

## APPENDIX 1

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**

JAN - 9 2007

**LEONARD GREEN, Clerk**

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

ORDER

Before: MERRITT, GIBBONS, and GRIFFIN, Circuit Judges.

Federal Defender Services (FDS) brought this appeal in the name of Daryl Keith Holton, a Tennessee prisoner under sentence of death. The district court found that FDS failed to demonstrate reasonable cause to believe that Holton was not competent to dismiss the federal habeas corpus petition filed by FDS, and dismissed the petition as unauthorized. The district court issued a certificate of appealability as to that issue, and FDS moved this court to expand the certificate of appealability. Holton has responded to this court's directives and filed letters pro se indicating that he does not wish to pursue this appeal or the expansion of the certificate of appealability.

Upon review, we affirm the district court's dismissal of the petition as unauthorized and deny FDS's motion to expand the certificate of appealability.

ENTERED BY ORDER OF THE COURT

  
 \_\_\_\_\_  
 Clerk

## APPENDIX 2

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE, TENNESSEE

Daryl Keith Holton, :  
 :  
 : Petitioner, :  
 : Case No. 1:05-cv-202  
vs. :  
 : Motions Hearing  
Warden Ricky Bell, :  
 :  
 : Respondent. :

Transcript of proceedings before the Hon. Thomas W. Phillips, U. S.  
District Judge, and the Hon. H. Bruce Guyton, U. S. Magistrate Judge, on  
July 31<sup>st</sup>, 2006.

Appearances:

On behalf of the Petitioner:

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Federal Defender Services, Inc.  
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On behalf of the Respondent:

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1 JUDGE GUYTON: No, I don't.

2 THE COURT: Ms. Smith, you wish to put on some  
3 evidence, do you?

4 MS. SMITH: I do, your Honor. We actually wish to call  
5 Mr. Holton.

6 THE COURT: Okay. Mr. Holton, if you would please  
7 stand to be sworn.

8 COURTROOM DEPUTY: Do you solemnly swear that  
9 the testimony that you will give in the matter before the Court today  
10 will be the truth, the whole truth, and nothing but the truth, so help  
11 you God?

12 MR. HOLTON: Yes, I do.

13 THE COURT: Let's let him just testify where he is, Ms.  
14 Smith, rather than having him come to the witness seat.

15 MS. SMITH: All right, your Honor.

16 THE COURT: Just have a seat, Mr. Holton. Yes, please,  
17 if you would, push the microphone over in front of him so we can all  
18 hear him clearly.

19 DIRECT EXAMINATION

20 by Ms. Smith:

21 Q. Would you state your name for the record, please?

22 A. Daryl Keith Holton.

23 Q. Thank you, Mr. Holton. I'd like to hand you a document and  
24 see if you can identify this document.

25 MR. FERRELL: Your Honor, if I may just real quickly,

1 I'd be willing to stipulate that this letter was written by Mr. Holton.

2 I have no reason to believe that it wasn't, and, in fact—

3 THE COURT: Let's let Mr. Holton answer the question.

4 MR. FERRELL: Okay.

5 Q. Mr. Holton, can you identify the document, please?

6 A. The parts that I can see do appear to be my handwriting, and it  
7 does appear to be the letter that I wrote.

8 Q. Sir, you can take it out of the covering. It's just a protective  
9 covering—

10 A. Just trying to be cautious.

11 Q. —and Mr. Ferrell can assist you with that.

12 A. It does appear to be the letter that I wrote.

13 Q. What is the date of that letter, please, sir?

14 A. It would be the 9<sup>th</sup> of— rather the 19<sup>th</sup>, excuse me, of October of  
15 2005.

16 Q. And your signature does appear at the end of the letter?

17 A. It does.

18 Q. I'd ask, if you would, just to glance through the contents of the  
19 letter and to tell whether or not the contents remain true and  
20 accurate to the best of your information and belief. Can you read  
21 through that letter and—

22 A. I did glance through it and they do— they are the same.

23 Q. Okay. There's nothing materially changed from today from  
24 when you wrote that letter—

25 A. No.

1 Q. –in terms of the facts? Okay. When was the last visit that you  
2 received from Ernest Holton?

3 A. It would be the 6<sup>th</sup> of June in 2004.

4 Q. Okay. Is Mr. Ernest Holton currently on your approved list of  
5 visitors at Riverbend Maximum Security Institution?

