

No. 1881555

IN THE SUPREME COURT OF ALABAMA

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

DOYLE HAMM'S THIRD STATUS UPDATE

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

1. On Thursday, September 14, 2015, undersigned counsel received official confirmation from Donaldson Correctional Facility of the medical visit of Dr. Mark Heath with Doyle Hamm at Donaldson scheduled for Saturday, September 23, 2017, at 1:30pm. See Exhibit A.

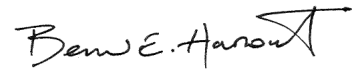
2. By letter dated and e-mailed Monday, September 11, 2017, undersigned counsel made a follow up request with the Alabama Attorney General for a confidential copy of the State of

Alabama's official written protocol for lethal injection, promising as a member of the Alabama State Bar and officer of this Court to keep the protocol "privileged and confidential." *Letter from Bernard E. Harcourt to Assistant Attorney General Beth Jackson Hughes dated September 11, 2017.* To date, undersigned counsel has received no response.

3. The extensive medical records in Mr. Hamm's case underscore the need for counsel to consult the official protocol for venous access for lethal injection. Because of his lengthy medical history and his more recent cranial and lymphatic cancer, cancer treatment, and ongoing lymphadenopathy, there is a significant risk of difficulty achieving venous access. The medical records contain, for instance, the following kind of medical indications: "S[ubject]: 'Got blood vessels bursting in R[ight] foot and ankle. Been like this for a while but now it's getting worse.' D[octor]: Small broken vessels noted on top and side of R[ight] foot. Also ankle area." See Wm. Donaldson Correctional Facility Patient Notes - 10.10.1991. This prior medical condition, in conjunction with his current cancer, may present significant barriers to humane venous access. For instance, the medical records reveal that Mr. Hamm's "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." See Wm. Donaldson Prison Medical Records - 2.28.14. In combination with the indications of "lymphadenopathy," see Wm. Donaldson Correctional Facility Medical Records - 3.7.17, these medical conditions suggest that it may be exceedingly difficult, if not impossible, for prison personnel to establish reliable intravenous access during the lethal injection procedure. This raises the unacceptable risk that he will experience significant pain constituting cruel and unusual punishment in violation of the Eighth Amendment. See *Baze v. Rees*, 128 S. Ct. 1520, 1531 (2008); *Nelson v. Campbell*, 124 S.Ct. 2117 (2004). Whether the state of Alabama would proceed to central venous cannulation, or a "central line," as the state of Georgia has done, therefore becomes a critical question and demands that the State provide undersigned counsel with a confidential copy of the official protocol for venous access. Cf. *Gissendaner v. Comm'r, Georgia Dept' of Corr.* (*Gissendaner I*), 779 F.3d 1275, 1278 (11th Cir. 2015) ("If the IV nurse is unable to identify a suitable vein in the prisoner's legs or arms, the physician on hand 'will provide access by central venous cannulation or other medically approved alternative.'"). In order for Dr. Mark Heath to render an informed medical opinion, Dr. Heath will need to be informed, confidentially and under privilege, of the protocol for venous access.

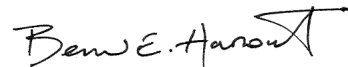
Respectfully submitted,

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 15, 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



Donaldson Correctional Facility

100 Warrior Lane
Bessemer, AL 35023

Telephone (205) 436-3681

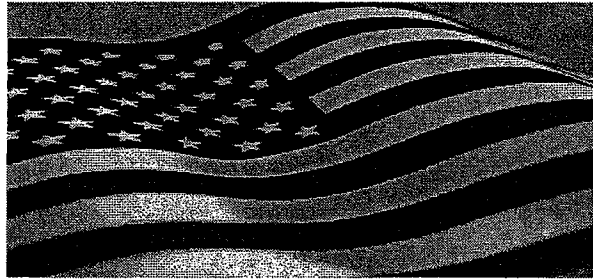
Fax (205) 436-3399

KAY IVEY
GOVERNOR

LEON BOLLING
WARDEN III

ANGELA MIREE
WARDEN II

ERROL PICKENS
WARDEN I



United We Stand

DATE: _____

9-14-17

TO: _____

Bernard Harcourt

FROM: Angela Miree, WARDEN II and/or Errol Pickens, Warden I

REF: Inmate Attorney Visitation

NOTE: In reference to your request for a legal visit, please read and sign the attached orientation sheet & return (via fax). The Orientation sheet as well as the confirmation sheet will list the expectations for entry into this facility. Please bring the Confirmation sheet with you (it has the name of the inmate, date and time of your visit). You will have to clear a metal detector and a pat search.

Number of Pages Faxed: 4 (including this cover sheet)

APPENDIX A



KAY IVEY
GOVERNOR

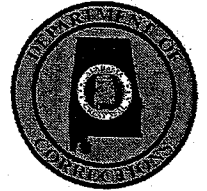
LEON BOLLING
WARDEN III

State of Alabama Alabama Department of Corrections

Donaldson Correctional Facility
100 Warrior Lane
Bessemer, AL 35023

Telephone (205) 436-3681

Fax (205) 436-3399



JEFFERSON DUNN
COMMISSIONER

ANGELA MIREE
WARDEN II

ERROL PICKENS
WARDEN I

THIS FORM MUST BE SHOWN TO BE ADMITTED TO FACILITY

Confirmation Sheet

9-14-17

Date

MEMORANDUM

FROM: Angela Miree, Correctional Warden II

TO: Bernard Harcourt & Dr. Mark Heath
Attorney Paralegal/ Psychologist

REF: Confirmation of Visit with Inmate Doyle Hamm
AIS # Z-479

This memorandum is to confirm your scheduled visit on, Saturday
September 23, 2017 @ 1:30 p.m. until 3:30 p.m.

