

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

**Quintin Phillippe Jones,
Petitioner**

vs.

**William Stephens, Director
Texas Department of Criminal Justice,
Correctional Institutions Division,**

Respondent.

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No. 4:05-CV-00638-Y

(Death Penalty Case)

OPPOSED FIRST MOTION FOR FUNDING

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TO THE HONORABLE JUDGE TERRY MEANS:

Petitioner Quintin Jones, through his attorneys, Lydia M.V. Brandt and Michael Mowla (“Attorneys for Petitioner”) come before this court and file this First Motion for Funding (“First Funding Motion”). This First Funding Motion is Jones’s first opportunity to seek funding to investigate his case because in 2007, the district court dismissed the federal habeas petition filed by Mr. Strickland because it was time-barred. Although in 2008 the court removed Strickland and appointed Brandt, the substitute appointment was for “the ‘sole purpose’ of challenging the dismissal ... as time barred..” See Order dated February 6, 2014 [ECF 31; 113 at 11].

The case remained in this status throughout the approximately six (6) years of litigation on the issue of equitable tolling. Thus, any request for funding could not meet the showing of 18 U.S.C. § 3599 “that investigative, expert, or other services are reasonably necessary for the representation of the defendant” because there was nothing to investigate until 2014, when the district court granted equitable tolling on February 6, 2014. [ECF #113].

Petitioner now asks this court to authorize \$30,000 (400 hours x \$75/hour) for mitigation investigative services, inclusive of expenses, by Ms. Mary Burdette, MSW, to assist his counsel in the preparation of an amended federal habeas petition, for reason more fully detailed below. *See* Exhibit 5. 18 U.S.C. § 3599(f) (2014). Attorneys for Petitioner ask that this court expeditiously authorize the first \$7,500.00 to allow the mitigation investigator to begin work, while the total amount is submitted to the Fifth Circuit for its approval.

This motion contains confidential attorney work product, including counsel’s

mental impressions, conclusions, opinions, legal theories, and strategy formed during the course of their representation of Mr. Jones. It is being publicly disclosed under objection because of the Court's prior ruling that it would not consider requests for adequate representation from Mr. Jones, an indigent, ex parte.¹

IV. Introduction

It is reasonably necessary to the adequate representation of their client in this proceeding to conduct an investigation into what information would have been reasonably discoverable had trial counsel not foreclosed investigation into certain information about Mr. Jones that trial counsel knew or should have known. This investigation is reasonably necessary because: (1) trial counsel unreasonably narrowed the scope of their sentencing investigation in light of the information they possessed and self-imposed time constraints, thus rendering the claim potentially meritorious if prejudice can be shown; and (2) an investigation into what information would have been discoverable by trial counsel had trial counsel not unreasonably narrowed the scope of their sentencing investigation has not been previously conducted by any previous counsel. Additionally, investigative services are reasonably necessary to the representation of Mr. Jones despite the fact that an ineffective-assistance-of-trial-counsel (IATC) claim based upon trial counsel's inadequate investigation was not raised in state court and may be procedurally defaulted if raised in an amended habeas corpus petition.

On September 21, 2007, the Court dismissed the federal habeas petition filed by

¹ Mr. Jones objects to the Court's interpretation of 28 U.S.C. § 3599 on due process and equal protection grounds. *See Griffin v. Illinois*, 351 U.S. 12, 18 (1956) (plurality opinion) (equal protection clause forbids government to grant legal rights in a way that discriminates against some convicted defendants on account of their poverty). He also objects to the Court's application of § 3599 to deny ex parte consideration as an abuse of discretion.

Jack Strickland as time-barred. [ECF 28]. On March 21, 2008, the Court appointed Lydia Brandt as substitute counsel. “for the sole purpose of challenging the dismissal of his petition as time barred, ...” [ECF 31, 116]. After several years of litigation, the court granted equitable tolling as Petitioner had requested in his Rule 59(e) Motion, reopened the case that had been dismissed because former state/federal habeas counsel Strickland had missed the statute of limitations deadline, and set the due date of May 6, 2014 for filing an Amended Petition. [ECF 113]. The Court appointed co-counsel Michael Mowla shortly thereafter. [ECF 115].

After the court reopened the case in 2014, Petitioner filed a Motion for Continuance in which Petitioner requested a full year from February 6, 2014, the date that this Court granted Petitioner’s Rule 59(e) Motion (ECF 113), i.e., until February 6, 2015. [ECF 116]. The Court entered an Order on Motion for Continuance [ECF 118], in which it granted Petitioner’s Motion for Continuance in part. The Court extended the filing deadline only until June 23, 2014. [ECF 118, p. 4]. A Motion for Reconsideration followed [ECF 119], which the court denied. [ECF 120].

