

No. 1881555

IN THE SUPREME COURT OF ALABAMA

Ex parte Doyle Lee Hamm,	*	
	*	
In re. State of Alabama	*	
<i>Petitioner,</i>	*	On the State's Motion to
	*	Set an Execution Date
v.	*	
	*	
Doyle Lee Hamm,	*	
<i>Respondent.</i>	*	

MOTION FOR ENLARGEMENT OF TIME TO RESPOND

Respondent Doyle Lee Hamm respectfully asks this Court to grant him an enlargement of time of 28 days, until August 8, 2017, to respond to the State of Alabama's motion to set an execution date. Mr. Hamm has cancer in his skull that may have metastasized to his chest, lungs, and abdomen. Undersigned counsel has requested, but not yet received Mr. Hamm's medical records from Donaldson Correctional Facility and, as such, is not in a position to properly assess the multiple risks Mr. Hamm faces with an execution. Once these records are obtained and reviewed, undersigned counsel will be able to properly respond to the State's motion to set an execution date. In support of this motion, Mr. Hamm asserts the following:

1. Doyle Lee Hamm was diagnosed with cancer. Mr. Hamm was found to have a large cell lymphoma behind his left eye and in his cranium—specifically in the left orbit and skull base. The MRI scan of his head confirmed the presence of a tumor extending through the foramina into the pterygoid space and into the middle cranial fossa. The cancer has probably metastasized. Mr. Hamm was found to have numerous abnormal lymph nodes in his chest, lungs, and abdomen, with some risk of involvement of the spinal fluid.

2. Doyle Hamm has received treatment for his cranial cancer, including steroids, dexamethasone, morphine, and radiation treatments. He received radiation treatment at Brookwood Cancer Care Center in Birmingham, Alabama. It was believed that the radiation might have been successful.

3. However, this past April 2017, Mr. Hamm was seen by a doctor in Jasper, Alabama, who conducted a biopsy of eye tissue and found that it was cancerous. The doctor has recommended surgery for Mr. Hamm to cut out the cancer. It now appears that Mr. Hamm's cancer has progressed. Mr. Hamm is currently on a heavy dose of prescribed pain killers which he takes three times a day.

4. Doyle Hamm had prior medical conditions that may have contributed to and may aggravate his cancer and cancer treatment. Mr. Hamm suffered from seizures throughout his life and was diagnosed with epilepsy and seizure disorder prior to his cancer. Mr. Hamm experienced multiple head injuries during his life, and

was diagnosed with presumptive brain damage prior to his cancer. Mr. Hamm also suffers from Hepatitis C as a result of drug use. All of these are well documented in the state post-conviction proceedings.

5. Undersigned counsel, who is representing Mr. Hamm *pro bono*, has been trying to obtain Doyle Hamm's medical records from Donaldson Correctional Facility for several months now and should receive those records in the next week or so, according to officials at Donaldson. Once those records are obtained, undersigned counsel will be in a position to obtain an independent doctor's report on the likely effect of his cancer and cancer treatment on an execution and will be in a position to respond properly to the State's motion to set an execution date.

6. In January 2017, undersigned counsel requested a copy of Doyle Hamm's medical records from Donaldson Correctional Facility in order to monitor the progress of Mr. Hamm's cancer and determine the condition of his mental and physical health. See Exhibit A (letter dated January 19, 2017 from Leon Bolling, Correctional Warden II). Despite paying for those records several months ago, undersigned counsel has not yet received those medical records. According to an official at the Donaldson Correctional Facility, those records should be copied and sent out around "Wednesday [July 5] or Thursday [July 6] under certified mail." See Appendix B (e-mail correspondence with Alabama Department of Corrections).

7. Undersigned counsel is representing Mr. Hamm *pro bono* and needs additional time to research the numerous legal claims and review Mr. Hamm's medical condition before properly responding to the State of Alabama's motion.

8. The Alabama Rules of Appellate Procedure recognize that time limitations in capital cases may be enlarged. See Ala. R. App. P. 2(b) and 39(a)(2)(C) (rule regarding time for filing certiorari petition may be suspended in death penalty cases); see also Ala. R. App. P. 39(a)(2)(D) (death penalty cases require different scope of review); Ala. R. App. P. 28(j) (page limitation for briefs in capital cases exceeds limitation in noncapital cases).