6 A. There are two ways to answer that question. Someone who has  
7 an approved visitation application will be on a list. However, if it's  
8 not renewed within a certain period of time, I think, at last count,  
9 was every three years, then they remain on the list, but they're not  
10 allowed to visit.

11 Q. Is Mr. Ernest Holton currently authorized to visit you at  
12 Riverbend Maximum Security Institution?

13 A. Not to my knowledge, no.

14 Q. Have you received any other contact from Mr. Ernest Holton,  
15 either by telephone or letter, since June of 2004?

16 A. His wife, who had recently died in December of 2005, had sent  
17 me a money order for Christmas, and I believe that he was the one  
18 that wrote the salutation on the card.

19 Q. Okay.

20 A. I don't believe she was able to write that. It appeared to be his  
21 handwriting.

22 Q. And do you recall the date of that?

23 A. That would have been, I believe, the third week of December,  
24 2005.

25 Q. 2005. Have you had any other contact– and you don't need to



1 name them, but have you had any other visits from other family  
2 members?

3 A. Yes.

4 Q. In the last year, since last summer, for example?

5 A. Yes.

6 Q. Okay. How many visits have you had from your mother, for  
7 example?

8 A. I believe it's a little-- a little more than once a month.

9 Q. So once a month you receive a visit from her?

10 A. At least.

11 Q. Okay. Any other family members visit you on a regular basis?

12 A. Yes.

13 Q. Okay. Mr. Holton, do you understand that you stand convicted  
14 of four counts of first-degree murder?

15 A. Yes, I do.

16 Q. Do you understand that you received as part of the state court  
17 judgment a sentence of death on each one of those convictions?

18 A. Yes, I do.

19 Q. Okay. Do you understand that at least until the running of your  
20 federal statute of limitations back in October of 2005 you had the  
21 option to come into federal court and challenge your state court  
22 convictions through the federal habeas corpus process?

23 A. I was very aware of that.

24 Q. Okay. Did you make any decisions up before the running of  
25 the statute of limitations regarding whether you intended to seek

1 habeas review with regard to your convictions?

2 A. I did.

3 Q. And what decisions did you make?

4 A. I decided that I wanted to procedurally default any previously  
5 determined issues raised in my direct appeal, and I certainly didn't  
6 want any of the issues presented in my state post conviction, the  
7 putative petition, to be raised in a habeas petition, federal habeas  
8 petition, on my behalf.

9 Q. Did you wish to present any issues to the federal court with  
10 regard to your convictions and sentence?

11 A. Not at this time, no.

12 Q. Do you understand that by making such a decision you could  
13 be executed by the State of Tennessee without the benefit of federal  
14 review of potentially meritorious claims for relief?

15 A. I'm not being sarcastic. I would be aware of that if I was aware  
16 of any potentially meritorious issues. But, yes, I do, I am aware that  
17 this could result in my execution.

18 Q. Okay. So you've made your decision— or have you made your  
19 decision with full knowledge of your right to have federal review?

20 A. It's an ongoing process, but, yes, so far.

21 Q. Okay.

22 A. Once again, I'm— may I elaborate?

23 THE COURT: You may. Go right ahead.

24 A. I don't believe this is the last shot. Mr. Ferrell, his intentions  
25 are generally characterized as well-intentioned. But I don't think

1 that his petition is the last chance or last resort. There are a number  
2 of options, state options, left. I can name those. I believe there's  
3 even one federal option left.

4 Additionally, there is always the option of presenting a claim,  
5 a theoretical claim, that would be entitled to equitable tolling. I'm  
6 not saying I have such a claim; I'm just saying that the option exists.

7 As far as state options, those are probably not relevant to this  
8 proceeding, but they are a petition for a writ of error coram nobis;  
9 in other words, if I had some type of new evidence that might entitle  
10 me to a new trial I might be able to petition that. I'm not  
11 commenting on the likelihood that I will do that or the pos- you  
12 know, the probability of success.

13 There is also the option for a petition for state habeas corpus  
14 relief. That would be matters strictly limited to the record.  
15 Executive clemency, there is that avenue of relief, petition for  
16 executive clemency both at the state level and on the federal level.  
17 Once again, I'm not saying that that's what I'm going to do. I'm  
18 just stating that I am aware of those options.

19 As far as the matter, I believe, that's before the Court today, a  
20 federal habeas petition, at this time I don't wish to have this petition  
21 pursued on my behalf, and I'm aware of the option to do that.

