

IN THE LONOKE COUNTY CIRCUIT COURT OF ARKANSAS

HEATH STOCKS

PETITIONER

VS

CASE NO. 97-9

STATE OF ARKANSAS

RESPONDENT

PETITIONER'S SECOND REPLY TO THE STATE'S RESPONSE TO THE  
PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL.

Comes now, Heath Stocks, the petitioner herein, and pro se, for his Second Reply to the State's Response to the Motion for Appointment of Counsel, does so state;

FACTS

1. The petitioner Heath Stocks filed his motion for the issuance of the writ of error coram nobis on September 20, 2017 and subsequently amended this petition on September 29, 2017 to include that Stocks was further moving for this court to consider the issuance of the writ of audita querela and other relief based upon the facts in the petition. Stocks additionally filed a motion for appointment of counsel.
2. On October 27, 2017 the State filed an ambiguous response asking this court to dismiss the writ of error coram nobis and the writ of audita querela without conducting a hearing. In essence the State is asking this court to grant summary judgment for failure to state facts upon which relief can be granted.
3. On October 27, 2017 the State filed a response to Stocks Motion for Appointment of Counsel.

4. The Respondent has filed a Petition to Seal in this case, of which it would take professional legal assistance to insure Stocks's rights to Due Process of Law and Equal Protection to be able to use the seal documents.

5. Stocks has made an irrefutable substantial showing that he is entitled to relief, and the merits of his pleading requires an evidentiary hearing, and the State has admitted in the Response (page 1; paragraph (4) ); "...counsel should be appointed for the hearing."

6. This is an admission by the State of the need for counsel and it would be in the best interests of this Court to appointment counsel for Stocks.

7. Stocks moved that this Court to appoint Attorney J. Thomas Sullivan to represent him in this Court.

8. The State filed a response on November 22, 2017

9. The State is arguing that there is no constitutional right to an attorney in post-conviction proceedings and relies heavily on *Viveros v State*, 372 Ark. 463 (2008). The ruling in *Viveros* those not overwhelm clearly established federal law that the United States Supreme Court has ruled on in *Martinez v Ryan*, 566 U. S. 1, 132 S. Ct. 1309, 182 L. Ed. 2d 272 (2012). The U. S. Supreme Court has ruled that in an initial-review collateral proceedings that if there was no counsel or that the counsel is ineffective, it would not bar a federal court from hearing otherwise procedurally defaulted claims. Stocks is entitled to counsel and effective assistance of counsel in these proceedings because it is the first place to raise his claims of prosecutorial misconduct and is not time-barred.

10. Failure to appoint counsel in these proceedings would violate *Strickland v Washington*, 466 U. S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674. Stocks is entitled to effective assistance of counsel during all stages of a criminal prosecution. *Michigan v Jackson*, 475 U. S. 625 (1986).

11. The State's errant response fails because it is a lackluster attempt to prevent Stocks from having a professional attorney from utilizing discovery procedures and trial experience in bringing forth information that the State has filed a motion to have this Court seal. It is in the sealed exculpatory material and mitigating evidence that proves Stocks's meritorious claims. Failure to appoint counsel would be a miscarriage of justice and violates clearly established federal law. *Strickland v Washington, supra; Martinez v Ryan, supra.*

12. Stocks motion for appoint of counsel should be granted and Attorney J. Thomas Sullivan assigned to the case.

**WHEREFORE**, Stocks prays that his Motion for Appointment of Counsel be granted and all other equitable relief.

Respectfully submitted,

*Heath Stocks*  
Heath Stocks

**VERIFICATION OF SIGNATURE**

I, Heath Stocks do swear and attest that I am filing this Second Reply to the States Response to the Motion for Appointment of Counsel, and the facts asserted herein are to the best of my knowledge and is not done in bad faith.

/s/ *Heath Stocks*  
Heath Stocks

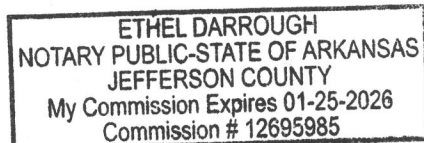
State of Arkansas  
County of Jefferson

SUBSCRIBED AND SWORN TO BEFORE  
*Dec* 2017.

me a Notary Public on this 5th day of

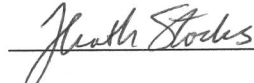
/s/ *Ethel Darrough*  
Notary Public

My Commission Expires: 01-25-2026



**CERTIFICATE OF SERVICE**

I, Heath Stocks hereby certify that I have serviced an exact copy of the foregoing to the Prosecuting Attorney Chuck Graham, Courthouse, 301 N. Center St., Ste. 301, Lonoke AR 72086-2892 on this 5<sup>th</sup> day of December 2017 by U. S. Mail postage prepaid.

  
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Heath Stocks