

ATTACHMENT 2

Execution Date: June 3, 2004

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MAY 20 2004

ATTORNEY
GENERAL'S
OFFICE

**IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2003**

DARYL KEITH HOLTON,

Petitioner,

v.

STATE OF TENNESSEE,

Respondent.

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Petitioner moves for leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*. In support of this motion, Petitioner states:

1. Petitioner is an inmate in the custody of the Tennessee Department of Corrections under sentence of death. The death sentence was recently affirmed on direct appeal by the Tennessee Supreme Court. *State v. Holton*, 126 S.W.3d 845 (Tenn. 2004).
2. Petitioner has previously been declared to be indigent and permitted to proceed *in forma pauperis* in the Tennessee Supreme Court, the Tennessee Court of Criminal Appeals, and the Circuit Court for Bedford County, Tennessee.
3. A copy of a Uniform Affidavit of Indigency executed by Petitioner on December 16, 1997

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CRIMINAL JUSTICE DIVISION

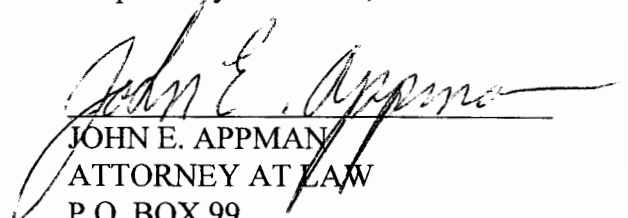
is attached to this motion. Petitioner asserts that the affidavit substantially complies with the requirements of the Rules of the United States Supreme Court, Rule 39. Petitioner's financial status has not altered since December 16, 1997 due to his continuous incarceration since that time. As recently as January 5, 2004, Petitioner was found to be indigent. *State v. Holton*, 126 S.W.3d at 869. Respondent did not contest that finding.

4. Petitioner has refused to meet with representatives of undersigned counsel who have attempted to visit Petitioner to speak with him and secure a more recent affidavit.

5. Since Petitioner has not communicated with undersigned counsel regarding this matter, undersigned counsel is filing this motion, as well as the Petition for Writ of Certiorari, pursuant to *Martinez v. Court of Appeal of California, Fourth Appellate District*, 528 U.S. 152, 120 S.Ct. 684, 145 L.Ed.2d 597 (2000).

Wherefore, Petitioner respectfully requests that this Court grant him leave to proceed *in forma pauperis* and any other relief the Court deems just.

Respectfully submitted,


JOHN E. APPMAN
ATTORNEY AT LAW
P.O. BOX 99
JAMESTOWN, TN 38556
(931) 879-7619

Counsel for Petitioner

CASE NO. 15278-115-605

15279
15280
15281

VS.
Daryl Keith Holton
Defendant

UNIFORM AFFIDAVIT OF INDIGENCY

Comes the defendant and, subject to the penalty of perjury, makes oath to the following facts (please list, circle, complete, etc.):

1. Full Name: Daryl Keith Holton
2. Social Security No.: 412-23-610
3. Any other names ever used: _____
4. Birthdate: 1-23-61
5. Telephone Nos.: (Home) _____ (Work) _____ (Other) _____
6. Names & ages of all dependents: None relationship _____
relationship _____
relationship _____
7. I have met with following lawyer(s), have attempted to hire said lawyer(s) to represent me, and have been unable to do so
Name _____
Address None _____
Phone No. _____
8. All my income from all sources (including, but not limited to wages, interest, gifts, AFDC, SSI, social security, retirement, disability, pension, unemployment, alimony, worker's compensation, etc.):
\$ _____ per _____ from _____
\$ None per _____ from _____
\$ _____ per _____ from _____
9. I (receive) (pay) child support in the amount of _____ per _____ by (voluntary payment) (court or (wage assignment).
10. All money available to me from any source:
A. Cash None
B. Checking, Saving, or CD Account(s)-give bank, acct. no., balance _____
C. Debt owed me None
D. Credit Card(s)-give acct. no., balance, credit limit, and type (Visa, Mastercard, American Express, etc.) None
E. Other _____
11. All vehicles/vessels owned by me, solely, or jointly, within the last six months (including but not limited to cars, trucks, motorcycles, farm equip, boats, etc.):
83 Buick value \$? amt. owed None
_____ value \$ _____ amt. owed _____
_____ value \$ _____ amt. owed _____
12. All real estate owned by me, solely, or jointly, within the last six months (including land, lots, houses, mobile homes, etc.):
None value \$ _____ amt. owed _____
_____ value \$ _____ amt. owed _____
13. All assets or property not already listed owned within the last six months or expected in the future:
None value \$ _____ amt. owed _____
_____ value \$ _____ amt. owed _____
14. The last income tax return I filed was for the year '93 and it reflected a net income of \$ 8000. I will provide a copy of same within 1 week if required.
15. I (am in custody unable to make bond) (am out on bond of \$ _____ made by _____). money to make bond, \$ _____ was paid by _____.
16. Acknowledging that I am still under oath, I certify that I have listed all assets in which I hold or expect to hold any legal equitable interest.
17. I am financially unable to obtain the assistance of a lawyer and request the court to appoint a lawyer for me.
18. I understand it is a Class A misdemeanor for which I can be sentenced to jail up to 11 months 29 days or be fined up to \$2500.00 or both if I intentionally or knowingly misrepresent, falsify, or withhold any information required in this affidavit. I also understand that I may be required by the Court to produce other information in support of my request for attorney.

THIS _____ DAY OF _____, 199 _____

Daryl Holton
DEFENDANT

CIRCUIT JUDGE

Jack Boman
SESSIONS JUDGE
12-16-97

DATE

14

DATE