22 Q. It has been suggested in this proceeding that you are not able  
23 to make a rational choice because- due to a diagnosis of depression.  
24 Can you explain to the Court your reasons for choosing to forego  
25 federal habeas corpus at this time?

1 A. Well, number one, I don't— I don't think that any of the issues  
2 presented in the state post conviction petition nor the state direct  
3 appeal represented my position, and generally those will be the only  
4 issues that would be available to be raised in the federal habeas  
5 petition, at least to my understanding. None of them represent my  
6 position at all. I would not— It's been my aim to procedurally  
7 default those.

8 Furthermore, likelihood is, I'm not going to file any further  
9 action. I'm satisfied with the finding of the state court's jury and  
10 the sentences of death. I believe that the death sentence is  
11 appropriate for the crime which I was convicted. I just don't have a  
12 problem with it.

13 We could continue in the court or judicial process for a number  
14 of years and still arrive at the same result. I don't see that it's  
15 necessary. If I come up with anything new, I wouldn't hesitate to  
16 put it in a petition and send it to the Court, but I don't have that  
17 right now.

18 I'm not going to waste the Court's time with frivolous issues.  
19 Like it or not, you can have four convictions of first-degree murder  
20 and four death sentences and still have some scruples. I just happen  
21 to think I do.

22 MS. SMITH: Thank you. I don't have any further  
23 questions, your Honor.

24 THE COURT: Thank you, Ms. Smith. Any questions,  
25 Mr. Ferrell?

1 MS. SMITH: Well, actually, I'm sorry, your Honor, I  
2 forgot to move to admit into evidence the original letter with the  
3 envelope that Mr. Holton identified. If I could, I'd like to move that  
4 into evidence, please, your Honor.

5 THE COURT: It will be received and made a part of the  
6 record in this case.

7 MS. SMITH: Thank you.

8 (Respondent's Exhibit No. 1 received.)

9 THE COURT: Mr. Ferrell, do you have any questions?

10 MR. FERRELL: No, your Honor, at this time I don't  
11 have any questions.

12 EXAMINATION BY THE COURT

13 by Judge Phillips:

14 Q. Mr. Holton, how old are you, please?

15 A. Sir, I'm 44.

16 Q. And when is your birth date?

17 A. The 23<sup>rd</sup> of November, 1961.

18 Q. How far did you go in school, Mr. Holton?

19 A. I've got about 60 credit hours in college, no degree, no major.

20 Q. You mentioned that you had several options. You do realize,  
21 of course, that your execution date is September the 19<sup>th</sup> of this  
22 year, 2006?

23 A. Yes, sir.

24 Q. That's not a lot of time to pursue those options that you have  
25 enumerated, even if you decided you wanted to do that. Do you

1 understand that what you are facing is your execution? Do you  
2 understand that?

3 A. I'm aware of that, yes, sir.

4 Q. Do you understand further that this court would like to make  
5 sure that you are competent to comprehend that decision before the  
6 execution— before the state goes forward with the execution? Do  
7 you understand that?

8 A. I'm getting that impression, yes, sir.

9 Q. Well, do you have an objection to being examined by a  
10 psychiatrist or a psychologist to determine if you are mentally  
11 competent to rationally make the decision to end your own life?

12 A. Yes, sir, I do.

13 THE COURT: Judge Guyton, do you have any questions  
14 of Mr. Holton?

15 JUDGE GUYTON: No.

16 THE COURT: Thank you, Mr. Holton. Do you have  
17 other evidence you'd like to present, Ms. Smith?

18 MS. SMITH: Nothing further, your Honor.

19 THE COURT: Mr. Ferrell, do you wish to present any  
20 evidence?

21 MR. FERRELL: Not at this time, your Honor, no, other  
22 than what was attached to our pleadings.

23 THE COURT: Okay. Ladies and gentlemen, we'll take  
24 a 15-minute recess, and we'll reconvene at ten o'clock.

25 (Recess had at 9:44 a.m. and Court reconvened 10:27 a.m.)

## APPENDIX 3

Associate Deputy Attorney General Smith,

19 Oct 05

Despite the unorthodox appearance of a communication by a death-sentenced inmate to the State Attorney General's office, I find it necessary to write to you. As you should already know, attorneys Stephen Ferrell and Donald Dawson of FDSET and PCDO, respectively, have involved me in adversarial proceedings with the State against my wishes. My position is that they are denying me closure in this matter. My difficulty lies in approaching the various courts' jurisdiction(s) without invoking it (them). On 10 Oct 05 I mailed Mr. Dawson a letter notifying him of my intent to write your office and that it would be a matter of your discretion as to whether you disclosed the content.

