

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PRESTON HUGHES, III,

Petitioner,

VS.

RICK THALER,

Respondent.

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CIVIL ACTION NO. H-01-4073

ORDER

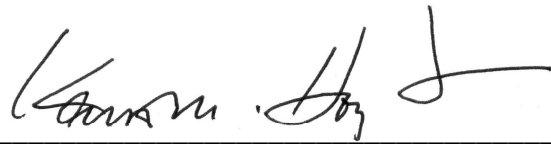
Petitioner Preston Hughes, an inmate on Texas' death row, faces an execution date of November 15, 2012. Hughes has filed a *pro se* "Motion to Replace Court Appointed Attorney." (Docket Entry No. 57). He has recently supplemented that motion. (Docket Entry No. 59, 62). Hughes expresses dissatisfaction with the litigation strategy chosen by his current counsel, Mr. Patrick McCann. The Court ordered Mr. McCann to file a response to Hughes' pleadings. (Docket Entry No. 58). Mr. McCann has recently filed a sealed response. (Docket Entry No. 60).

While federal law guarantees a capital inmate the services of legal counsel, *see* 18 U.S.C. § 3599(f), an inmate has no right to appointed counsel of his choice, *see United States v. Gonzalez-Lopez*, 548 U.S. 140, 151 (2006). A court may only substitute counsel for capital inmates when in the "interests of justice." *Martel v. Clair*, ___ U.S. ___, 132 S. Ct. 1276, 1282 (2012). Mr. McCann has been competently representing Hughes since 2000 and, in recent months, has zealously sought relief on his behalf before federal and state courts. Mr. McCann is well-acquainted with the complex record in this case. Under the circumstances of this case, substitution is not needed for Hughes to have competent assistance of counsel, and a change in

attorneys at this late date would unduly hardship Hughes' ability to litigate any valid claims, particularly given that the post-conviction process in this case has already spanned decades.

Taking into consideration the nearness of Hughes' execution, the nature of Hughes' complaints, and Mr. McCann's efforts in his behalf, the Court finds that the substitution of counsel is not in the interests of justice. Accordingly, the Court **DENIES** Hughes' motion to substitute counsel. (Docket Entry No. 57).

SIGNED at Houston, Texas this 10th day of October, 2012.

A handwritten signature in black ink, appearing to read "Kenneth M. Hoyt", written over a horizontal line.

Kenneth M. Hoyt
United States District Judge