

United States District Court
Southern District of Texas

ENTERED

December 10, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROBERT ALAN FRATTA,

Petitioner,

VS.

LORIE DAVIS,

Respondent.

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CIVIL ACTION NO. 4:13-CV-3438

ORDER

On September 18, 2017, this Court denied Robert Alan Fratta's federal petition for a writ of habeas corpus. (Docket Entry No. 80). Fratta is currently seeking appellate relief. Federal law guarantees an inmate sentenced to death representation by "one or more attorneys." 18 U.S.C. § 3599(a)(2). On December 4, 2013, this Court appointed Mr. James Rytting to represent Fratta. (Docket Entry No. 3). No other attorneys now represent him.

Fratta moves for the appointment of co-counsel. (Docket Entry Nos. 95, 96, 98). The Court **GRANTS** Fratta's motions and **APPOINTS** as co-counsel **Maureen Scott Franco**, Federal Public Defender - Western District of Texas, 504 Lavaca Street, Suite 960, Austin, TX 78701. **Tivon Schardl**, Supervisory Assistant Federal Public Defender for the Capital Habeas Unit (telephone 512-916-5035; email: *Tivon_Schardl@fd.org*), will be assigned this case and will be the attorney to be noticed.

Fratta has filed letters with the Court indicating that he would like Mr. Rytting to withdraw from representation. (Docket Nos. 99, 100). Under federal law, a capital habeas attorney "shall **represent** the [inmate] throughout every subsequent stage of available judicial proceedings" unless removed by the Court "upon the attorney's own motion or upon motion of the defendant" 18 U.S.C. § 3599(2)(e). A court may only substitute counsel for capital

inmates when “in the interests of justice.” *Martel v. Clair*, 565 U.S. 648, 659-60 (2012). This is not the first time that Fratta has complained about his attorneys’ representation. The Court has previously found that removing Mr. Rytting would not be in the interests of justice. (Docket Entry Nos. 13, 27). Nothing in Fratta’s recent letters suggests that the circumstances have changed or that Mr. Rytting cannot competently represent him. Mr. Rytting will continue to serve as lead counsel throughout the course of federal proceedings.

SIGNED at Houston, Texas this 10th day of December, 2018.



ANDREW S. HANEN
UNITED STATES DISTRICT JUDGE