

No. 1881555

IN THE SUPREME COURT OF ALABAMA

Ex parte Doyle Lee Hamm,	*	
	*	
In re. State of Alabama	*	
<i>Petitioner,</i>	*	Fourth Status Update in
	*	Response to the Court's Order
v.	*	Dated August 25, 2017
	*	
Doyle Lee Hamm,	*	
<i>Respondent.</i>	*	

DOYLE HAMM'S FOURTH STATUS UPDATE OF SEPTEMBER 22, 2017

Pursuant to this Court's order dated August 25, 2017, Doyle Lee Hamm respectfully submits the following status update:

1. Undersigned counsel and Dr. Mark Heath are on their way to Birmingham, Alabama, for the medical visit of Dr. Heath with Doyle Hamm at Donaldson Correctional Facility scheduled for tomorrow, Saturday, September 23, 2017, at 1:30pm.

2. To date, undersigned counsel has still not received any information from the State of Alabama about the Alabama protocol for venous access for purposes of lethal injection. Undersigned

counsel renewed his request for the protocol by letter dated Monday, September 11, 2017; but has received no response. Given Mr. Hamm's complicated medical history, cranial and lymphatic cancer, and ongoing lymphadenopathy, there is a significant risk of difficulty achieving venous access, and therefore it will be necessary to discuss these issues with the Court, under seal if necessary.

3. Having now had more time to review the extensive, 777 pages of medical records obtained from the Donaldson Correctional Facility, counsel is in a better position to explain Mr. Hamm's cancer illness.

4. Mr. Hamm's cancer was originally identified in February 2014, when a pathology report diagnosed "a poorly margined mass within the left orbit [of the skull] with both intraconal and extraconal components. This appears to extend through the orbital apex via the superior and inferior orbital fissures both of which appear enlarged. The left foramen rotundum is asymmetrically enlarged. The cortex along the lateral aspect of the left vidian canal appears mildly slightly eroded. The lesion probably extends into the left cavernous sinus. There is mild left proptosis" (Hamm Donaldson Prison Medical, p. 189). The doctors reported their "Impression: Left orbital neoplasm with possible perineural tumor spread to the left cavernous sinus and left masticator space [of the skull]. This may represent an

adenoid cystic carcinoma, given this pattern" (Hamm Donaldson Prison Medical, p. 189-190). The pathological reports indicated that these findings are consistent with a "B-cell lymphoma" (Hamm Donaldson Prison Medical, p. 165). Another report at the time determined that "The epidermis is ulcerated. Budding from the dermal epidermal junction are geometrically shaped tumor islands consisting of basaloid cells. The tumor islands are mitotically active and demonstrate peripheral palisading. There is peritumoral reactive fibroplasia and cellularity" (Hamm Donaldson Prison Medical, p. 174)

5. In April 2014, a CT scan confirmed that the "Left orbit [of the skull] is abnormal, large soft tissue masses seen in the left orbit resulting in expansion of the bony orbit. Proptosis seen. This mass is surrounding the left optic nerve complex. Posteriorly, the mass extends up to the orbital apex. There is also extension through the inferior orbital fissure into the pterygopalatine fossa, masticator space and the buccal space. There is also suggestion of extension to the left vidian canal" (Hamm Donaldson Prison Medical, p. 151). This led to a preliminary diagnosis by Dr. Brian Adler of the Brookwood Cancer Center of a "MALT lymphoma or marginal zone lymphoma" and the recommendation for immediate radiation therapy and the possibility of "a Rituxan based regimen that will probably include some cytotoxic chemotherapy" (Hamm Donaldson Prison

Medical, p. 135). The doctors also found at that time, on examination of his abdomen, numerous "granulomata throughout the spleen" and abnormal lymph nodes in the abdomen (Hamm Donaldson Prison Medical, p. 140).

