

DEATH PENALTY/LIFE WITHOUT PAROLE CASE

IN THE SUPERIOR COURT OF GORDON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,

v.

JERRY WILLIAM JONES,

Indictment No.16471

FILED
Clerk Superior Ct., Gordon County
OCT 16 2006
Brian Brannon
Clerk

**MOTION TO ALLOW MR. JONES TO WAIVE HIS PRESENCE AT THE COURT
HEARINGS SCHEDULED FOR OCTOBER 27, 2006.**

COMES NOW JERRY WILLIAM JONES, the defendant named in the above styled matter, through counsel, and pursuant to the First, Fifth, Sixth, Eighth, Ninth, Fourteenth, Thirteenth and Fifteenth Amendments to the United States Constitution, to Article I, ' I, & I, II, VI, VII, XI, XII, XIII, XIV, XVI, XVII and XXVIII of the Georgia Constitution, Title 42 U.S.C. § 1983. 42 U.S.C.A. § 1983, the International Covenant on Civil and Political Rights (adopted by the United Nations General Assembly, October 5, 1977) and Article 4 of The American Convention on Human Rights, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and other applicable state, federal and international law respectfully moves this Court for an order allowing Mr. Jones to waive his presence at the hearings on October 27, 2006.

On Wednesday October 11, 2006, Mr. Jones, during a visit with his counsel, signed a written waiver of his right to be present at the hearing presently scheduled in his case for October 27, 2006. This waiver is attached and incorporated herein by reference as "Exhibit A." In

support of his right to waive his presence during these hearings, Mr. Jones asserts the following:

1)

Every criminal defendant has a right to be present at every critical stage of the proceeding against him. Illinois v. Allen, 397 U.S. 337 (1970). The Confrontation Clause of the Sixth Amendment to the United States Constitution provides that: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him..." U.S. Const. Amend. 6th. The Fourteenth Amendment makes the guarantees of this clause obligatory upon the States. Pointer v. Texas, 380 U.S. 400 (1965). Pursuant to Art. I, Sec. I, Para. XII of the Georgia Constitution, "it is the legal right of a person accused of crime in this State to be present at all stages of his trial..." See Wilson v. State, 212 Ga. 73, 74-75 (1955).

2)

However, United States Supreme Court has held that "the right to be present at one's trial is a personal right that may be waived by a defendant." Diaz v. United States, 223 U.S. 442 (1912). The Georgia Supreme Court has expressly held that the right to waive presence extends to capital defendants. Lonchar v. State, 258 Ga. 447, 452 (1988). The right may be personally waived by the defendant or by defendant's counsel if "counsel does so in the defendant's presence or pursuant to the defendant's express authority, or the defendant may subsequently acquiesce in counsel's waiver." Goodroe v. State, 224 Ga. App. 378 (1997). Therefore, Mr. Jones's express intention to waive his presence evidenced by oral statements made to counsel as well as through the written waiver attached to this motion are sufficient under Goodroe to allow the Court to permit Mr. Jones to be absent.

3)

In Allen, the Supreme Court held that “[a] defendant in custody can lose his right to be present by disruptive behavior. 397 U.S. at 343. An accused cannot be permitted by his disruptive conduct indefinitely to avoid being tried on the charges brought against him. The Court in Allen held that “[i]t would degrade our country and our judicial system to permit our courts to be bullied, insulted and humiliated and their orderly progress thwarted and obstructed by defendants brought before them charged with crimes. Id., at 346.

4)

It would be illogical and inconsistent with the 6th Amendment for a court to hold that the right to be present can be waived by a defendant’s actions as in Allen, but cannot be voluntarily waived. Allen at 339. In fact, a ruling disallowing capital defendants to voluntarily waive their right to be present while permitting their removal when they are disruptive, encourages the type of behavior exhibited in Allen and creates an increase in the likelihood of disruptive courtroom behavior among defendants who would rather not be present. The Georgia Supreme Court has consistently held that these defendants have an absolute right to waive their presence if they so desire and do so knowingly and voluntarily. See Lonchar, et. al.

5)

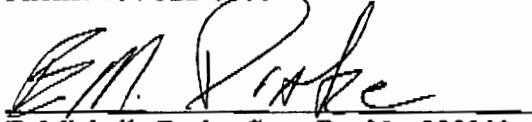
WHEREFORE, for the foregoing reasons and any others that may appear to this Court after a hearing, counsel for Mr. Jones respectfully requests this Court to allow him to waive his presence at the hearing on October 27, 2006.

DATED this 13th day of October, 2006.

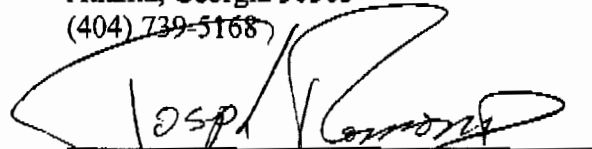
Respectfully Submitted,



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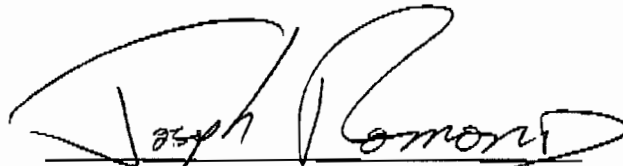


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Counsel for Jerry Jones

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion has been mailed to The Office of the District Attorney for Gordon County via first-class United States Postal Service this 13th day of October, 2006.



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I HAVE SPOKEN TO MY ~~ATTORNEYS~~ ^{BAAR-BEARDNAYS} AND
Clerk

THEY HAVE DISCUSSED THE ISSUES THAT WILL:

BE PRESENTED TO THE COURT ON OCTOBER

27, 2006.

IT IS MY PREFERENCE THAT THE HEARING

BE CONDUCTED IN MY ABSENCE. I WANT

TO WAIVE MY RIGHT TO BE PERSONALLY

PRESENT AT THE HEARING AND I AUTHORIZE

MY ATTORNEYS TO CONDUCT THE HEARING IN

MY ABSENCE.

NO ONE HAS OFFERED ME ANYTHING OR

PROMISED ME ANYTHING IN ORDER TO GET ME

P1/2



TO WAIVE MY RIGHT TO ATTEND IN
PERSON, NOR HAS ANYONE THREATENED ME
IN ANY WAY. I MAKE THIS DECISION
FREELY, VOLUNTARILY, AND OF MY OWN
FREE WILL.

I DO NOT WANT TO BE TRANSPORTED TO
GORDON COUNTY, NOR DO I WANT TO
ATTEND COURT. PLEASE HONOR THIS WAIVER.

SIGNED THIS 11TH DAY OF OCTOBER, 2006

9/2006