

No.

IN THE
Supreme Court of the United States

TONY VON CARRUTHERS,
Petitioner,

v.

STATE OF TENNESSEE,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE TENNESSEE SUPREME COURT

MOTION TO PROCEED *IN FORMA PAUPERIS*

OFFICE OF THE FEDERAL PUBLIC DEFENDER
FOR THE MIDDLE DIST. OF TENNESSEE
CAPITAL HABEAS UNIT

AMY D. HARWELL*
INTERIM CHIEF, CAPITAL HABEAS UNIT

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**Counsel of Record*

Petitioner Tony Von Carruthers respectfully moves this Court to permit him to proceed *in forma pauperis*. He is indigent and the Federal Public Defender for the Middle District of Tennessee was appointed to represent him pursuant to 18 U.S.C. § 3599. The Order of Appointment is attached to this Motion.

The motion should be granted.

Respectfully submitted,

/s/ Amy D. Harwell

OFFICE OF THE FEDERAL PUBLIC
DEFENDER FOR THE MIDDLE DIST. OF
TENNESSEE CAPITAL HABEAS UNIT

AMY D. HARWELL*
Interim Chief, Capital Habeas Unit

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**Counsel of Record*

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

TONY VON CARRUTHERS,	X	
	X	
Petitioner,	X	
	X	
vs.	X	No. 08-2425-BBD-dkv
	X	
JIM WORTHINGTON, Warden,	X	
Brushy Mountain State Prison,	X	
	X	
Respondent.	X	
	X	

ORDER GRANTING MOTION TO PROCEED IN FORMA PAUPERIS
ORDER GRANTING MOTION FOR APPOINTMENT OF COUNSEL
ORDER APPOINTING COUNSEL
ORDER DENYING AUTHORIZATION FOR REQUESTED EXPERTS

Petitioner Tony Von Carruthers, Tennessee Department of Correction ("TDOC") prisoner number 139604, an inmate under sentence of death at Brushy Mountain State Prison ("BMSP") in Petros, Tennessee, has filed a pro se petition for a writ of habeas corpus (Docket Entry ("D.E.") 1), pursuant to 28 U.S.C. § 2254, along with a Motion to Proceed In Forma Pauperis (D.E. 2) and an "Application For Appointment Of Counsel For a Writ of Habeas Corpus Ab-Subjiciendum to Investigate, Prepare, and File Amended Petition for Writ of Habeas Corpus in a Capital Case" ("Application for Appointment of Counsel") (D.E. 3). The Clerk shall record the Respondent as Warden Jim Worthington.

In connection with his in forma pauperis motion, Petitioner has, pursuant to 28 U.S.C. § 1915, submitted an

affidavit of indigency and a current copy of his inmate trust account statement. Based on the information provided in connection with the motion, it appears that Petitioner is unable to prepay the habeas corpus filing fee. Accordingly, Petitioner's Motion to Proceed In Forma Pauperis is GRANTED.

Regarding Petitioner's Application for Appointment of Counsel, Petitioner requests that the Court appoint the Federal Public Defender's Office for the Middle District of Tennessee as counsel because of its Capital Habeas Unit. (D.E. 3 at 2, 8). Attorneys from the Federal Public Defender's Office for the Middle District of Tennessee are routinely appointed to represent capital habeas petitioners in this district, and Assistant Federal Public Defender Michael J. Passino of that office has consented to his appointment in this matter. Eighteen U.S.C. § 3599(a)(2) reads as follows:

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).

The materials submitted in conjunction with Petitioner's Motion to Proceed In Forma Pauperis demonstrate that he is "financially unable to obtain adequate representation", and therefore, entitled to the appointment of counsel.

Accordingly, Petitioner's Application for the Appointment of Counsel is GRANTED to the extent that the Court will order the appointment of counsel from the Federal Public Defender's Office for the Middle District of Tennessee.

It is ORDERED that Michael J. Passino, Assistant Federal Public Defender for the Middle District of Tennessee, is appointed counsel for Petitioner pursuant to 18 U.S.C. § 3599.

In his application for appointment of counsel, Petitioner also requests that attorneys Barry C. Scheck and Peter Neufeld of the "Innocence Project" be designated as DNA experts in his case. (Id. at 8). Eighteen U.S.C. § 3599 (f) provides:

Upon a finding that investigative, expert, or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or the sentence, the court may authorize the defendant's attorneys to obtain such services on behalf of the defendant and, if so authorized, shall order the payment of fees and expenses therefor under subsection (g). No ex parte proceeding, communication, or request may be considered pursuant to this section unless a proper showing is made concerning the need for confidentiality. Any such proceeding, communication, or request shall be transcribed and made a part of the record available for appellate review.

Petitioner has not demonstrated the need for a D.N.A. analysis presentation in his case, nor has he indicated that Mr. Scheck and/or Mr. Neufeld have consented to assist as experts in his case. Further, as Petitioner's counsel has just been appointed and not had the opportunity to determine the need for experts in Petitioner's case, the Court will not authorize the expert services

requested at this time. Petitioner's motion for authorization to obtain Barry C. Scheck and Peter Neufeld as experts, pursuant to 18 U.S.C. § 3599, is DENIED without prejudice.

IT IS SO ORDERED this 3rd day of September, 2008.

s/Bernice B. Donald
BERNICE B. DONALD
UNITED STATES DISTRICT JUDGE