On 12 Oct 05 he received that letter.

On 29 Sep 05, I wrote Mr. Ferrell directing him to not file a federal habeas petition on my behalf. He received that letter on 03 Oct 05 which was the last day of the period afforded me by the federal statute of limitations. I did not and do not authorize the filing of a federal habeas petition on my behalf.

On 05 May 05, Ernest Holton executed an affidavit for Mr. Ferrell in order to proceed as my 'next-best-friend'. Aside from the extraordinary proposal that the grandfather of the victims be permitted to proceed as a next-best-friend, the affidavit contains 2 perjured grounds of support. The first being the purported general power of attorney. I executed a specific power of attorney to allow Ernest Holton to sell a car. The attorney who prepared it could verify this.



At present he is the Assistant District Attorney General for Bedford County. His name is Mike Randles. Additionally, the head jailer Cpt Dan Brooks witnessed my signing, and my initial refusal to make it a general power of attorney.

Secondly, Ernest Holton last visited me on 06 Jun 04. He curtailed the visit in anger. His visitation application has since expired and he has not renewed it, I have not refused any visits with Ernest Holton.

As you know, the Circuit Court for Bedford County issued the 29 Jun 05 order directing me to meet with PCDO and Dr. Kenner for the limited purpose of discussing my 'legal status and options.' Dr. Kenner has been present with the PCDO on one visit on 25 Aug 05. He was to return the next week, He did not.

On 05 Oct 05, I was informed by the prison staff that a Dr. George Woods was here to see me. My first question to him was "who sent you?" He told me the PCD had asked him to speak with me. On my way back to my cell, I learned Dr. Woods meets with inmates on both federal and state collateral review. The PCDO came an hour later and stated Mr. Ferrell had asked that they introduce Dr. Woods to me.

07 Oct 05, Dr. Woods came again. He characterized his indiscretion as a mere mistake. He stated he was a neuro-psychiatrist and his intent was to perform what is ostensibly a forensic psychiatric examination. At the risk of a kettle calling the pots black, there is something about these boys that 'ain't quite right.'

I think there is a major difference between discussing one's 'legal status and options' and a forensic evaluation. I understand the nature of ex parte proceedings, however

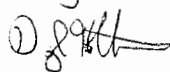
I do not believe that the purpose of such a pleading is meant to allow the circumvention of a ruling by the Tennessee State Supreme Court (i.e., the Zagorski ruling) and therefore provide an avenue to obtain so-called mitigation evidence against the wishes of an unwilling client.

It is my personal belief that this attempt was outside the bounds of the 29 Jun 05 order of the Circuit Court.

I apologize if I have wasted your time. I see I no longer enjoy service of process from your office by mail. I received your 07 Oct 05 filing (doc. #13) in the federal matter on 14 Oct 05, from Mr. Ferrell. Given the belated receipt, I cannot say this is an improvement.

I don't think there was anything improper about this correspondence and understand that you may choose to disclose it to the court(s).

Thank you for your time.

Daryl Holton  


## APPENDIX 4

1                    IN THE UNITED STATES DISTRICT COURT  
2                    FOR THE EASTERN DISTRICT OF TENNESSEE  
3                    NORTHERN DIVISION, AT KNOXVILLE, TENNESSEE

4 Daryl Keith Holton,                    :

5    :  
6    :

7 Vs.     : CV

8 Ricky Bell,     : 1:05:202

9    :  
10    :

11    :  
12    :  
13    :

14 APPEARANCES:

15 ON BEHALF OF THE PLAINTIFF:

16 Jennifer L. Smith  
17 Amy Tarkington  
18 Assistants State Attorney General

19 ON BEHALF OF THE DEFENDANT:

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1 pleasant, appropriate, respectful model prisoner,  
2 someone who takes full advantage of opportunities to  
3 exercise, listens to the radio, talks appropriately.  
4 There are no, there is no evidence or external evidence  
5 of any mental health problems. There is no objective  
6 evidence I could find that would suggest a mental  
7 disorder or defect in terms of those sorts of  
8 observations.

9 I did do an MMPI-2 and it is not suggestive of  
00:18:58 10 the kind of mental disorder or defect that rises to a  
11 level of any question of his rational process. I do  
12 believe that there is a previous and credible history of  
13 depression and a previous and credible history of drug  
14 abuse, arguably, dependency.