At the time of your scheduled visit, this confirmation must be presented to the Communications Operator to verify that your Interview/Visit has been scheduled by the Administrative Office.

The following will be required prior to entering William E. Donaldson Correctional Facility:

- 1) Present valid picture identification (i.e. driver's license).
- 2) Clear metal detector and pat search.
- 3) Wear professional attire (No solid whites, no see-through clothing, no shorts, and no short dresses/skirts, if dress/skirts must have on slip, proper underwear, no open-toe shoes, no light colored clothing i.e. beige, Khaki, and no low top blouse/dress).
- 4) Search or x-ray of materials.

If for some reason you cannot keep your scheduled appointment, you must call the Administrative Office at (205) 436-3681, Ext. 106, and cancel your appointment and rescheduled your attorney visit and retain another confirmation.

Your cooperation in this matter is greatly appreciated.



KAY IVEY
GOVERNOR

CHERYL PRICE
INSTITUTIONAL
COORDINATOR

State of Alabama
Alabama Department of Corrections

Donaldson Correctional Facility
100 Warrior Lane
Bessemer, AL 35023

Telephone (205) 436-3681

Fax (205) 436-3399



JEFFERSON DUNN
COMMISSIONER

LEON BOLLING
WARDEN III

ANGELA MIREE
WARDEN I

MEMORANDUM

TO: Attorney, paralegals, psychologist

FROM: Leon Bolling, Warden III

RE: Your visit

In an effort to allow each attorney to see their inmate the time allotted, it has become necessary to ask you to please honor the time that you request. Often times we have several attorney/paralegal visits scheduled on the same date and time. We try to accommodate as many requests as soon as you request it and try to allow you to see the inmate as quickly as possible even during our count and/or bed roster. Please be mindful that your arrival time is important and your allotted request times will be honored by our shift commander. Thank you for your consideration in this matter.

Alabama Department of Corrections

ATTORNEY/LEGAL VISIT ORIENTATION FORM

A. General Rules for Visitation:

1. Visitor(s) must have a photo identification card.
2. Visitor(s) and all item(s) will be searched.
3. Visitor(s) are required to return all unapproved personal item(s) to their vehicle. Staff will not be responsible for any personal item(s).
4. Visitor(s) providing false name(s) or introducing or attempting to introduce contraband may be committing a criminal offense and face possible felony prosecution.
5. Visiting schedule is subject to change without prior notice due to security reasons.
6. Visitor(s) may be asked to leave the institution if they, or an inmate they are visiting, fail to abide by the established visitation rules.
7. Visitor(s) shall be dressed in business or business casual attire.
8. All dresses, skirts, and pants shall extend below the knee (females only).
9. All blouses and shirts must be long enough to cover the waist and chest area.
10. Visitor(s) must wear a complete set of undergarments.
Visitor(s) are permitted to bring in a no more than \$5.00 in coins for soft drinks, coffee, and/or snacks.
11. Prior to the visit, the attorney may request, with approval of the Warden, to leave legal documents with an inmate.
12. An inmate may refuse to meet with the attorney or legal assistant; an inmate can not be forced to meet with an attorney or legal assistant.
13. Visitor(s) may bring two (2) writing instruments and current legal documents to the visit.

B. Prohibited Items:

1. Sunglasses, except prescribed by a doctor. (Identify in Section C. Comments/Requests.)
2. Electronic equipment to include, but not be limited to, cell phones, video games, radios, MP3 players, laptops, etc. unless prior approval of the Warden and ADOC General Counsel.
3. Jewelry, except wedding set/band.
4. Medication, except prescribed by a doctor and unless prior approval of the Warden. (Identify in Section C. Comments/Requests.)
5. Tobacco products, matches or lighters.
6. Firearms/Weapons.
7. Purses, briefcases, or duffel bags.
8. Hats, caps, scarves, or headbands.
9. White or any light colored clothing that appears white.
10. Wigs, except prescribed by a doctor and with the prior approval of the Warden.

C. Comment(s)/Request(s): _____

I have read and understand the above listed guidelines. I will abide by these guidelines or my visit may be denied or terminated. You must submit a letter on your firm's letterhead identifying any member of the defense team requesting approval to visit. The letter shall contain:

1. That they have been retained in the scope of representation or potential representation of an inmate.
2. The name and AIS# of an inmate to visit.
3. The name(s) of the attorney or legal assistant(s) and the last four digits of their social security number (SSN).
4. The attorney or legal assistant(s) current valid driver's license number and state of issuance; the bar identification number; and/or, the professional organization license number.
5. The date and time of the proposed visit.
6. Any other pertinent identification information.

(Date)

(Attorney's Signature)

Distribution: Inmate Database

ADOC Form 303-E – August 1, 2012