

IN THE SUPREME COURT OF ALABAMA

EX PARTE DOYLE LEE HAMM )  
 )  
In re: State of Alabama, )  
 )  
Petitioner, )  
 )  
v. ) No. \_\_\_\_\_  
 )  
Doyle Lee Hamm, )  
 )  
Respondent. )

STATE OF ALABAMA'S MOTION TO SET AN EXECUTION DATE

Pursuant to Rule 8(d)(1) of the Alabama Rules of Appellate Procedure, the State of Alabama respectfully requests that this Honorable Court set an execution date for carrying out Doyle Lee Hamm's duly-adjudicated sentence of death. In support of its motion, the State asserts the following:

Doyle Lee Hamm currently resides on Alabama's death row, where he has spent the last twenty-nine years. As described below, Hamm murdered Patrick Cunningham in January 1987. As a result of this murder, Hamm was convicted of a murder during a robbery in violation of Ala. Code, § 13A-5-40(a)(2). Hamm was subsequently sentenced to death. Because Hamm has exhausted all three layers of appellate review (direct appeal, state post-conviction, and

federal habeas), the State now seeks execution of Hamm's duly-adjudicated death sentence.

As set out more fully below, Hamm's conviction and sentence are final because he has completed his direct appeal, state post-conviction review, and federal habeas review. Hamm's federal habeas proceedings ended in 2016. Hamm v. Allen, 137 S. Ct. 39 (2016). There is currently no impediment to Hamm's conviction and death sentence. Accordingly, the time has come for this Court to enter an appropriate order "upon disposition of the appeal or other review" in Hamm's case. Ala. R. App. P. 8(d)(1).

**I. The procedural history indicates that Hamm has fully exhausted his appeals.**

Hamm's conviction and death sentence have been fully reviewed through direct appeal, state post-conviction petition, and application for a federal writ of habeas corpus.

**A. Trial and direct appeal proceedings**

Hamm was convicted of capital murder for the death of Patrick Cunningham during a robbery. On January 24, 1987, Patrick Cunningham was working the 3:00 p.m. to 7:00 a.m. shift as the desk clerk of Anderson's Motel in Cullman, Alabama. (R. 271) Kathryn Flannagan, who was traveling

from Florida to Missouri, stopped at the motel around 10:30 p.m. to rent a room for the night. (R. 299) While Ms. Flannagan was filling out the registration form, a small-framed white man entered the lobby and asked to rent a room for three. (R. 300-301) Mr. Cunningham told the man that rooms were not rented without a reservation and the man left the lobby. (R. 301-302) Mr. Cunningham told Ms. Flannagan that they did not rent to locals. (R. 302-303) Minutes later, as Ms. Flannagan was about to leave the lobby, the same man came into the lobby, accompanied by a second man. (R. 303) The second man was larger than the first man and was wearing a faded green army fatigue jacket. (R. 303) Mr. Cunningham gave Ms. Flannagan her key, pointed to her room, and told her it "looks like there is going to be trouble." (R. 303)

After Ms. Flannagan got into her car, she looked back inside the lobby and saw the second man (the one in the green army fatigue jacket) pointing a gun in the direction of the desk. (R. 308, 330) Ms. Flannagan was not able to see behind the desk because her view of the desk was obstructed. Hamm v. State, 564 So. 2d 453, 455 (Ala. Crim. App. 1989). The first man was standing near the door and

Ms. Flannagan also noticed a "banged up" early 1970's car parked, with its engine running, just outside the door to the Anderson Motel. (R. 302, 305) Ms. Flannagan also testified that it looked like there was one more person in the car. (R. 305)

Ms. Flannagan acted like she did not see anything and drove to a nearby convenience store where she called the police. (R. 309, 342-344) She told the dispatcher that the Anderson Motel was being robbed. The dispatcher told Ms. Flannagan to return to the motel to meet the police, which she did. (R. 310-344) Ms. Flannagan gave the officers a statement and a description of the two men she saw in the motel. (R. 310, 344)

Lieutenant Larry Waldrop of the Cullman County Sheriff's Department was the first officer to arrive at the crime scene and found the victim's body behind the reception desk. (R. 403-407) The victim had been killed by a single gunshot to the head from a .38 caliber pistol. Hamm, 564 So. 2d at 455. The victim's wallet, containing approximately \$60 was missing. In addition, the cash drawer of the motel was missing over \$350. Id.

