

IN THE CIRCUIT COURT OF ADAMS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI


RECEIVED
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VS.

AUG 08 2002

CAUSE NO. 2002-KR-0141-J

JEFFREY KEITH HAVARD

M.L. VINES, CIRCUIT CLERK
BY:  D.C.

MOTION FOR FUNDS FOR INVESTIGATIVE ASSISTANCE

COMES NOW the Defendant, by his attorneys, and moves this Court pursuant to Miss. Code Ann. SS 99-15-15- & 99-15-17, Miss. Const. Art. 3, SS 14, 16 & 28, and the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, to order the county to provide him with funds to retain investigative assistance. As grounds for this motion, the Defendant, states the following:

1. Defendant is an indigent who is represented by appointed counsel. The State has declared it will seek the death penalty in this case. The State has already had help from various law enforcement agencies in preparing its case. To prepare adequately for this trial, defendant requires investigative assistance.

2. The United States Supreme Court has "long recognized that when a State brings its judicial power to bear on an indigent defendant in a criminal proceeding, it must take steps to assure that the defendant has a fair opportunity to present his defense." Ake v. Oklahoma, 470 U.S. 68, 76 (1985). See also Douglas v. California, 372 U.S. 353 (1963) (state must insure that defendant has a meaningful chance to present his defense). As the Court in Ake noted, this fundamental principle of due process "derives from the belief that justice cannot be equal where, simply as a result of his poverty, a defendant is denied the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake." Id.

3. The Mississippi Supreme Court has held that the decision in Ake applies to all

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experts reasonably necessary for an effective defense. See Harrison v. State, 635 So.2d 894 (Miss. 1994). There is no doubt that it applies to investigative assistance. See, e.g., Mason v. Arizona, 504 F.2d 1345 (9th Cir. 1974) (effective assistance of counsel and Due Process requires, “where necessary, the ... appointment of investigative assistance for indigent defendants in order to ensure effective preparation of their defense by their attorneys”); Wilson v. State, 574 So.2d 1338, 1341 (Miss. 1990) (the specific expenditures that may be incurred on behalf of client include “the cost of an investigator, the cost of an expert witness, and a trip to interview witnesses.”) As the Louisiana Supreme Court has explained:

The right to a private investigator may in many cases be an adjunct to the right to counsel; furnishing counsel to the indigent defendant is not enough if counsel cannot secure information on which to construct a defense ...

State v. Madison, 345 So.2d 485, 490 (La. 1977).

4. “At the heart of effective representation is the independent duty to investigate and prepare.” Goodwin v. Balkcom, 684 F.2d 794, 805 (11th Cir. 1982). Counsel cannot make strategic decisions as to the best direction to take the case without knowing the facts on which to base this decision. Counsel will be ineffective if counsel is not provided with the investigative assistance necessary to conduct a thorough review of the case against the defendant at the first phase of the trial.

5. The investigation in this capital case is particularly and uniquely complicated. The defense in a capital case has

a duty to investigate the client’s life history, and emotional and psychological make-up, as well as the substantive case and defenses. There must be an inquiry into the client’s childhood, upbringing, education, relationships, friendships, formative and traumatic experiences, personal psychology, and present feelings. The affirmative case for sparing the defendant’s life will be composed

in part of information uncovered in the course of this investigation. The importance of this investigation, and the thoroughness and care with which it is conducted, cannot be overemphasized.

Goodpaster, *The Trial for Life: Effective Assistance of Counsel in Death Penalty Cases*, 58 *N.Y.U.L.Rev.*299, 323-24 (1983) (footnote omitted).

6. Counsel cannot perform this investigation himself. Counsel would be placed in an untenable position were he called upon to testify to impeach the potential witnesses who must be investigated in this case. Furthermore, counsel has more than enough work that must be done on this case in the time allowed, without having to do all the investigation as well.

7. Counsel has learned from sources that there are some witnesses who may be able to buttress the Defendant's version of the events.

8. The Defendant requires development of the facts in this case as well as development of other mitigation both statutory and non-statutory including. See Miss. Code Ann. SS 99-19-101(6).

9. The Defendant's proposed investigator is Don Evans. He is experienced in this field. His standard fee is \$32.00 per hour and .32 per mile. It is expected that his services will not cost more than \$2,000.00 for the initial work on the case.

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully requests that this Court grant him funds for investigative assistance.

Respectfully submitted,

JEFFREY KEITH HAVARD

BY: GUS G. SERMOS




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CERTIFICATE OF SERVICE

I, Gus G. Sermos, do hereby certify that I have this date mailed, postage prepaid, a true and correct copy of the above and foregoing Motion to the Ronnie Harper, District Attorney, Adams County, to his regular business address of P.O. Box 1148, Natchez, MS 39121.

Certified on this, the 8 day of August, 2002.


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