

No. 19-\_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES  
October Term 2019

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PHILLIP WAYNE TOMLIN,  
*Petitioner,*

v.

TONY PATTERSON, WARDEN, HOLMAN CORRECTIONAL  
FACILITY,  
*Respondent.*

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On Petition for Writ of Certiorari to the United States Court  
of Appeals for the Eleventh Circuit

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MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

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BERNARD E. HARCOURT  
*Counsel of Record*  
COLUMBIA LAW SCHOOL  
435 West 116th Street  
New York, New York 10027  
(212) 854-1997  
beh2139@columbia.edu

December 27, 2019

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

Petitioner, Phillip Wayne Tomlin, respectfully seeks leave to file the attached petition for writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

In support of this motion, Petitioner states the following:

1. Petitioner was previously declared indigent, granted leave to proceed *in forma pauperis*, and appointed C.J.A. counsel in the United States Court of Appeals for the Eleventh Circuit. See Appendix A.

2. Undersigned counsel was appointed for Petitioner in the United States Court of Appeals for the Eleventh Circuit under the Criminal Justice Act, 18 U.S.C. § 3006A. See Appendix A.

3. Petitioner further affirms that he is indigent in the attached affidavit. He has been incarcerated for over 41 years, is not employed, and has no income. See Appendix B.

Conclusion

The petitioner requests that he be granted leave to file the attached petition for writ of certiorari without prepayment of costs and to proceed *in forma pauperis* in this Court.

Respectfully submitted,

A handwritten signature in black ink that reads "Bernard E. Harcourt". The signature is written in a cursive style with a prominent, stylized initial "B" and a long, sweeping horizontal line extending to the right.

Bernard E. Harcourt  
*Counsel of Record*  
COLUMBIA LAW SCHOOL  
435 West 116th St.  
New York, New York 10027  
(212) 854-1997  
beh2139@columbia.edu

# Appendix A

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

David J. Smith  
Clerk of Court

For rules and forms visit  
[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov)

February 13, 2019

Bernard E. Harcourt  
Columbia Law School  
Jerome Green Hall 515  
435 W 116TH ST  
NEW YORK, NY 10027

Appeal Number: 19-10494-H  
Case Style: Phillip Tomlin v. Tony Patterson  
District Court Docket No: 1:10-cv-00120-CG-B

Party To Be Represented: Phillip Wayne Tomlin

Dear Counsel:

We are pleased to advise that you have been appointed to represent on appeal the indigent litigant named above. This work is comparable to work performed pro bono publico. The fee you will receive likely will be less than your customary one due to limitations on the hourly rate of compensation contained in the Criminal Justice Act (18 U.S.C. § 3006A), and consideration of the factors contained in Addendum Four § (g)(1) of the Eleventh Circuit Rules.

Supporting documentation and a link to the CJA eVoucher application are available on the internet at <http://www.ca11.uscourts.gov/attorney-info/criminal-justice-act>. **For questions concerning CJA eVoucher please contact our CJA Team by email at [cja\\_evoucher@ca11.uscourts.gov](mailto:cja_evoucher@ca11.uscourts.gov) or phone 404-335-6167.** For all other questions, please call the "Reply To" number shown below.

Every motion, petition, brief, answer, response and reply filed must contain a Certificate of Interested Persons and Corporate Disclosure Statement (CIP). Appellants/Petitioners must file a CIP within 14 days after the date the case or appeal is docketed in this court; Appellees/Respondents/Intervenors/Other Parties must file a CIP within 28 days after the case or appeal is docketed in this court, regardless of whether appellants/petitioners have filed a CIP. See FRAP 26.1 and 11th Cir. R. 26.1-1.

On the same day a party or amicus curiae first files its paper or e-filed CIP, that filer must also complete the court's web-based CIP at the [Web-Based CIP](#) link on the court's website. Pro se

filers (except attorneys appearing in particular cases as pro se parties) are **not required or authorized** to complete the web-based CIP.

Your claim for compensation under the Act should be submitted within 60 days after issuance of mandate or filing of a certiorari petition. We request that you enclose with your completed CJA Voucher one additional copy of each brief, petition for rehearing, and certiorari petition which you have filed. Please ensure that your voucher includes a detailed description of the work you performed. Thank you for accepting this appointment under the Criminal Justice Act.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Gerald B. Frost, H  
Phone #: (404) 335-6182

CJA-1 Appointment of Counsel Letter

# Appendix B

**Motion for Permission to  
Appeal In Forma Pauperis and Affidavit**  
United States Court of Appeals for the Eleventh Circuit

Phillip Wayne Tomlin

v.