The day after the murder Douglas Roden was found driving a car that matched the description of the car Ms. Flannagan saw at the Anderson Motel. Ms. Flannagan later positively identified this vehicle as the one she saw at the motel. Id. Roden took the officers from the Cullman Police Department to a trailer park in Cullman where they arrested Hamm. Id. While searching the trailer, officers seized a nickel-plated .38 caliber pistol, numerous rounds of .38 caliber ammunition, a faded green army fatigue jacket with .38 caliber bullets in the pocket, some knives, and other clothing. Id.

After being taken to jail, Hamm gave a statement in which he denied any involvement in the murder of Patrick Cunningham. The next day, Hamm gave a second statement and confessed to the murder. Hamm's statement was played for the jury.

During the investigation of this case, the Cullman Police Department learned that Doug Roden and Regina Roden were involved in the murder. Doug Roden was the other person who entered the motel lobby and Regina Roden remained outside the motel in the car. In exchange for

being allowed to plead guilty to lesser offenses, both of the Rodens testified against Hamm at his trial. Id.<sup>1</sup>

On direct appeal, the Alabama Court of Criminal Appeals and this Court affirmed Hamm's conviction and death sentence. Hamm v. State, 564 So. 2d 453 (Ala. Crim. App. 1989), aff'd, 564 So. 2d 469 (Ala. 1990). The United States Supreme Court then denied Hamm's petition for writ of certiorari. Hamm v. Alabama, 498 U.S. 1008 (1990).

**B. State post-conviction proceedings**

Hamm filed a petition for post-conviction relief under Rule 32 of the Alabama Rules of Criminal Procedure in December of 1991. An evidentiary hearing was held on the post-conviction petition. After the evidentiary hearing, the trial court denied the post-conviction petition. The Alabama Court of Criminal Appeals affirmed the denial of the post-conviction petition. Hamm v. State, 913 So. 2d 460 (Ala. Crim. App. 2002). This Court and the United States Supreme Court denied Hamm's petition for writ of certiorari.

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<sup>1</sup> A more detailed statement of the facts can be found in the direct appeal opinion of the Alabama Court of Criminal Appeals. Hamm v. State, 564 So. 2d 453, 455-457 (Ala. Crim. App. 1989).

### **C. Federal habeas corpus proceedings**

Hamm then filed a petition for writ of habeas corpus. On March 27, 2013, Judge Karon O. Bowdre entered a memorandum opinion and final judgment denying the habeas petition. Hamm then filed a motion to alter or amend judgment. This motion was granted in part to strike a sentence from the memorandum opinion and denied in part. The Eleventh Circuit affirmed the denial of the habeas petition. Hamm v. Commissioner, 620 F. App'x 752 (11th Cir. 2015). The United States Supreme Court then denied Hamm's petition for writ of certiorari. Hamm v. Allen, 137 S. Ct. 39 (2016).

### **II. CONCLUSION**

There are currently no pending challenges to the validity of Hamm's conviction and death sentence. Hamm has exhausted his direct appeal, his state post-conviction remedies, and his federal habeas corpus remedies. As such, it is time for his sentence to be carried out. Pursuant to Rule 8(d)(1) of the Alabama Rules of Appellate Procedure, the State requests that this Court "enter an order fixing a

date of execution, not less than 30 days from the date of the order of execution."

Respectfully submitted,

Steve Marshall  
*Attorney General*

**s/ Thomas R. Govan, Jr.**  
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**s/ Beth Jackson Hughes**  
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**CERTIFICATE OF SERVICE**

I hereby certify that on June 23, 2017, I did serve a copy of the foregoing on the attorney for Hamm, by placing same in the United States mail, first class, postage prepaid and addressed as follows:

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*s/ Beth Jackson Hughes*  
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