Because the court reopened the case for a determination on the merits (rather than prior years’ litigation whose focus was the procedural issue of equitable tolling), Attorneys for Petitioner have undertaken the necessary steps to conduct a due diligence inquiry that has now resulted in this First Application, in which counsel seek authorization of funding for investigative services prior to filing the Amended Federal Habeas Petition. Attorneys for Petitioner seek to make a showing that state habeas counsel failed to investigate and develop evidence of Petitioner’s life history, and raise a substantial IATC *Wiggins* claim, among others. Thus, Attorneys for Petitioner expect to

try to meet the showing to establish cause to overcome procedural default, pursuant to *Martinez v. Ryan*, 132 S.Ct. 1309 (2012), and *Trevino v. Thaler*, 133 S.Ct. 1911 (2013) (applying *Martinez* to Texas).

V. Diligent representation in the instant proceeding requires Attorneys for Petitioners to investigate what information would have been reasonably discoverable by trial counsel had trial counsel not unreasonably narrowed the scope of their sentencing investigation.

It is reasonably necessary to the adequate representation to Petitioner to conduct an investigation into what information would have been reasonably discoverable had trial counsel not foreclosed investigation into certain information about Mr. Jones that trial counsel knew or should have known. This investigation is reasonably necessary because: (1) trial counsel unreasonably narrowed the scope of their sentencing investigation in light of the information they possessed and self-imposed time constraints, thus rendering the claim potentially meritorious if prejudice can be shown; and (2) an investigation into what information would have been discoverable by trial counsel had trial counsel not unreasonably narrowed the scope of their sentencing investigation has not been previously conducted by any previous counsel.

A. Trial counsel's representation may have been constitutionally ineffective in that they unreasonably narrowed the scope of their sentencing investigation

An adequate mitigation investigation includes review of various factors including (but not limited to) the client's prenatal history, medical, trauma, abuse or neglect, education, employment, multi-generation family history, juvenile correctional experience, religious, gender, sexual orientation, ethnic, racial, cultural, and socio-economic histories. Consequently, not only must records be obtained, but interviews

with the client, his family and others must be conducted. Often multiple interviews are necessary to establish trust in order to elicit sensitive information to conduct a thorough and reliable life-history investigation. *See* Exhibit 5: Burdette Letter, dated 5/18/2014.

This endeavor requires a substantial amount of time to adequately explore the complex aspects of a person's life, locate and review the records, locate and interview witnesses, and assist counsel in selecting appropriate experts and lay witnesses to tell the client's story to the jury. It is a process that cannot be rushed, particularly when sensitive, often emotionally-charged issues play a major role and require building a relationship of trust with persons being asked to provide such sensitive information. Such an investigation often takes between 350 and 800 hours of investigation to adequately prepare a capital mitigation defense, depending on the complexity of issues, number of records to be gathered and reviewed, number of persons to be interviewed and travel involved, selection and preparation of appropriate expert witnesses, as well as preparation of work product. *See* Exhibit 5: Burdette Letter, dated 5/18/2014.

Trial counsel likely failed to conduct an adequate mitigation investigation into the client's life history. Mr. Mowla has reviewed trial counsel's file that prior habeas counsel tendered to Ms. Brandt. These documents consist of the client's school records, nearly all of which have missing pages. There are also a number of documents pertaining to pretrial lab reports, pretrial investigative reports, police reports, numerous pages of pretrial correspondence, and trial counsel's notes. There are also thousands of pages pertaining to voir dire, including voir dire notes, seating charts, and juror questionnaires.

1. Timeline: The sentencing investigation was not initiated until about a month before the guilt/innocence and punishment phases started

Based on an analysis of the file documentation generated by trial counsel, the following timeline supports that what investigation had been done by trial counsel, was done on the eve of trial and was significantly underfunded:

- 10/05/1999 Rex Barnett was appointed as lead defense counsel for Petitioner. (CR 1:16).
- 11/10/1999 Motion filed by Mr. Rex Barnett for appointment of investigator. Order signed same day allowing \$1,000.00 for the costs of investigator E.D. Loven. No billing records exist for E.D. Loven. No known work was performed by E.D. Loven. *See* Exhibit 8.
- 12/11/1999 Quinton Jones was indicted for capital murder. (CR 1:3).
- 03/01/2000 Larry Moore was appointed as defense counsel for Petitioner. (CR 1:23-24).
- 08/21/2000 Janie Brownlee, a private investigator, was appointed after a motion was filed to substitute her as the investigator on the case. A limit of \$2,500 was allowed for Ms. Brownlee. *See* Exhibit 9.
- 08/21/2000 Larry Moore filed a motion for leave to proceed ex parte for expert and investigative assistance. *See* Exhibit 10. The proposed order was not signed by the trial court.
- 10/13/2000 Ray Finn, Ph.D. appointed as forensic expert. *See* Exhibit 11.
- 01/11/2001 Voir dire begins. (RR7).
- 01/17/2001 Interviews by Investigator Brownlee began, with the exception of one 30-minute phone call and another 15-minute phone call that had been done prior to this time.***
- 02/15/2001 Guilt/Innocence phase begins. See*** Exhibit 15, Billing Sheet of Barnett; (RR29).
- 02/20/2001 Carol Wadsworth, Ph.D. appointed as forensic expert. *See* Exhibit 12.
- 02/21/2001 Jury returns a verdict of capital murder. (CR 3:397)