

ENTERED
NOV 17 2008
FRANKLIN CIRCUIT COURT
SALLY JUMP, CLERK

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II
CASE NO. 07-CI-01523

MARCO ALLEN CHAPMAN

PETITIONER

AND

COMMONWEALTH OF KENTUCKY
by and through
JACK CONWAY, ATTORNEY GENERAL

INTERVENING PETITIONER

V.

ORDER

KENTUCKY DEPARTMENT OF PUBLIC ADVOCACY;
ERNE LEWIS, PUBLIC ADVOCATE;
JOHN ANTHONY PALOMBI, ASSISTANT PUBLIC ADVOCATE AND,
ALL OTHER EMPLOYEES AND AGENTS THEREOF

RESPONDENTS

This matter is before this Court upon the **“PETITION FOR THE DECLARATION OF RIGHTS TO PROHIBIT THE STATE, THE DEPARTMENT OF PUBLIC ADVOCACY, THE PUBLIC ADVOCATE ERNE LEWIS AND ANY OTHER OF ITS EMPLOYEES OR AGENTS FROM PURSING(PURSUIING) APPEALS ON BEHALF OF THE PETITIONER AGAINST HIS WILL.”¹**

The Petitioner, now scheduled for execution by the Commonwealth of Kentucky, asks this Court for a Declaration of Rights prohibiting the Department of Public Advocacy or any of its employees or agents from filing **“undesired appeals or other legal actions in the petitioner’s name.”²**

¹Petition, Chapman v. Pubic Advocacy, Case No. 07-CI-01523, Franklin Circuit Court, filed Sept. 20, 2007.

² Id.

On October 10, 2008, this Court Ordered the Petitioner to undergo a competency evaluation by a psychiatrist selected by the Court from a list of 4 names submitted by Anthony Palombi, Assistant Public Advocate, and the Petitioner in an "Agreed Motion for Modification and Clarification of Order." This evaluation was to determine the Petitioner's competence to direct his attorneys to cease legal actions on his behalf, thus removing any legal impediments to his eventual execution by the Commonwealth of Kentucky.

The Attorney General was allowed to intervene in this case by Order entered November 10, 2008, after a hearing conducted on the Motion on November 7, 2008. At this hearing, the Court was also informed that the competency evaluation had been completed and a hearing was set, with counsels' and the Petitioner's concurrence, for November 14, 2008, to determine the Petitioner's competence to make the decisions he has requested in this action.

A hearing was conducted on November 14, 2008, as scheduled by the Court. Present at the hearing were counsel for the Kentucky Department of Public Advocacy and the Attorney General of Kentucky. The Petitioner, Marco Chapman, participated by telephone.

The Court heard testimony from a medical expert, Michael R. Harris, MD, and the Petitioner, Marco Chapman. The Court also admitted into evidence as Exhibit 1 the psychiatric report concerning the Petitioner's competence. Dr. Harris testified that Mr. Chapman is competent to decide that he does not want further legal actions taken on his behalf. The Petitioner, Marco Chapman, testified that he is competent to make his own decision and that he does not suffer from any mental condition that impairs his ability to appreciate his legal situation.

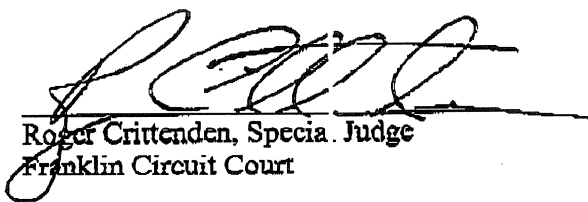
The Court, after considering the evidence and hearing the arguments of the parties, finds as follows:

1. The Petitioner, Marco Chapman, has the capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation on his behalf; and
2. The Petitioner, Marco Chapman, is not suffering from a mental disease, disorder or defect which substantially affects his capacity to decide to forego further legal proceedings on his behalf; and
3. There is no evidence of any mental condition present in the Petitioner that impairs his ability or shows a lack of capacity to appreciate his present legal situation; and
4. The Petitioner, Marco Chapman, appreciates the legal consequences of the actions he requests; and
5. The Petitioner, Marco Chapman, is capable of making decisions concerning his own defense and legal representation; and
6. The Petitioner, Marco Chapman, is competent for purposes of entering this Order.

This Court **ORDERS** that the Kentucky Department of Public Advocacy, John Palombi, The Public Advocate, and any agents or employees of the Department of Public Advocacy are prohibited from filing, in the Petitioner's name, undesired appeals or other legal actions, direct or collateral, attacking the Petitioner's conviction and sentence.

This is a **FINAL AND APPEALABLE JUDGMENT**.

So **ORDERED** this 17th Day of November, 2008.


Roger Crittenden, Special Judge
Franklin Circuit Court

Clerk's Distribution:

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