

IN THE SUPREME COURT OF ALABAMA

EX PARTE DOYLE LEE HAMM )  
 )  
In re: State of Alabama, )  
 )  
Petitioner, )  
 )  
v. ) No. 1881555  
 )  
Doyle Lee Hamm, )  
 )  
Respondent. )

**STATE'S REPLY TO HAMM'S OCTOBER 1, 2017, ANSWER  
TO THIS COURT'S AUGUST 25, 2017, ORDER**

Hamm does not dispute that he has completed his direct appeal, state post-conviction review, and federal habeas review and that his conviction and sentence are final. Therefore, there is no question that now is the "appropriate time" to enter an order setting Hamm's execution date. Ala. R. App. P. 8(d) (1). Given that Hamm's conventional appeals were concluded in 2016, his execution date should be set forthwith.

Despite the fact that Hamm does not dispute that his conventional appeals have concluded, Hamm unsurprisingly argues for more delay. Oct. Resp. 3-15. Hamm argues that this Court should refuse to set his execution date for two reasons: (1) he is suffering

from cancer,<sup>1</sup> and (2) his veins are impaired making venous access extremely difficult. Oct. Resp. 3-15. Hamm also requests that this Court put in place further measures to ensure that proper procedures and protocols for venous access are agreed upon before an execution date is set. Oct. Resp. 15-18.

Hamm's execution date should be set because he senselessly murdered Patrick Cunningham during a robbery in January 1987 and there are currently no pending challenges to the validity of his conviction and death sentence. Moreover, although Hamm received radiation treatments for cancer in 2014, there was no

---

<sup>1</sup> While Hamm argues that he is currently suffering from a serious cranial and lymphatic cancer, the medical records from the Department of Corrections indicate that this cancer is, in fact, in remission. On August 4, 2017, a physician for the Department of Corrections indicated that there is no evidence of ocular lymphoma. Appendix A, Corizon Practitioner Consultation Report. This finding is consistent with a report issued on September 14, 2016, where an MRI revealed that there was "[n]o indication of recurrent disease in the left orbit, left cavernous sinus, left pterygopalatine fossa and left masticator space." Appendix B, MRI Final Report. In addition, the place on Hamm's left cheek was biopsied on April 4, 2017. This biopsy revealed that Hamm has a basal cell carcinoma on his cheek, not ocular lymphoma, as Hamm suggests in his October pleading. Appendix C, April 19, 2017, report. In fact, Hamm admits that the skin cancer is only 4 millimeters in Appendix B to his October pleading.

attempt to have him evaluated before the State moved this Court to set an execution date. In addition, Hamm has not filed a lawsuit in state or federal court based on his current medical condition and has not argued in any other court that his veins are impaired to the point that venous access would likely be difficult.<sup>2</sup> In fact, the Larry David Nelson lawsuit Hamm refers to was in federal district court, not before this Court or any other state court.<sup>3</sup> Hamm had ample time to raise these questions *before* the State petitioned for his sentence to be carried out. The fact that he waited until after the State requested that this Court set an execution date strongly suggests that his action is brought solely for delay and not for any legitimate purpose.

---

<sup>2</sup> On information and belief, medical personnel from the Donaldson Correctional Facility had no problem accessing Hamm's veins to draw blood in May 2017, November 2016, or at any other time.

<sup>3</sup> As the State noted in its August 15, 2017, pleading, should Hamm file a lawsuit challenging his execution, the court where the lawsuit is filed would be in the best position to litigate whatever challenge he brings. This Court should not defer its decision-making authority to set an execution date simply because such litigation is a possibility.

If this Court does not set Hamm's execution date, it will ensure that his execution will not be set for an undetermined amount of time. This is especially true where Hamm asks this Court to put in place further measures to ensure that proper procedures and protocols for venous access are agreed upon before an execution date is set - including ordering the State to disclose the exact protocol for venous access, appointing a special master to ensure that an unspecified protocol for venous access is agreed upon, and holding a hearing to approve any agreement over a protocol for venous access.<sup>4</sup> Oct. Resp. 15-18. This request reveals that Hamm's argument is nothing but a bald request for an undetermined delay of his execution.

