dellinger, Lee Hall, Kennath Henderson, Daryl Hines, Henry Hodges, Stephen Hugueley, David Ivy, Akil Jahi, Donnie Johnson, David Jordan, David Keen, Donald Middlebrooks, Farris Morris, Pervis Payne, Gerald Lee Powers, William Glenn Rogers, Michael Sample, Oscar Smith, and Charles Wright and move this Court for leave to proceed *in forma pauperis* pursuant to Supreme Court Rule 39.

Petitioner Abu-Ali Abdur'Rahman has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Middle District of Tennessee and continued to proceed *in forma pauperis* on appeal. Further, Petitioner was found to be indigent and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Kelley Henry, is appointed by the United States District Court for the Middle District of Tennessee pursuant to 18 U.S.C. § 3006A(a)(2)(B) and (g).¹

Petitioner John Michael Bane has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Western District of Tennessee. Further, Petitioner was found to be indigent and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Richard Tennent, is appointed by the United States Dis-

¹ Ms. Henry is the Supervising Attorney for the Capital Habeas Unit for the Federal Public Defender's Office in the Middle District of Tennessee. Dean Erwin Chemerinsky appears *pro bono*.

trict Court for the Western District of Tennessee pursuant to 18 U.S.C. § 3599.

Petitioner Bryon Black has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Middle District of Tennessee and continued to proceed *in forma pauperis* on appeal. Further, Petitioner was found to be indigent and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Kelley Henry, is appointed by the United States District Court for the Middle District of Tennessee pursuant to 21 U.S.C. § 848(q), presently codified at 18 U.S.C. § 3599.

Petitioner Andre Bland has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Western District of Tennessee. Further, Petitioner was found to be indigent and permitted to proceed *in forma pauper is* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Kelley Henry, is appointed by the United States District Court for the Western District of Tennessee pursuant to 18 U.S.C. § 3599.

Petitioner Kevin Burns has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Western District of Tennessee and continued to proceed *in forma pauperis*. Further, Petitioner was found to be indigent and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Kelley Henry, is appointed by the United States District Court for the Western District of Tennessee pursuant to 21 U.S.C. § 848(q), presently codified at 18 U.S.C. § 3599.

Petitioner Tony Carruthers has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Western District of Tennessee and continued to proceed *in forma pauperis* on appeal. Further, Petitioner was found to be indigent and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Kelley Henry, is appointed by the United States District Court for the Western District of Tennessee pursuant to 21 U.S.C. § 848(q), presently codified at 18 U.S.C. § 3599.

Petitioner Tyrone Chalmers has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Western District of Tennessee. Further, Petitioner was found to be indigent and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Kelley Henry, is appointed by the United States District Court for the Western District of Tennessee Pursuant to 18 U.S.C., §3599.

Petitioner James Dellinger has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Eastern District of Tennessee. Further, Petitioner was found to be indigent and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Kelley Henry, is appointed by the United States District Court for the Eastern District of Tennessee pursuant to 18 U.S.C. § 3599.

Petitioner Lee Hall has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Eastern District of Tennessee pursuant to 21 U.S.C. § 848(q), presently codified at 18 U.S.C. § 3599. Further, Petitioner was found to be indigent

and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Mr. Hall is represented by *pro bono* counsel Kathleen Morris at the request of Mr. Hall's appointed state court attorney, Justyna Scalpone, the State Postconviction Defender, who is appointed pursuant to Tenn. Code Ann. § 40-30-107(b)(1).

Petitioner Kennath Henderson has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Western District of Tennessee and continued to proceed *in forma pauperis* on appeal. Further, Petitioner was found to be indigent and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Kelley Henry, is appointed by the United States District Court for the Western District of Tennessee pursuant to 21 U.S.C. § 848(q), presently codified at 18 U.S.C. § 3599.

Petitioner Daryl Hines has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Middle District of Tennessee and continued to proceed *in forma pauperis* on appeal. Petitioner was found to be indigent and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Amy Harwell, is appointed by the United States District Court for the Middle District of Tennessee pursuant to 21 U.S.C. §848(q), presently codified at 18 U.S.C. §3599.

Petitioner Henry Hodges has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Middle District of Tennessee and continued to proceed *in forma pauperis* on appeal. Further, Petitioner was found to be indigent and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital convic-

tion. Petitioner's counsel, Kelley Henry, is appointed by the United States District Court for the Middle District of Tennessee pursuant to 21 U.S.C. § 848(q), presently codified at 18 U.S.C. § 3599.

Petitioner Stephen Hugueley has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Middle District of Tennessee and continued to proceed *in forma pauperis* on appeal. Petitioner was found to be indigent and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Amy Harwell, is appointed by the United States District Court for the Western District of Tennessee pursuant to 21 U.S.C. § 848, presently codified at 18 U.S.C. § 3599.

