

No. _____

CAPITAL CASE

IN THE SUPREME COURT OF THE UNITED STATES

JERRY SCOTT HEIDLER,

Petitioner,

-v-

SHAWN EMMONS, WARDEN,
Georgia Diagnostic Prison,

Respondent.

MOTION TO PROCEED *IN FORMA PAUPERIS*

Petitioner Jerry Scott Heidler, through undersigned counsel, moves pursuant to Supreme Court Rule 39.1 for leave to proceed *in forma pauperis* in his concurrently filed Petition for Writ of Certiorari. Mr. Heidler is indigent and has been appointed counsel in state and federal court.

As to his federal proceedings, the United States District Court for the Southern District of Georgia issued an order appointing counsel pursuant to 18 U.S.C. § 3599. *See* attached Order, at Appendix A. The Eleventh Circuit Court of Appeals likewise issued an order appointing counsel pursuant to 18 U.S.C. § 3599. *See* attached Order, at Appendix B.

Undersigned counsel hereby certify that Mr. Heidler remains indigent. Mr. Heidler requests that this Court allow him to proceed *in forma pauperis*.

Respectfully submitted,

/s/ Marcia A. Widder
Marcia A. Widder (Ga. 643407)*
Anna Arceneaux (Ga. 401554)
Danielle Allyn (Ga. 277928)
Georgia Resource Center
104 Marietta Street NW, Suite 260
Atlanta, Georgia 30303
Phone: 404-222-9202

COUNSEL FOR PETITIONER,
JERRY SCOTT HEIDLER

APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

JERRY SCOTT HEIDLER,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. CV611-109
	)	
CARL HUMPHREY, Warden,	)	
Georgia Diagnostic &	)	
Classification Center,	)	
	)	
Respondent.	)	

ORDER

Under a sentence of death for committing four counts of malice murder, kidnapping with bodily injury, two counts of kidnapping, aggravated sodomy, child molestation, and burglary, *Heidler v. State*, 273 Ga. 54, 64 (2000), Jerry Scott Heidler petitions this Court for 28 U.S.C. § 2254 relief. Doc. 1. That petition is before the district judge. His unopposed motions for appointment of counsel and to proceed *in forma pauperis* (IFP) have been referred to the undersigned. Doc. 40. The Court **GRANTS** the IFP motion, doc. 3, as Heidler is indigent. Doc. 4.

“An indigent capital habeas petitioner has a statutory right to

counsel. 18 U.S.C. § 3599(a)(2) (2012).”¹ *Pollock v. Martel*, 2012 WL 174821 at * 1 (N.D. Cal. Jan. 20, 2012). Appointed counsel must meet certain minimum qualifications.² The state does not question the qualifications of attorneys Brian Kammer and Lynn Margo Pearson, who have filed Heidler’s papers (doc. 1 at 1) and otherwise meet the § 3599(2)(c), (d) criteria. See doc. 2 at 9-15. The Court **GRANTS** Heidler’s motion for appointment of counsel. Doc. 2.

¹ In relevant part § 3599 states:

In any post conviction proceeding under section 2254 or 2255 of title 28, United States Code, seeking to vacate or set aside a death sentence, any defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services shall be entitled to the appointment of one or more attorneys and the furnishing of such other services in accordance with subsections (b) through (f).

18 U.S.C. § 3399(2).

² The statute governs qualifications:

(c) If the appointment is made after judgment [of conviction], at least one attorney so appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in that court in felony cases.

(d) With respect to subsection[. . .] (c), the court, for good cause, may appoint another attorney whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

18 U.S.C. § 3399(2)(c), (d).

SO ORDERED this 6th day of March, 2012.

A handwritten signature in black ink, appearing to read "J. R. Smith", is written above a horizontal line.

UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA

APPENDIX B

**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

October 15, 2020

Marcia A. Widder
Georgia Resource Center
104 MARIETTA ST NW STE 260
ATLANTA, GA 30303

Appeal Number: 20-13752-P
Case Style: Jerry Scott Heidler v. Warden GDCP
District Court Docket No: 6:11-cv-00109-LGW

Party To Be Represented: Jerry Scott Heidler

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 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: David L. Thomas
Phone #: (404) 335-6171

CJA-1 Appointment of Counsel Letter

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PROOF OF SERVICE

Pursuant to Supreme Court Rule 29.5(a), I certify that a copy of the Motion to Proceed *In Forma Pauperis* was sent via Fed Ex to the U.S. Supreme Court and a digital copy was sent to counsel for the Respondent by electronic mail on February 7, 2024. The parties have consented to electronic service. Respondent's counsel's name, address and telephone number are set forth below:

Sabrina D. Graham, Esp.
Senior Assistant Attorney General
Georgia Office of the Attorney General
Capital Litigation Section
40 Capitol Square, SW
Atlanta, GA 30334
(404) 458-3239

Respectfully submitted,

/s/ Marcia A. Widder

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