15 At present I find nothing in my interviews of  
16 Mr. Holton to suggest that he does not have a rational  
17 process. Would another individual make the same choices  
18 as he? You know, arguably, yes. Are his choices  
19 consistent with his rational process? Yes. He was  
00:20:04 20 questioned extensively about this in the trial  
21 transcript November 19, 1999, and January 14, 2000, by  
22 the court and he more than holds his own in terms of his  
23 knowledge of the legal process. I don't anticipate  
24 there would be any disagreement that he is someone who,  
25 you know, has a very strong knowledge base.

1           In talking to him about how he views his  
2 situation, I could find no evidence of psychopathology,  
3 unusual thinking, you know, the sort of, you know, rigid  
4 and variant process that is associated with some mental  
5 disorders. My opinion which I gave is that I could find  
6 nothing to challenge his competence, in fact, I found  
7 much that underline his capacity as quite competent.

8           Q. Dr. Seidner, if you would, please, based upon  
9 your background, training and education, considering the  
00:21:42 10 information that you have reviewed in preparation for  
11 interviewing Mr. Holton and in view of your actual  
12 interview of him and testing of him would you relate  
13 within a reasonable degree of psychological certainty  
14 your findings as to the three questions presented to you  
15 by the court.

16           A. The first question was whether Mr. Holton  
17 suffers from mental disease, disorder or defect. It is  
18 my opinion that Mr. Holton does not currently present  
19 with a mental disease, disorder or defect. For example,  
00:22:26 20 he does not currently present with depression or  
21 symptoms of PTSD. While I do believe he is credibly  
22 diagnosed with a personality disorder at present, this  
23 does not rise to the threshold of the meaning of mental  
24 disease, disorder or defect relevant to issues of  
25 competence.

1 Two, whether a mental disease, disorder or  
2 defect prevents Mr. Holton from understanding his legal  
3 position and the options available to him. It is my  
4 opinion that there is no condition that affects  
5 Mr. Holton's competence. He is fully competent and  
6 especially informed about his legal position and the  
7 options available to him.

00:23:10

8 The third question, whether a mental disease,  
9 disorder or defect prevents Mr. Holton from making a  
10 rational choice among his options. It is my opinion  
11 that Mr. Holton is fully rational. He is especially  
12 informed of his legal options. He is especially aware  
13 of the consequences of his legal options. He has no  
14 unusual beliefs about death and fully understands the  
15 legal reasons for and consequences of his execution and  
16 death. He is not overborne by guilt, delusion or  
17 irrational thinking. He is not a "death row volunteer."  
18 His adjustment to death row has been as good as one  
19 could expect.

00:23:46

20 THE COURT: Thank you, Dr. Seidner. Your  
21 report will be received and made a part of the record in  
22 this case. I guess we probably need to since it is a  
23 psychological evaluation, place it in the record under  
24 seal.

25 (Psychological report filed under



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1 decision.

2 Now, Mr. Holton, you understand that this  
3 is a proceeding that could result in this court issuing  
4 a stay of your execution, and your execution is  
5 scheduled for September the 19th of this month. You  
6 understand that, is that correct, sir?

7 MR. HOLTON: Yes, sir.

8 THE COURT: Well, Mr. Holton, if this were  
9 a run-of-the-mill criminal case, there would be no  
02:03:18 10 question but that you are competent. You're oriented as  
11 to time and place, you know the nature of the  
12 proceedings that you are involved in, you have been able  
13 to follow those proceedings and you understand the  
14 issues involved. Your prior testimony to the court and  
15 in response to questioning by the counsel of the State  
16 of Tennessee at our hearing on July the 31st leads the  
17 court to the conclusion that you are quite intelligent,  
18 articulate and capable of fully understanding your  
19 position. I think you have the ability to assist your  
02:03:52 20 attorney in your own defense, if you chose to do so.

21 This is not the run-of-the-mill case. It  
22 is a death case. My focus has to be on whether or not  
23 you have the capacity to make a rational choice to do  
24 what you are asking to do. The question is not whether  
25 I or anyone else would make the same choice, it is

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1 whether you have the ability to make that choice.

2 The burden is on Mr. Ferrell to show that  
3 there is some reason to doubt your competence and to  
4 doubt that you have the capacity to make this decision.  
5 The evidence must be sufficient to raise a serious doubt  
6 or give reasonable cause to believe that you are  
7 incompetent.