Petitioner David Ivy has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Western District of Tennessee. Further, Petitioner was found to be indigent and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Kelley Henry, is appointed by the United States District Court for the Western District of Tennessee pursuant to 18 U.S.C. § 3599.

Petitioner Akil Jahi has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Western District of Tennessee, Petitioner was found to be indigent and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Richard Tennent, is appointed by the United States District Court for the Western District of Tennessee pursuant to 21 U.S.C. § 848(q), presently codified at 18 U.S.C. § 3599.

Petitioner Donnie Johnson has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Western District of Tennessee and continued to proceed *in forma pauperis* on appeal. Further, Petitioner was found to be indigent and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Kelley Henry, is appointed by the United States District Court for the Western District of Tennessee pursuant to 21 U.S.C. § 848(q), presently codified at 18 U.S.C. § 3599.

Petitioner David Jordan has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Western District of Tennessee. Further, Petitioner was found to be indigent and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Kelley Henry, is appointed by the United States District Court for the Western District of Tennessee pursuant to 18 U.S.C. § 3599.

Petitioner David Keen has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Western District of Tennessee and continued to proceed *in forma pauperis* on appeal. Further, Petitioner was found to be indigent and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Kelley Henry, is appointed by the United States District Court for the Western District of Tennessee pursuant to 18 U.S.C. § 3599.

Petitioner Donald Middlebrooks has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Middle District of Tennessee and continued to proceed *in forma pauperis* on appeal. Further, Petitioner was found to be indigent

and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Kelley Henry, is appointed by the United States District Court for the Middle District of Tennessee pursuant to 21 U.S.C. § 848(q), presently codified at 18 U.S.C. § 3599.

Petitioner Farris Morris has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Western District of Tennessee and continued to proceed *in forma pauperis* on appeal. Further, Petitioner was found to be indigent and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Richard Tennent, is appointed by the United States District Court for the Western District of Tennessee pursuant to 21 U.S.C. § 848(q), presently codified at 18 U.S.C. § 3599.

Petitioner Pervis Payne has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Western District of Tennessee and continued to proceed *in forma pauperis* on appeal. Further, Petitioner was found to be indigent and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Kelley Henry, is appointed by the United States District Court for the Western District of Tennessee pursuant to 21 U.S.C. § 848(q), presently codified at 18 U.S.C. § 3599.

Petitioner Gerald Lee Powers has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Western District of Tennessee. Further, Petitioner was found to be indigent and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Kelley Henry, is appointed by the United States District Court for the

Western District of Tennessee pursuant to 18 U.S.C. § 3599.

Petitioner William Glenn Rogers has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Middle District of Tennessee. Further, Petitioner was found to be indigent and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Kelley Henry, is appointed by the United States District Court for the Middle District of Tennessee pursuant to 18 U.S.C. § 3599.

Petitioner Michael Sample has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Western District of Tennessee, and has continued to proceed *in forma pauperis* on appeal. Petitioner was found to be indigent and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Richard Tennent, is appointed by the United States District Court for the Western District of Tennessee pursuant to 21 U.S.C. § 848(q), presently codified at 18 U.S.C. § 3599.

Petitioner Oscar Smith has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Middle District of Tennessee and continued to proceed *in forma pauperis* on appeal. Further, Petitioner was found to be indigent and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Kelley Henry, is appointed by the United States District Court for the Middle District of Tennessee pursuant to 21 U.S.C. § 848(q), presently codified at 18 U.S.C. § 3599.

Petitioner Charles Wright has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the Middle District of Tennessee and continued to proceed *in forma pauperis* on appeal. Further, Petitioner was found to be indigent and permitted to proceed *in forma pauperis* by the Tennessee state courts in all proceedings regarding his capital conviction. Petitioner's counsel, Kelley Henry, is appointed by the United States District Court for the Middle District of Tennessee pursuant to 21 U.S.C. § 848(q), presently codified at 18 U.S.C. § 3599.

The Chancery Court for the State of Tennessee 20th Judicial District, Davidson County, Part Two found each petitioner to be indigent and allowed each to proceed *in forma pauperis*. Attachment 1. The Court of Appeals of Tennessee at Nashville made the same finding. Attachment 2. Petitioners' *in forma pauperis* status traveled with the appeal to the Supreme Court of Tennessee. *Abdur'Rahman v. Parker*, 558 S.W.3d 606 (Tenn. 2018). Petitioners' appointed counsel appeared in the Chancery Court, the Court of Appeals, and the Tennessee Supreme Court pursuant to their obligation to represent their clients in this collateral proceeding relating to their death sentences.

WHEREFORE, the motion should be granted.

