

DEATH PENALTY/LIFE WITHOUT PAROLE CASE
IN THE SUPERIOR COURT OF GORDON COUNTY
STATE OF GEORGIA

FILED
Clerk Superior Ct., Gordon County

MAY 19 2005

Brian Brannon
Clerk

Indictment No.16471

STATE OF GEORGIA,)
)
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)
)
v.)
)
JERRY WILLIAM JONES,)
)
_____)

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MOTION TO REQUIRE CONSTITUTIONAL INCARCERATION

JERRY WILLIAM JONES, through undersigned counsel, respectfully moves this Court, pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article I, § I, ¶¶ I, II, IV, V, VII, IX, X, XI, XII, XIII, XIV, XVI, XVII, XVIII, XXIV and XXVIII of the Constitution of the State of Georgia, 42 U.S.C. Section 1983, international law, as well as statutory and jurisprudential authorities cited below, and all other applicable constitutional, statutory, treaty, customary international law, evolving international standards, and jurisprudential authority to require his constitutional incarceration prior to and during the trial of this case.

In support of this motion, counsel states:

1

JERRY WILLIAM JONES is on trial for his life. The State, through the District Attorney, has announced its intention to kill Mr. Jones, a human being, by lethal injection.

2.

"The fundamental respect for humanity underlying the Eighth Amendment's prohibition

against cruel and unusual punishment gives rise to a special 'need for reliability in the determination that death is the appropriate punishment' in any capital case." Johnson v. Mississippi, 486 U.S. 578, 584 (1988) (citations omitted). It is well established that when a defendant's life is at stake, a court must be "particularly sensitive to insure that every safeguard is observed." Gregg v. Georgia, 428 U.S. 153, 187 (1976). The United States Supreme Court has repeatedly emphasized that because of the exceptional and irrevocable nature of the death penalty, "extraordinary measures" are required by the Eighth and Fourteenth Amendments to ensure the reliability of decisions regarding both guilt and punishment in a capital trial. Eddings v. Oklahoma, 455 U.S. 104, 118 (1982) (O'Connor, J., concurring). See also Monge v. California, 524 U.S. 721, 732 (1998); Johnson v. Mississippi, 486 U.S. 578, 584 (1988); Ford v. Wainwright 477 U.S. 399, 411 (1986); Spaziano v. Florida, 468 U.S. 447, 456 (1984); Strickland v. Washington, 466 U.S. 668, 704 (1984); California v. Ramos 463 U.S. 992, 998-99 (1983); Estelle v. Smith, 451 U.S. 454, 463 (1981); Beck v. Alabama, 447 U.S. 625, 637-38 (1980); Lockett v. Ohio, 438 U.S. 586, 604 (1978); and Gardner v. Florida, 430 U.S. 349, 357-58 (1977). As the Supreme Court has held:

[T]he penalty of death is qualitatively different from a sentence of imprisonment, however long. Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two. Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.

Woodson v. North Carolina, 428 U.S. 280, 305 (1976).

3.

The courts in this country have continually stressed the importance of a defendant taking an active role in his defense. For "the right to defend is given directly to the accused," not to his

attorney. Faretta v. California, 422 U.S. 806, 8 9-820 974). The Sixth Amendment grants the right to the assistance of counsel. See Gideon v. Wainwright, 372 U.S. 335 963. The Faretta Court spoke of this right as "the [grant] to the accused personally the right to make his defense. 422 U.S. at 819. The accused must remain "informed of the nature and cause of the accusation against him in order to have adequate defense. Id. (citations omitted). These conditions of incarceration impairing the defendant to remain informed, take active role in his defense, and receive effective assistance of counsel.

4.

Mr. Jones has ability to provide his counsel with legal materials in his case at the time that counsel visits him at Georgia State Prison at Reidsville. While Mr. Jones is allowed to have contact visits with his counsel, he is forbidden from providing counsel with written materials when counsel leaves the prison. Moreover at least one occasion, the materials that Mr. Jones sought to provide to his counsel were seized and read in the presence of counsel, by State Prison employee Lieutenant Sanders.

Mr. Jones is not able, under these circumstances, to assist undersigned counsel in the preparation of his case. Prisoners and inmates "have right of access to threshold level of legal information or aid. Lynott v. Henderson, 610 F.2d 340, 343 (5th Cir. 1980). Visitation by attorney is not enough to meet this level, and "visitation by attorney who...is unable to render legal assistance is not adequate. Portis v. Evans, 249 Ga. 396 398, 29 S.E.2d 982)

WHEREFORE, for the foregoing reasons and any others that may appear to this Court after hearing, counsel for Mr. Jones respectfully requests this Court enter order requiring that this

defendant be allowed to provide confidential legal materials to his counsel during the course of prison visits with counsel and that the privileged nature of such materials be respected.

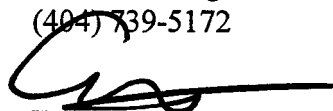
DATED this 19th day of May, 2008

Respectfully Submitted,

Respectfully Submitted,



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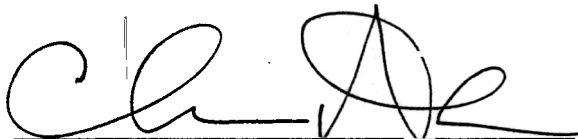


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Counsel for Jerrv Jones

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 19th day of May, 2005



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JERRY WILLIAM JONES,

ORDER

IT IS HEREBY ORDERED AND DECREED, that JERRY WILLIAM JONES shall be allowed to provide his counsel with written materials when counsel visits him. The privileged and confidential nature of said materials is to be maintained, and under no circumstance is any prison employee to be allowed to read or attempt to otherwise discern the nature of such materials.

SO ORDERED this day of _____, 20_____

The Honorable G. Carey Nelson
Chief Judge Superior Court Gordon County

Prepared by:
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E. Michelle Drake, State Bar No. 229202
Counsel for Jerry Jones