6. In May 2014, the doctors at Brookwood confirmed a primary diagnosis of "Large cell lymphoma unspecified site, Diagnosed 2014 (Active)" (Brookwood Hamm 2014 - 10). They reported that the "scans demonstrated a large mass in the retro-orbital area on the left extending into the masseter space [cavity in face above jaw, under temple]. There was a suggestion of widening of the neural foramen [space in spine through which the spinal cord runs]. In the chest were noted numerous abnormal lymph nodes most of which were associated with calcifications. Calcified granulomata [scar tissue] were noted within the lung as well. A few small nodes were seen in the abdomen. The pelvis was not imaged" (Brookwood Hamm 2014 - 10). More specifically, the MRI revealed that "there is a soft tissue lesion filling most of the retro-orbital region on the left. There is extension posteriorly through the orbital fissures to involve the pterygopalatine fossa and cavernous sinus regions. From the cavernous sinus region, there may be extension into the middle cranial fossa with some degree of asymmetrical dural enhancement noted" and that "there is also extension of tumor laterally into the infratemporal fossa and masticator space region on the left.

Enhancing tumor surrounds portions of the pterygoid musculature, as well as the inferior aspect of the temporalis muscle. There is also tumor surrounding the gasserian ganglion and extending inferiorly along the foramen ovale into the masticator space. Some component of tumor near foramen lacrum portion of the carotid canal cannot be excluded" (Hamm Donaldson Prison Medical, p. 129).

7. In June 2014, the doctors confirmed "the presence of a tumor extending through the foramina into the pterygoid space and into the middle cranial fossa. There is involvement of the cavernous sinus as well as extension into the left side of the nasopharynx." (Hamm Donaldson Prison Medical, p. 111). Note that the "nasopharynx" is the back of the throat and the "foramina" is the spinal cord. The pterygoid space is the space where the head and spine meet. The middle cranial fossa is the space in the skull above where the spine meets the head. The doctors reported that "The patient appears chronically ill." (Hamm Donaldson Prison Medical, p. 111). They also indicated that "There is some risk of involvement of the spinal fluid." Ibid. The treating physician at Brookwood said he would "request approval from the prison medical clinic for the patient to have a lumbar puncture with cytology. In the interval I recommended that we proceed with radiation therapy as he is going to require some form of local treatment even if he takes systemic

chemotherapy." Ibid.

8. In July 2014, Mr. Hamm underwent radiation therapy, specifically "IMRT to 40Gy over 20 fractions for orbital lymphoma completed on July 11, 2014." (Brookwood Hamm 2014 - 6)

9. By September 2014, the doctors felt that there had been improvement. They reported that Mr. Hamm had "completed 40 gray for a lymphoma involving the left orbit and skull base. He is feeling better at this time... Constitutional: Complains of poor appetite and major fatigue. Eyes: Complains of double vision with the left eye and visual difficulties of the left eye that is also dry and red. Complains of some pain in the left eye but has gotten better" (Brookwood Hamm 2014 - 3).

10. Again in September 2015, Mr. Hamm showed some improvement, even though there was evidence from the tests of "Abnormal enhancement is seen in the left orbit with involvement in the left pterygopalatine fossa and left infratemporal fossa/masticator space region. Abnormal enhancement is also seen in the inferior orbital fissure and in foramen ovale, and along foramen rotundum on the left." (Hamm Donaldson Prison Medical, p. 629). But these "areas of abnormal enhancement are improved in appearance when compared with 3/10/2015 and markedly improved from 9/29/2014." Ibid.

11. However, beginning in March 2017, the cancer has come back and Mr. Hamm is suffering increasingly from

lymphadenopathy. In March or April 2017, Mr. Hamm was seen by a doctor in Jasper, Alabama, who identified on the basis of a biopsy a new cancer in his eye. Mr. Hamm apparently also has a new lesion on his face that is the size of a quarter. On March 7, 2017, Mr. Hamm was complaining of "'knots' on my chest" and the medical team was reporting that "These feel like lymph nodes." (Hamm Donaldson Prison Medical, p. 453.) On March 2017, Mr. Hamm reported that he "Need[s] to see the doctor I have lumps in my chest." (Hamm Donaldson Prison Medical, p. 472; see also "lumps in chest," *ibid.*, p. 470). A recent visual examination of Mr. Hamm revealed two abnormal lumps on Mr. Hamm, one under his chin on the left side; and one on the back right of his neck below his right ear.

12. Undersigned counsel will confirm the medical condition of Mr. Hamm during the medical visit at Donaldson Correctional Facility tomorrow.

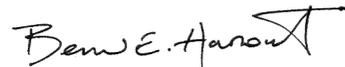
Respectfully submitted,

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.

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CERTIFICATE OF SERVICE

I hereby certify that on September 22, 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
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