Respectfully submitted,

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Counsel for Petitioners

March 7, 2019

* Counsel of Record

ATTACHMENT 1

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
20TH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART TWO

ABU-ALI ABDUR'RAHMAN,)
LEE HALL, a/k/a/ Leroy Hall,)
BILLY RAY IRICK,)
DONNIE JOHNSON,)
DAVID EARL MILLER,)
NICHOLAS TODD SUTTON,)
STEPHEN MICHAEL WEST,)
CHARLES WALTON WRIGHT,)
EDMUND ZAGORSKI,)
JOHN MICHAEL BANE,)
BRYON BLACK,)
ANDRE BLAND,)
KEVIN BURNS,)
TONY CARRUTHERS,)
TYRONE CHALMERS,)
JAMES DELLINGER,)
DAVID DUNCAN,)
KENNATH HENDERSON,)
ANTHONY DARRELL HINES,)
HENRY HODGES,)
STEPHEN HUGUELEY,)
DAVID IVY,)
AKIL JAHI,)
DAVID JORDAN,)
DAVID KEEN,)
LARRY MCKAY,)
DONALD MIDDLEBROOKS,)
FARRIS MORRIS,)
PERVIS PAYNE,)
GERALD POWERS,)
WILLIAM GLENN ROGERS,)
MICHAEL SAMPLE,)
OSCAR SMITH,)
Plaintiffs,)
v.)
)

FILED
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DAVIDSON CO. CHANCERY CT
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NO 234

N. F

Case No. 18-183-II

TONY PARKER, in his official capacity)
as Tennessee’s Commissioner of)
Correction,)
))
TONY MAYS, in his official capacity)
as Warden of Riverbend Maximum)
Security Institution,)
))
JANE/JOHN DOE)
EXECUTIONERS 1-100,)
))
JOHN/JANE DOE MEDICAL)
EXAMINER(S) 1 – 100,)
))
JOHN/JANE DOE PHARMACISTS 1 – 100,)
))
JOHN/JANE DOE PHYSICIANS 1 – 100,)
))
JOHN/JANE DOES 1 – 100,)
))
Defendants.)

ORDER GRANTING MOTION TO PROCEED IN FORMA PAUPERIS


The Plaintiffs, inmates in the custody of the Tennessee Department of Correction under a death sentence, seek to file the present action in forma pauperis.

According to the affidavit of Kelley J. Henry, Supervisory Assistant Federal Public Defender for the Federal Public Defender’s Office in the Middle District of Tennessee, whose office is appointed counsel for 27 of the plaintiffs, each of the above-captioned plaintiffs has been found indigent by the state and federal courts which have reviewed their criminal convictions and sentences, including the Davidson County Chancery Court in *West, et al. v. Schofield, et al.*, Case No. 13-1627-I; the Tennessee Supreme Court in *West, et al. v. Schofield, et al.*, 519 S.W.3d 500, 572 (Tenn. 2017); and the United States Supreme Court in *West v. Parker*, 138 S. Ct. 476 (2017) and *Abdur’Rahman v. Parker*, No. 17-6068, 2018 WL 311479 (U.S. Jan.

8, 2018). Ms. Henry attests under penalty of perjury that there has been no material change in any Plaintiff's financial status since these findings of indigency, the most recent of which was January 8, 2018.

Accordingly, as the Plaintiffs have been found indigent and allowed to proceed in forma pauperis under the standards set forth in Tenn. Code Ann. § 41-21-807, their motion for permission to proceed in forma pauperis in the present action is hereby granted.

It is so ORDERED.


WILLIAM E. YOUNG
CHANCELLOR, PART II

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FILED
2/21/18

ATTACHMENT 2

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

FILED

07/30/2018

Clerk of the
Appellate Courts

ABU-ALI ABDUR RAHMAN ET AL. v. TONY PARKER ET AL.

**Chancery Court for Davidson County
No. 18-183-II-III**

No. M2018-01385-COA-R3-CV

ORDER

The appellants, Abu-Ali Abdur'Rahman, John Michael Bane, Byron Black, Andre Bland, Kevin Burns, Tony Carruthers, Tyrone Chalmers, James Dellinger, David Duncan, Lee Hall, Keenath Henderson, Anthony Daryl Hines, Henry Hodges, Stephen Hugueley, Akil Jahi, Billy Ray Irick, David Ivy, Donnie Johnson, David Jordan, David Keen, Donnie Middlebrooks, Farris Morris, Pervis Payne, Gerald Lee Powers, William Glenn Rogers, Michael Sample, Oscar Smith, Charles Wright, and Edmund Zagorski, have filed a motion for leave to proceed as indigent persons on appeal. The appellants were permitted to proceed as indigent persons in the trial court and are thus entitled to proceed as indigent persons on appeal. Tenn. R. App. P. 18(a).

It is, therefore, ordered that the motion to proceed as indigent persons on appeal is granted.

PER CURIAM