8 The only evidence in the record to suggest  
9 that you are incompetent is an affidavit of Dr. George  
02:04:36 10 W. Woods, Jr. and an addendum to that affidavit that has  
11 been filed here today, who performed a preliminary  
12 neuropsychiatric evaluation of you at Mr. Ferrell's  
13 request, and who gives his preliminary opinion that you  
14 may be suffering from a mental disease or defect  
15 rendering you mentally incompetent. Dr. Woods'  
16 suggestion of incompetence does not, however, in my  
17 mind, give rise to a reasonable doubt that you are  
18 competent today, particularly in light of the testimony  
19 of Dr. Seidner and your own testimony today and your own  
02:05:12 20 testimony in the previous hearing on July the 31st,  
21 2005.

22 In fact, the record reveals that, with the  
23 exception of Dr. Woods, every psychiatrist and  
24 psychologist who has examined you as to your competence  
25 to stand trial, your competence to waive your right to

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1 pursue a direct appeal of your conviction and sentence  
2 and your competence not to pursue federal habeas corpus  
3 relief has found you to be competent.

4           According to the psychological evaluation  
5 by Dr. Seidner, after meeting with you for a total of  
6 approximately nine hours, reviewing all of your medical  
7 and prison records and administering appropriate  
8 psychological tests, it is the finding of Dr. Seidner  
9 that you do not currently present with a mental disease,  
10 disorder or defect, you do not currently present with  
11 depression or symptoms of post traumatic stress disorder  
12 and while you have been credibly been diagnosed with a  
13 personality disorder, such disorder does not rise to the  
14 threshold of the meaning of mental disease, disorder or  
15 defect relevant to issues of competency.

16           In addition, Dr. Seidner has found that  
17 there is no condition that affects your competence, you  
18 are fully competent and especially informed about your  
19 legal position and the options available to you.

20 Dr. Seidner found that you are fully rational,  
21 especially informed of your legal options, especially  
22 aware of the consequences of your legal options and have  
23 no unusual beliefs about death and fully understand the  
24 legal reasons for and consequences of your execution and  
25 death. You are not overborne by guilt, delusion or

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1 irrational thinking.

2 Dr. Seidner opines that you are not a  
3 "death row volunteer" and has suggested that you are  
4 contemplating your legal options once unencumbered by  
5 what you describe to Dr. Seidner as uninvited and  
6 unwanted action of the Federal Defender Services.  
7 Consequently, Dr. Seidner finds you fully competent to  
8 waive your appeal for habeas review.

9 In addition, I have seen and heard you  
02:07:25 10 testify, I have seen and heard you explain your thought  
11 processes and the basis for your decisions. I don't  
12 think anybody in this courtroom who has seen or heard  
13 your testimony could doubt that you have the ability to  
14 reason and to think rationally. There may be those who  
15 disagree with your decision, but it is not up to them to  
16 make the decision for you. It is your decision and  
17 yours alone to make.

18 The court finds that there is no  
19 reasonable cause to believe that Mr. Holton is not  
02:07:54 20 competent to choose not to seek federal habeas review of  
21 his death sentence. There is thus no reason to have a  
22 full competency hearing on Mr. Holton's competence.  
23 Consequently, Mr. Holton, I find there is no indication  
24 that you are presently suffering from any mental  
25 disease, defect or disorder which substantially affects

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1 your ability to make decisions on your own behalf.

2 Based upon your own stated desire to not pursue a habeas  
3 corpus petition, I am going to dismiss the petition.

4 Accordingly, the respondent's motion to  
5 dismiss the petition for writ of habeas corpus shall be  
6 granted. All other pending motions will be denied as  
7 moot.

8 The court will make as a part of the  
9 record of these proceeding and Dr. Seidner's testimony  
02:09:44 10 the transcript of hearing conducted on November 19,  
11 1999, and January 14, 2000, and the order of Judge  
12 Charles Lee, the circuit judge who heard the defendant's  
13 original -- who heard Mr. Holton's original case, as  
14 well as the findings of Dr. Seidner, his report will be  
15 made as a part of the record of this case as well and  
16 placed under seal.

17 (Exhibit No. 3 was received in  
18 evidence.)

19 THE COURT: There was one other item,  
02:09:16 20 Ms. Smith.

21 MS. SMITH: The current CV, Your Honor.

22 THE COURT: Yes, the current CV of  
23 Dr. Seidner.

24 Anything further we need to take up at  
25 this time on behalf of defendant, Mr. Ferrell?