

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

**DARYL KEITH HOLTON,**            )  
  )  
    Petitioner-Appellant        )  
  )  
**v.**                                    )  
  )  
**RICKY BELL,** Warden,         )  
  )  
    Respondent-Appellee        )

Case No. 06-\_\_\_\_\_  
**DEATH PENALTY CASE**  
EXECUTION DATE:  
September 19, 2006

**MOTION TO PROCEED *IN FORMA PAUPERIS***

Now comes Federal Defenders Services of Eastern Tennessee, Inc., (FDSET), and respectfully requests that this Court grant leave to proceed in his appeal to the Sixth Circuit Court of Appeals *in forma pauperis* in the above-styled proceeding. In support thereof, the undersigned states as follows:

1. FDSET was appointed by the district court to litigate issues of Holton's competency to proceed.
2. Although Holton has not signed any Affidavits of indigency for purposes of federal court litigation, he was found to be indigent at his trial and counsel was appointed. Holton has also been represented by court-appointed counsel since his conviction and undersigned believes that he continues to be indigent while on death row.
3. The district court granted a certificate of appealability (COA) "as to

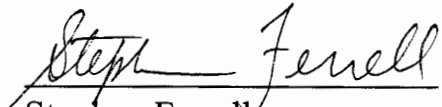
the Court's finding that the Federal Defender Services has failed to demonstrate, under the standard established in *Harper v. Parker*, 177 F.3d 567, 572 (6<sup>th</sup> Cir. 1999), reasonable cause to believe that Mr. Holton is not competent to make a rational decision to dismiss his pending federal habeas corpus petition." (R. 46).

4. Under the authority of *Harper* and *Pate v. Robinson*, 383 U.S. 375 (1966), once Holton's competence was put in issue, Holton cannot waive his right to have his competence determined.
5. FDSET is the only entity available to pursue an appeal of the district court's judgment.

WHEREFORE, FDSET respectfully requests that this Court grant leave to proceed with this appeal in forma pauperis.

Respectfully submitted,

FEDERAL DEFENDER SERVICES  
OF EASTERN TENNESSEE, INC.

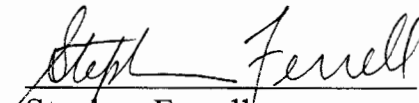
BY:   
Stephen Ferrell  
Asst. Federal Community Defender  
530 S. Gay Street, Suite 900  
Knoxville, TN 37902  
(865) 637-7979

CERTIFICATE OF SERVICE

I, Stephen A. Ferrell, hereby certify that a true and correct copy of the foregoing document was sent via overnight mail to:

Jennifer L. Smith, Esq.  
Office of Attorney General and Reporter  
Criminal Justice Division  
P.O. Box 20207  
Nashville, TN 37202

this the 12<sup>th</sup> day of September, 2006.

  
Stephen Ferrell