

IN THE CIRCUIT COURT OF MAYCOMB COUNTY, ALABAMA

STATE OF ALABAMA,

v.

JOE CLIENT.

*
*
*
*
*

Case No. CC-00-0000

MOTION FOR PERMISSION TO PROCEED
EX PARTE IN REQUESTS FOR FUNDS

Joe Client respectfully requests that this Court allow him to proceed ex parte in his requests for funds. In support of this motion, Mr. Client submits the following:

1. Mr. Client has been charged with capital murder pursuant to Alabama Code section 13A-5-40(a)(2) and the State is seeking the death penalty.

2. Mr. Client is indigent and intends to request funds from this Court for expert assistance. In Alabama, “an indigent criminal defendant is entitled to an ex parte hearing on whether expert assistance is necessary.” Ex parte Moody, 684 So. 2d 114, 120 (Ala. 1996); see also Ake v. Oklahoma, 470 U.S. 68, 82-83 (1985) (state must provide indigent defendant with access to expert assistance when defendant able to make “an ex parte threshold showing” of need); Finch v. State, 715 So. 2d 906, 909 (Ala. Crim. App. 1997) (indigent defendant must be afforded “an opportunity to communicate his request to the trial court in the State’s absence.”).

3. To obtain funds for expert assistance, Mr. Client must show that there is a reasonable probability that the expert will assist in his defense and that he will not have a fair opportunity to present his case if he is denied expert assistance. Ex parte State (DuBose v. State), 662 So. 2d 1189, 1192 (Ala. 1995) (denial of due process where trial court refused to provide indigent defendant with funds for DNA expert where DNA evidence critical in case); see also McWilliams v. Dunn, 137 S. Ct. 1790 (2017) (where defendant indigent and mental condition relevant, state’s refusal to provide defendant access to independent mental health expert to evaluate and assist defense violated due process); Ake v. Oklahoma, 470 U.S. 68, 76 (1985) (where indigent defendant’s sanity significant factor at both phases of trial, state’s refusal to provide expert psychiatric assistance was denial of due process).

4. To make the required showing, Mr. Client may be required to reveal to this Court his theory of defense, the results of any investigation or consultation that has already taken place, and the information that is anticipated from the expert services sought. Moore

v. Kemp, 809 F.2d 702, 710-12 (11th Cir. 1987) (en banc); Messer v. Kemp, 831 F.2d 946 (11th Cir. 1987) (en banc). Of necessity, this showing requires disclosure of work product and information obtained in attorney-client interviews. See Ala. R. Prof'l Conduct R. 1.6 (rule that lawyer “shall not reveal information relating to representation of a client . . . applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source”).

5. Such disclosures go well beyond the discovery permitted under Alabama law, see Ala. R. Crim. P. 16, and include information that is not available to the State. Forcing Mr. Client to make these disclosures to the State would thwart his right to present his case and to prepare it in confidence with counsel. Taylor v. Illinois, 484 U.S. 400, 408 (1988); Chambers v. Mississippi, 410 U.S. 284, 302 (1973); Washington v. Texas, 388 U.S. 14, 19 (1967); see also Wardius v. Oregon, 412 U.S. 470, 472 (1973) (Due Process Clause “forbids enforcement of [discovery] rules unless reciprocal [] rights are given to criminal defendants”).

6. A denial of this motion would violate Mr. Client’s equal protection rights because he would not be forced to disclose confidential information to the State if he were not indigent. See United States v. Meriwether, 486 F.2d 498 (5th Cir. 1973) (serious equal protection questions raised when indigent defendant’s case subjected to pretrial scrutiny by prosecutor, while nonindigent defendant able to proceed without such scrutiny); see also Griffin v. Illinois, 351 U.S. 12, 19 (1956) (“There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”); Moody, 684 So. 2d at 120 (indigent and nonindigent defendants should be treated equally).

7. Because this is a capital case, this Court must apply heightened standards to ensure that it is fair. Under the Eighth Amendment, the “fundamental respect for humanity” requires heightened reliability in determining whether the death penalty is appropriate. Johnson v. Mississippi, 486 U.S. 578, 584 (1988) (quoting Gardner v. Florida, 430 U.S. 349, 363-64 (1977)); see also Ex parte Monk, 557 So. 2d 832, 836-37 (Ala. 1989) (“death penalty is special circumstance” that justifies expansion of constitutional rights).

8. Without the ability to proceed ex parte, counsel would be forced to forgo a request for funds to keep attorney-client communications, work product, and strategy confidential, or to make the needed request, breach her duty of confidentiality and prematurely reveal privileged information to the State. Proceeding ex parte obviates such an untenable choice. Moody, 684 So. 2d at 120.

9. Permitting Mr. Client to proceed ex parte in his request for funds is essential to protect Mr. Client's rights to due process, equal protection, effective assistance of counsel, confront the witnesses against him, present evidence on his own behalf, and a fair trial and reliable sentencing, as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Alabama law.

For these reasons, Mr. Client respectfully requests that this Court:

- a. schedule an ex parte hearing on this motion;
- b. seal the record of the ex parte hearing on this motion; and
- c. enter an order granting the motion.

Respectfully submitted,

/s/ Linda Lawyer

Linda Lawyer

123 Main Street

Maycomb, AL 54321

(334) 987-6543

lawyer@email.com

Counsel for Joe Client

[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/04/17]