

No. 1881555

IN THE SUPREME COURT OF ALABAMA

Ex parte Doyle Lee Hamm,	*	
	*	
In re. State of Alabama	*	
<i>Petitioner,</i>	*	Answer to this Court's
	*	Order dated July 14, 2017
v.	*	
	*	
Doyle Lee Hamm,	*	
<i>Respondent.</i>	*	

DOYLE HAMM'S ANSWER TO THIS COURT'S ORDER

Doyle Hamm, aged 60, suffers from cranial cancer and lymphatic cancer. Since March 2017, Mr. Hamm has been experiencing lymphadenopathy associated with his earlier diagnosed and treated skull-orbital cancer. The etiology and progression of his cancer suggest, with all reasonable medical certainty, that IV access may not be possible. Undersigned counsel is obtaining a medical report and will update this Court as soon as that report is prepared.

1. Undersigned counsel for Doyle Hamm received copies of Mr. Hamm's recent medical records on July 20, 2017 (777 pages of medical records, mostly related to his recent cancer diagnosis and

radiation treatment). Counsel had requested these documents from Donaldson Correctional Facility in January 2017 and has been diligent in pursuing this records request.

2. Undersigned counsel has quickly reviewed these 777 pages of recent medical records and shared these records with an anesthesiologist, Dr. Mark Heath. Dr. Heath is a medical doctor with an active licensed full-time medical practice in New York State, is board certified in anesthesiology, and holds an appointment as an Assistant Professor of Clinical Anesthesiology at Columbia University in New York City. Dr. Heath has 29 years of experience obtaining both peripheral and central intravenous (IV) access and administering large doses of anesthetic agents.

3. Undersigned counsel consulted with Dr. Heath on Sunday, August 6, 2017, for a one-hour telephonic conference call.

4. Dr. Heath's preliminary medical opinion from reviewing the medical records is that, because of Mr. Hamm's prior medical conditions, his current lymphoma cancer, and the ongoing lymphadenopathy, it is reasonably certain that IV access for Mr. Hamm, both peripheral and central-line, may be impossible and, if achievable, will be extraordinarily difficult, challenging, arduous, painful, and bloody. The lymphadenopathy means that Mr. Hamm's lymph nodes will likely present obstacles to access and severe complications, and because of this, there would need to be in place medical measures and procedures far beyond what would

even be necessary for a central-line IV procedure in order to treat the likely bleeding and necessary blood transfusions and the fact that Mr. Hamm also has Hepatitis C. This would present a serious medical challenge even in a fully-functional operating room with teams of different specialists and full medical equipment.

5. Dr. Heath has requested an opportunity to conduct a medical examination of Mr. Hamm, and undersigned counsel is currently setting up a medical visit for Dr. Heath with Doyle Hamm at Donaldson Correctional Facility for a date in September 2017 when Dr. Heath will be available to travel to the prison.

6. By way of background, Doyle Hamm was treated with radiation for cranial lymphoma cancer at Brookwood Cancer Care Center in Birmingham, Alabama, in 2014, with overall good results; but his cancer condition has deteriorated since March 2017. He currently is experiencing lymphadenopathy in his neck, chest and abdomen, which is likely associated with worsening lymphoma cancer.

7. Mr. Hamm was originally diagnosed with a large cell lymphoma behind his left eye and in his cranium—specifically in the left orbit and skull base. The MRI showed “the presence of a tumor extending through the foramina into the pterygoid space and into the middle cranial fossa.” See *Donaldson Correctional Facility Medical Records*. The CT 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 were noted within the lung as well. A few small nodes were seen in the abdomen." *See Donaldson Correctional Facility Medical Records.*

8. Doyle Hamm received treatment for his cranial cancer, including, specifically, radiation treatment ("IMRT to 40Gy over 20 fractions for orbital lymphoma [...] radiation," *see Donaldson Correctional Facility Medical Records*), as well as steroids, dexamethasone, and morphine, all at the Brookwood Cancer Care Center in Birmingham, Alabama.

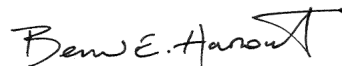
9. However, since March 2017, Mr. Hamm has been experiencing aggravated problems with his lymph nodes. He has also been seen by another outside doctor who conducted a biopsy of eye tissue and found that it was cancerous. Mr. Hamm has a black lesion, the size of a dime, under his left eye, likely related to his earlier cranial cancer. Mr. Hamm is currently on a heavy dose of "Norco," a prescribed pain killer, which he takes three times a day.

10. Undersigned counsel, who is representing Mr. Hamm *pro bono*, is diligently pursuing a constitutionally acceptable resolution of this death penalty case. This Court has made clear that the death penalty, as an extraordinary punishment, must

satisfy heightened constitutional standards. *Ex parte Monk*, 557 So. 2d 832, 836-37 (Ala. 1989). The United States Supreme Court as well has held that meaningful legal review is critical to the constitutionality of an execution. *Woodson v. North Carolina*, 428 U.S. 280, 303 (1976).

WHEREFORE, undersigned counsel respectfully requests that this Court allow Dr. Mark Heath to conduct his medical examination before making any decision on the state's motion to set an execution date. Counsel will immediately update this Court as soon as he has received Dr. Heath's report or no later than 5 days after the scheduled medical examination.

Respectfully submitted,

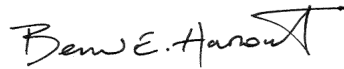


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August 8, 2017

CERTIFICATE OF SERVICE

I hereby certify that on August 8, 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 flourish at the end of the name.

BERNARD E. HARCOURT
Counsel of Record