Tony Patterson

Court of Appeals No. 19-10494-HH  
District Court No. 1:10-cv-00120-CG-B

**Instructions:** Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

**Affidavit in Support of Motion**

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Date: 3-19-2019

Signed: Phillip Wayne Tomlin

1. *My issues on appeal are:* Whether the final state court judgment in  
Mr. Tomlin's case, upholding Mr. Tomlin's sentence of life  
imprisonment without the possibility of parole under the  
1975 Alabama Death Penalty Act, Sec. 13-11-1, Ala. Code  
1975, violated Mr. Tomlin's right to fair notice under the  
Due Process Clause of the Fourteenth Amendment  
of the United States Constitution.

2. For both you and your spouse, estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

| Income Source  | Average monthly amount during the past 12 months |          | Amount expected next month |          |
|--|--|----------|----------------------------|----------|
|  | You  | Spouse   | You                        | Spouse   |
| Employment   | \$ <u>N</u>                                      | \$ _____ | \$ _____                   | \$ _____ |
| Self-employment  | \$ <u>N</u>                                      | \$ _____ | \$ _____                   | \$ _____ |
| Income from real property (such as rental income)                    | \$ <u>N</u>                                      | \$ _____ | \$ _____                   | \$ _____ |
| Interests and dividends  | \$ <u>N</u>                                      | \$ _____ | \$ _____                   | \$ _____ |
| Gifts  | \$ <u>N</u>                                      | \$ _____ | \$ _____                   | \$ _____ |
| Alimony  | \$ <u>N</u>                                      | \$ _____ | \$ _____                   | \$ _____ |
| Child support  | \$ <u>N</u>                                      | \$ _____ | \$ _____                   | \$ _____ |
| Retirement (such as Social Security, pensions, annuities, insurance) | \$ <u>N</u>                                      | \$ _____ | \$ _____                   | \$ _____ |
| Disability (such as Social Security, insurance payments)             | \$ <u>N</u>                                      | \$ _____ | \$ _____                   | \$ _____ |
| Unemployment payments  | \$ <u>N</u>                                      | \$ _____ | \$ _____                   | \$ _____ |
| Public-assistance (such as welfare)                                  | \$ <u>N</u>                                      | \$ _____ | \$ _____                   | \$ _____ |
| Other (specify): <u>See Attachment</u>                               | \$ <u>N</u>                                      | \$ _____ | \$ _____                   | \$ _____ |
| <b>Total monthly income:</b>   | \$ <u>N</u>                                      | \$ _____ | \$ _____                   | \$ _____ |

3. List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

| Employer | Address | Dates of Employment | Gross Monthly Pay |
|----------|---------|---------------------|-------------------|
| <u>N</u> | _____   | _____               | _____             |
| _____    | _____   | _____               | _____             |
| _____    | _____   | _____               | _____             |

4. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

|          |       |       |       |
|----------|-------|-------|-------|
| <u>N</u> | _____ | _____ | _____ |
| _____    | _____ | _____ | _____ |

5. How much cash do you and your spouse have? \$ N

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

| Financial Institution | Type of Account | Amount you have | Amount your spouse has |
|-----------------------|-----------------|-----------------|------------------------|
| <u>N</u>              |                 | \$ <u>N/A</u>   | \$ _____               |
| _____                 | _____           | \$ _____        | \$ _____               |
| _____                 | _____           | \$ _____        | \$ _____               |

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account. *See Attachment*

6. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

|                                 |   |  |
|---------------------------------|---|--|
| <b>Home (Value)</b><br><u>N</u> | <b>Other Real Estate (Value)</b><br>_____ | <b>Motor Vehicle #1 (Value)</b><br>Make & Year: <u>N</u> |
| _____                           | _____                                     | Model: _____   |
| _____                           | _____                                     | Registration #: _____                                    |

|   |                                      |   |
|---|--------------------------------------|---|
| <b>Other Assets (Value)</b><br><u>N</u> | <b>Other Assets (Value)</b><br>_____ | <b>Motor Vehicle #2 (Value)</b><br>Make & Year <u>N</u> |
| _____                                   | _____                                | Model: _____  |
| _____                                   | _____                                | Registration #: _____                                   |

7. State every person, business, or organization owing you or your spouse money, and the amount owed.

| Person owing you or your spouse money | Amount owed to you | Amount owed to your spouse |
|---------------------------------------|--------------------|----------------------------|
| <u>N</u>                              | <u>N</u>           | _____                      |
| _____                                 | _____              | _____                      |
| _____                                 | _____              | _____                      |

