

****CAPITAL CASE****

IN THE
SUPREME COURT OF THE UNITED STATES

Ronson Bush
Petitioner,

v.

Tommy Sharp, Interim Warden,
Oklahoma State Penitentiary,
Respondent

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

APPENDIX D

Interim Decision of the Tenth Circuit on Certificate of Appealability

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

February 9, 2018

**Elisabeth A. Shumaker
Clerk of Court**

RONSON KYLE BUSH,

Petitioner - Appellant,

v.

TERRY ROYAL, Warden, Oklahoma
State Penitentiary,

Respondent - Appellee.

No. 16-6318
(D.C. No. 5:13-CV-00266-R)
(W.D. Okla.)

ORDER

Before **MURPHY**, Circuit Judge.

In accordance with matters discussed and resolved at the case management conference held in this appeal, it is ORDERED:

1. The issues to be raised in the opening brief are:

A. Issue IV, whether the prosecution's legally purposeless presentation of an offer of proof that contained inadmissible and tremendously prejudicial information violated Mr. Bush's Eighth and Fourteenth Amendment rights;

B. Issue V, whether the victim impact testimony presented in this case violated Mr. Bush's constitutional rights under the Eighth and Fourteenth Amendments;

C. Issue VI, whether trial counsel was ineffective for failing to object to unconstitutional and prejudicial victim impact testimony;

D. Issue VII, whether appellate counsel was ineffective for neglecting to challenge trial counsel's failure to attack the constitutionality of an Oklahoma statute that bars defendants who plead guilty from getting the jury sentencing to which they are constitutionally entitled; and

E. Issue XIV, whether the cumulative impact of the multiple constitutional errors that marred Mr. Bush's trial support a grant of habeas relief.

2. Appellant's opening brief shall be filed by June 13, 2018 and shall consist of no more than 21,000 words.

3. Appellee's answer brief shall be filed by August 13, 2018 and shall consist of no more than 21,000 words.

4. Appellant's reply brief shall be filed by September 12, 2018 and shall consist of no more than 9,000 word.

5. The merits panel assigned to this appeal will determine the date and time for oral argument. The Clerk's Office will notify counsel through CM/ECF when the matter is calendared for oral argument.

6. A Certificate of Appealability is GRANTED on the issues set forth in Paragraph 1. Any request for leave to grant additional issues in the Certificate of Appealability must be raised by written motion filed not later than ten days after the date of this order. Appellee may file a response to such a request not more than ten days after the request is filed. The Clerk shall submit motions for modification of the Certificate of Appealability to the merits panel for decision. Unless otherwise ordered by the merits

panel, no issue shall be included in the briefs other than those set forth in Paragraph 1 of this order.

7. When the Petitioner-Appellant is represented by counsel appointed under the CJA, either exclusively or along with FPD counsel, CJA counsel must submit a proposed budget and supporting memorandum. The budget proposal and supporting memorandum in this matter, which may be filed ex parte and under seal, shall be filed on or before March 8, 2018.

The budget proposal and supporting memorandum should seek to establish, to the extent possible at this early stage of the proceedings, the total number of hours and total expenses CJA counsel deem(s) reasonably necessary to the representation. Counsel should be guided in this effort by 18 U.S.C. §§ 3599, 3005, and 3006A; Chapters 2 and 6 of Volume 7, Part A, of the *Guide to Judiciary Policy*; and the court's Advice to CJA Counsel Letter for Capital Habeas Cases (available on the court's website).

If the appellant is represented by both a CJA attorney and an FPD attorney, the budget proposal will include only hours and expenses that will be associated with the work of the CJA attorney. Because the reasonableness of the CJA attorney's proposed budget is dependent on the level of contribution of the FPD's office, CJA and FPD counsel must dedicate time to settling these representation issues in advance of the budget proposal's submission to the court. The budget proposal must address in detail the division of labor, and affirm that both CJA and FPD counsel are in agreement as to that division of labor.

Effective April 2015, CJA counsel in capital habeas appeals must submit their proposed budget and supporting memorandum to the Tenth Circuit's CJA Case Budgeting Attorney, Cari Waters, no later than 14 days before the deadline for submitting the budget to the court via ECF. CJA counsel shall submit their proposed budget and supporting memorandum to Ms. Waters via email to Cari_Waters@ca10.uscourts.gov. Upon review of the proposed budget and supporting memorandum, Ms. Waters will contact CJA counsel to discuss any recommended modifications to the budget prior to its formal submission to the court. CJA counsel may decide whether to incorporate such modifications into the proposed budget, and the authority to approve the proposed budget lies solely with the court. CJA counsel remain obligated to formally electronically file the proposed budget and supporting memorandum with the court by the deadline set in the order issued after the case management conference.

8. Any objection to the contents of this order must be raised by written motion of not more than five pages filed not later than ten days after its date. Motions for extension of time or to alter the briefing limitations of this order are discouraged and will be considered only in the most crucial circumstances.

Entered for the Court,

ELISABETH A. SHUMAKER, Clerk

A handwritten signature in black ink, appearing to read 'Chris Wolpert', with a long horizontal stroke extending to the right.

by: Chris Wolpert
Chief Deputy Clerk