As set out in the State's motion, it is time to set an execution date for carrying out Hamm's duly adjudicated sentence of death pursuant to Rule 8(d)(1)

---

<sup>4</sup> Hamm relies on the litigation in the Larry David Nelson case to support his request that this Court supervise the parties to ensure that proper procedures and protocols are in place before this Court sets an execution date. Hamm's reliance on the David Larry Nelson case is misplaced because that case involved a pending 42 U.S.C. § 1983 case. There is no pending lawsuit in the instant case.

of the Alabama Rules of Appellate Procedure for the  
murder/robbery of Patrick Cunningham in January 1987.

**CONCLUSION**

The State respectfully requests that this Court issue an order setting Hamm's execution date.

Respectfully submitted,

Steve Marshall  
*Attorney General*

***s/ Thomas R. Govan, Jr.***  
Thomas R. Govan, Jr.  
*Deputy Attorney General*

***s/ Beth Jackson Hughes***  
Beth Jackson Hughes  
*Assistant Attorney General*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 10, 2017, I filed the foregoing with the clerk of the court, and I served a copy on the attorney for Hamm by email, as follows:

Bernard E. Harcourt  
beh2139@columbia.edu

*s/ Beth Jackson Hughes*  
Beth Jackson Hughes  
*Assistant Attorney General*

State of Alabama  
Office of the Attorney General  
501 Washington Avenue  
Montgomery, AL 36130-0152  
(334) 242-7392 Office  
(334) 353-3637 Fax  
bhughes@ago.state.al.us

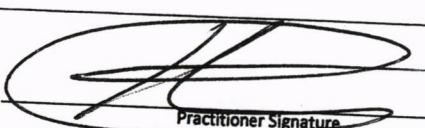
# APPENDIX

## A



**Practitioner Consultation Report**

(Complete and return in SEALED envelope with Correctional Officer)

Reference #	Date of Service	
Inmate: <u>Hamm, Doyle</u>	Inmate ID: <u>Z479</u>	DOB: <u>2/14/57</u>
Facility: <u>6253</u>	Facility ID: <u>Donaldson</u>	Phone: <sup>205</sup> <u>436-3421</u>
Practitioner:	Practitioner Type:	Location:
<p><b>*** See Attached Consultation Request for Health Services Authorized ***</b>                  For security reasons inmates must NOT be informed of recommended treatment or possible hospitalization. Due to security considerations, all recommended tests and treatments are to be scheduled by Corizon.</p>		
Review of Case (Chief complaint, exam findings, etc.):		
<p>① h/o orbital B cell lymphoma OS. No evidence of ocular lymphoma                  ② radiation induced cataract OS. Noted to have CF vision, previously 20/30 in 2014                  ③ dry eye OS</p>		
Diagnosis and Prescription Suggestions (To be reviewed by Corizon Medical Director):		
<p>① h/o orbital lymphoma w/o radiation. Monitor                  ② visually significant cataract left eye. Recommend CEIOL OS                  ③ dry eye left eye - * lubricating eye ointment 2x/day left eye + artificial tears 4x/day</p>		
Can equivalent medication substitution be used?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Follow-up needed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If follow up needed, explain:		
<p>Recommend cataract surgery left eye. Will need left eye post op follow up</p>		
<u>HONGVAN Lu</u> Practitioner Name (Print)	 Practitioner Signature	<u>8/2/17</u> Date

**To be completed by Corizon practitioner**

Recommendation after review of consultant's report:	<input type="checkbox"/> No further action	<input checked="" type="checkbox"/> Implement the following
Implement:	<u>h/m filled out for CEIOL OS</u>	
<u>Roy F. Riddam</u> Corizon Practitioner Name (Print)	<u>R.F. Riddam, MD</u> Corizon Practitioner Signature	<u>4 Aug 17</u> Date

# APPENDIX

## B

**\* Final Report \***

**Reason For Exam**  
LYMPHOMA / C83.39

**REPORT**

MRI FACE AND ORBITS WITHOUT AND WITH CONTRAST

**CLINICAL HISTORY:**

Left orbital lymphoma. Followup study.

**COMPARISON:**

MRI face and orbits dated 9/16/2015 and 3/10/2015.

**FINDINGS:**

On previous studies there is an infiltrative process at the left orbital apex with involvement of the extraocular muscles. There is extension of disease into the superior orbital fissure and cavernous sinus and through the inferior orbital fissure and into the region of the left pterygoid palatine fossa and masticator space. There was interval improvement of between 3/10/2015 and 9/16/2015.