9. This Court has held that the "death penalty is [a] special circumstance" that justifies the expansion of constitutional rights. *Ex parte Monk*, 557 So. 2d 832, 836-37 (Ala. 1989). The United States Supreme Court has held that meaningful appellate review is critical to the constitutionality of the death penalty. *Woodson v. North Carolina*, 428 U.S. 280, 303 (1976) (death penalty process must be "rationally reviewable").

WHEREFORE, Doyle Lee Hamm respectfully requests that this Court grant him 28 days, until August 8, 2017, to obtain and review his medical records and respond properly to the State of Alabama's motion to set an execution date.

Respectfully submitted,

A handwritten signature in black ink that reads "Bernard E. Harcourt". The signature is written in a cursive style with a prominent, sweeping flourish at the end of the name.

BERNARD E. HARCOURT
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New York, NY 10027
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CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2017, I served a copy of the attached pleading by electronic mail to Assistant Attorney General Beth Jackson Hughes at bhughes@ago.state.al.us.

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".

BERNARD E. HARCOURT
Counsel of Record



ROBERT BENTLEY
GOVERNOR

LEON BOLLING
WARDEN III

State of Alabama Alabama Department of Correction

Donaldson Correctional Facility
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Bessemer, AL 35023

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JEFFERSON DUNN
COMMISSIONER

ANGELA MIREE
WARDEN II
ERROL PICKENS
WARDEN I

January 19, 2017

Mr. Bernard Harcourt
Columbia Law School
435 West 116th Street
New York, NY 10027

Dear Mr. Harcourt

Correspondence was received on January 19, 2017 requesting a copy of Inmate Doyle Hamm's, AIS# Z479, medical record. The Department of Corrections has a \$1.00 per page fee for the first 25 pages, \$.50 thereafter, a \$5.00 search fee and \$19.45 for postage for any copies obtained from the William E. Donaldson Correctional Facility inmate files. We are in receipt of your money order in the amount of \$25.00 and have deducted this amount from the total due.

The total number of pages is 805 pages. Please remit \$44.00 to address below, with \$19.45 made payable to USPS. Once payment is received the requested documents will be mailed to you. Return payment to:

William E. Donaldson Correctional Facility
Attn: Leon Bolling, Correctional Warden II
100 Warrior Lane
Bessemer, AL 35023

Thank you in advance for your cooperation. If I can be of further assistance, feel free to contact me.

Sincerely,


Leon Bolling, Correctional Warden II

LB/far

APPENDIX A

FW: Doyle Hamm

Rutley, Faylor (DOC) <Faylor.Rutley@doc.alabama.gov>
To: "bernard.harcourt@columbia.edu" <bernard.harcourt@columbia.edu>

Thu, Jun 29, 2017 at 2:30 PM

We are in receipt of your payment for copies of inmate Doyle Hamm's, AIS Z749 medical records.

I will have the Medical Records Clerk to copy on Wednesday, Monday and Tuesday is holiday for us.

This should be mailed out to you on Wednesday or Thursday under certified mail.

Thank you

From: Bernard E Harcourt [mailto:bernard.harcourt@columbia.edu]
Sent: Thursday, June 29, 2017 12:15 PM
To: Rutley, Faylor (DOC) <Faylor.Rutley@doc.alabama.gov>
Subject: Re: FW: Doyle Hamm

Dear Ms. Rutley,

I am following up on these medical records request. I sent a money order in the right amount a few months ago, and just wanted to know when you think I might be able to receive the medical records for Doyle Hamm.

Thank you and warm regards, Bernard Harcourt

Bernard E. Harcourt

Isidor and Seville Sulzbacher Professor of Law, Professor of Political Science, and Director of the Columbia Center for Contemporary Critical Thought, Columbia University

Directeur d'études, École des hautes études en sciences sociales (EHESS)

On Thu, Jan 19, 2017 at 5:05 PM, Rutley, Faylor (DOC) <Faylor.Rutley@doc.alabama.gov> wrote:

Copying of inmate Doyle Hamm's medical record.

Faylor A. Rutley, ASA III
Secretary to Leon Bolling, Warden III
William E. Donaldson Correctional Facility
100 Warrior Lane