8. State the persons who rely on you or your spouse for support.

| Name [or, if under 18, initials only] | Relationship | Age |
|---------------------------------------|--------------|-----|
| <u>N</u>                              |              |     |
|                                       |              |     |
|                                       |              |     |

9. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

|   | You           | Your Spouse |
|---|---------------|-------------|
| For home-mortgage payment (include lot rented for mobile home)                                      | \$ <u>N/A</u> | \$ _____    |
| Are real-estate taxes included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | \$ <u>N/A</u> | \$ _____    |
| Is property insurance included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | \$ <u>N/A</u> | \$ _____    |
| Utilities (electricity, heating fuel, water, sewer, and telephone)                                  | \$ <u>N/A</u> | \$ _____    |
| Home maintenance (repairs and upkeep)   | \$ <u>N/A</u> | \$ _____    |
| Food  | \$ <u>N/A</u> | \$ _____    |
| Clothing  | \$ <u>N/A</u> | \$ _____    |
| Laundry and dry-cleaning  | \$ <u>N/A</u> | \$ _____    |
| Medical and dental expenses   | \$ <u>N/A</u> | \$ _____    |
| Transportation (not including motor vehicle payments)   | \$ <u>N/A</u> | \$ _____    |
| Recreation, entertainment, newspapers, magazines, etc.  | \$ <u>N/A</u> | \$ _____    |
| Insurance (not deducted from wages or included in mortgage payments)                                | \$ <u>N/A</u> | \$ _____    |
| Homeowner's or renter's   | \$ <u>N/A</u> | \$ _____    |
| Life  | \$ <u>N/A</u> | \$ _____    |
| Health  | \$ <u>N/A</u> | \$ _____    |
| Motor Vehicle   | \$ <u>N</u>   | \$ _____    |
| Other: _____  | \$ <u>N</u>   | \$ _____    |
| Taxes (not deducted from wages or included in mortgage payments) (specify): _____                   | \$ <u>N</u>   | \$ _____    |
| Installment payments  | \$ <u>N</u>   | \$ _____    |
| Motor Vehicle   | \$ <u>N</u>   | \$ _____    |
| Credit card (name): _____   | \$ <u>N</u>   | \$ _____    |
| Department store (name): _____  | \$ <u>N</u>   | \$ _____    |
| Other: _____  | \$ <u>N</u>   | \$ _____    |

|   |             |          |
|---|-------------|----------|
| Alimony, maintenance, and support paid to others  | \$ <u>N</u> | \$ _____ |
| Regular expenses for operation of business, profession, or farm (attach detailed statement) | \$ <u>N</u> | \$ _____ |
| Other (specify): <u>N</u>   | \$ <u>N</u> | \$ _____ |
| <b>Total monthly expenses</b>   | \$ <u>N</u> | \$ _____ |

10. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes  No If yes, describe on an attached sheet.

11. Have you spent – or will you be spending – any money for expenses or attorney fees in connection with this lawsuit?

Yes  No If yes, how much: \$ \_\_\_\_\_

12. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

See Attachment

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13. State the city and state of your legal residence. Atmore, AL 36503

Your daytime phone number: (\_\_\_\_) \_\_\_\_\_

Your age: 65 Your years of schooling: GED - some college

Alabama Department of Corrections  
Average Inmate Deposit Balances for TOMLIN, PHILLIP WAYNE AIS# 00235217

|            | Average<br>Balance | Gross<br>Deposits |
|------------|--------------------|-------------------|
| 02/28/2019 | \$224.51           | \$196.00          |
| 01/31/2019 | \$61.20            | \$261.00          |
| 12/31/2018 | \$9.67             | \$100.00          |
| 11/30/2018 | \$30.29            | \$150.00          |
| 10/31/2018 | \$57.37            | \$201.00          |
| 09/30/2018 | \$30.23            | \$0.00            |
| 08/31/2018 | \$49.81            | \$250.00          |
| 07/31/2018 | \$0.84             | \$0.00            |
| 06/30/2018 | \$50.64            | \$46.00           |
| 05/31/2018 | \$210.55           | \$450.00          |
| 04/30/2018 | \$27.45            | \$90.00           |
| 03/31/2018 | \$43.79            | \$165.00          |
|            | \$66.36            | \$1,909.00        |

I certify that this is a true and correct copy of inmate Phillip Tomlin average balances and gross deposits.

  
Ashley Penn