

No. 1881555

IN THE SUPREME COURT OF ALABAMA

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

DOYLE HAMM'S STATUS UPDATE OF SEPTEMBER 8, 2017

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

1. Undersigned counsel has secured a medical visit for Dr. Mark Heath with Doyle Hamm at Donaldson Correctional Facility on Saturday, September 23, 2017, at 1:30pm. Warden Bolling at Donaldson approved the visit on Tuesday, September 5, 2017, subject to confirmation by general counsel at the Alabama Department of Corrections ("ADOC"). Undersigned counsel spoke with the office of general counsel on Thursday, September 7,

2017, and was told that ADOC has no objection to the visit. Undersigned counsel is accordingly arranging for travel and transport for Dr. Heath for a medical visit on September 23rd.

2. By letter dated Thursday, September 7, 2017, responding to undersigned counsel's request dated August 28, 2017, the Alabama Attorney General refused to provide undersigned counsel with a copy of the State of Alabama's official written protocol for lethal injection, claiming that the protocol is "privileged and confidential." *Letter to Bernard E. Harcourt from Assistant Attorney General Beth Jackson Hughes dated September 7, 2017.* The Attorney General contends that "the drugs and dosage amounts administered in the ADOC's lethal injection protocol are publicly available in various legal opinions. See e.g. *Grayson v. Warden*, 672 Fed. App'x 956, 959 (11th Cir. 2016)." *Ibid.* The Attorney General is indeed correct that the 2016 opinion of the Eleventh Circuit spells out the drugs and dosage amounts, specifically stating that "currently" [in 2016] the protocol "calls for the administration of: (1) a 500-mg dose of midazolam, (2) followed by a 600-mg dose of rocuronium bromide, and (3) finally, 240 milliequivalents of potassium chloride," *see Grayson v. Warden*, 672 Fed. App'x 956, 959 (11th Cir. 2016). But these generalities about drugs and dosage do not begin to describe the official protocol regarding venous access which is of central importance here because of Mr. Hamm's lymphatic

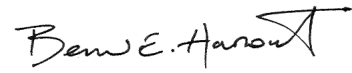
cancer.

3. Undersigned counsel will assuredly maintain the privileged and confidential nature of the Alabama execution protocol, especially since he is a sworn member of the Alabama State Bar. There is no reasonable explanation why the State of Alabama would not provide undersigned counsel with the full official protocol including information about venous access, given that the State is seeking to execute Doyle Hamm by lethal injection. Undersigned counsel will renew his request with the Alabama Attorney General, and, if unsuccessful, will respectfully seek an order from this Court.

4. Undersigned counsel is continuing to review the 777 pages of Doyle Hamm's medical records from Donaldson Correctional Facility. What is clear from the records is that Mr. Hamm's cancer and medical condition took a turn for the worse beginning in March 2017. The medical records reflect that, back in 2014, Doyle Hamm suffered from a very serious cancer in the skull and lymph nodes. At the time, on June 6, 2014, for instance, it was determined that Mr. Hamm suffered from "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." See Donaldson Correctional Facility Medical Records, p. 111. At that time in 2014, there

were indications that there was a risk of "involvement of the spinal fluid," which was why the doctors requested and received "approval from the prison medical clinic for the patient to have a lumbar puncture with cytology" and recommended that the doctors "proceed with radiation therapy as [Mr. Hamm] is going to require some form of local treatment even if he takes systemic chemotherapy." Ibid. After severe radiation therapy to Mr. Hamm's skull in 2014 and an apparent improvement of his cancer, however, his medical condition began to deteriorate in March 2017. It is around that time, for instance on March 7, 2017, that Mr. Hamm began to complain about "'knots' on my chest," with the doctors reporting that "these feel like lymph nodes." See Donaldson Correctional Facility Medical Records, p. 453; see also *ibid.*, p. 472 ("Need to see the doctor I have lumps in my chest and to have my pain medicine renew"); *ibid.*, p. 470 ("lumps in chest"). In March 2017, the doctors began to mention in the medical records the possibility of "lymphadenopathy," see *ibid.*, p. 453. Undersigned counsel will continue to review and summarize these extensive medical records and has shared them with his medical expert, Dr. Heath.

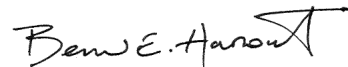
Respectfully submitted,

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.

BERNARD E. HARCOURT
Counsel of Record
COLUMBIA LAW SCHOOL
435 West 116th Street
New York, NY 10027
Phone: (212) 854-1997
E-mail: beh2139@columbia.edu

CERTIFICATE OF SERVICE

I hereby certify that on September 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, stylized initial "B".

BERNARD E. HARCOURT
Counsel of Record