On today's study there is no indication of significant recurrent disease. Extraocular muscles and intra- and extraconal fat have an unremarkable appearance. Optic nerves have a normal appearance as do the globes. There is no longer asymmetrical enhancement in the left cavernous sinus. Normalization of the left masticator space structures is observed.

No additional abnormalities are identified. The right orbit has a normal appearance. No abnormalities are seen in evaluation of the nasal cavity or paranasal sinuses. Right masticator space structures have a normal appearance.

Incidental note is made of prominent bilateral Meckel's caves. This is a stable developmental finding.

**IMPRESSION:**

1. No indication of recurrent disease in the left orbit, left cavernous sinus, left pterygopalatine fossa and left masticator space.

Finalized by Arthur Sandy, MD  
9/14/2016 12:00 PM

**Signature Line**

\*\*\*Final Report\*\*\*

Dictated: 09/14/2016 12:00

Dictated By: SANDY MD, ARTHUR D

Electronic Signature: 09/14/2016 12:00 pm

Signed By: SANDY MD, ARTHUR D

# APPENDIX

## C

**John P. Donahue, M.D., F.R.C.P.(C)**

**4330 HIGHWAY 78 E, SUITE 105  
JASPER, AL 35501  
1-877-785-3002  
205-295-9415**

DATE: APRIL 19, 2017

DEAR DOYLE HAMM

RE: Results of your biopsy(s) / test(s) performed on APRIL 4, 2017

NON-CANCER  
DIAGNOSIS: RIGHT ANTERIOR TEMPLE - SEBORRHEIC KERATOSIS

CANCER  
DIAGNOSIS: LEFT INFERIOR ORBITAL RIM - BASAL CELL CARCINOMA  
WITH SCLEROSIS

Please keep your previously arranged follow-up visit.  
 No follow up appointment is necessary.  
 Continue the treatment(s) or prescription(s) originally recommended.

An appointment for surgery is required. \_\_\_\_\_  
 Your surgery has been scheduled for \_\_\_\_\_  
 Please call our office to arrange an appointment for your surgery.

Please call our office to schedule an appointment for  
 Medical Treatment       Re-evaluation of Skin

For questions concerning your biopsy or test results, to make a surgical appointment or to arrange a follow-up appointment, please contact our office at 1-877-785-3002 (toll free).

**John P. Donahue, M.D., F.R.C.P. (C)**  
**Diplomat of American Boards of Dermatology and Dermatopathology**

4330 Highway 78 East  
Suite 105  
Jasper, AL 35501  
Phone: 1-877-785-3002

**DERMATOPATHOLOGY REPORT**

Patient: HAMM, DOYLE  
DOB: 02/14/57  
Chart #:

Biopsy Date: 04/04/17  
Report Date: 04/07/17  
Surgeon: J.P. Donahue, M.D.

**Specimen A:**

Biopsy:    x   

Surgical Site:

Clinical Data:

Provisional Diagnosis:

Gross Description:

Excision:           

left inf. orbital rim  
nodule, tumor

BCC

Skin: 0.5 x 0.4 x 0.2 cm

Accession #: 17-1041

Previous Surgical:

**Specimen B:**

Biopsy:    x   

Surgical Site:

Clinical Data:

Provisional Diagnosis:

Gross Description:

Excision:           

right temple

papule

LM?

Skin: 0.6 x 0.5 x 0.3 cm

Accession #: 17-1042

Previous Surgical:

**Microscopic Examination:**

A: The epidermis is thin but otherwise unremarkable. Budding from the dermal epidermal junction are geometrically shaped tumor islands consisting of basaloïd cells. The tumor islands are mitotically active and demonstrate peripheral palisading. There is peritumoral reactive fibroplasia and cellularity. Many tumor islands are linear, and percolate through a reactive and fibrous stroma.

B: The epidermis is irregularly acanthotic. The rete ridges are thickened and fused and darkly pigmented at their lowermost border. The dermis is elastotic.

**Diagnosis:**

Specimen A: basal cell carcinoma [sclerosing]

Specimen B: seborrheic keratosis, pigmented

John P. Donahue, M.D., F.R.C.P. (C)  
Dermatopathologist  
JPD:rk

*R.F. Redd, M.D., M.P.*  
*18 May 17*