

No. 19-5769

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Supreme Court, U.S.
FILED

AUG 23 2019

OFFICE OF THE CLERK

DAN J. WHITT — PETITIONER
(Your Name)

VS.

JEFF NORMAN ET. AL. — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED IN *FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

CIRCUIT COURT OF GREENE COUNTY, MISSOURI 31ST JUDICIAL CIRCUIT > 4-29-2011 & 9-9-2016

U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI, SOUTHERN DIVISION > 6-15-2018

Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

The appointment was made under the following provision of law: _____
_____, or

a copy of the order of appointment is appended.

Dan J. Whitt

(Signature)

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AUG 30 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, DAN J. WHITT, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>8.50</u>	\$ <u>N/A</u>	\$ <u>8.50</u>	\$ <u>N/A</u>
Self-employment	\$ <u>0</u>	\$ <u>1</u>	\$ <u>0</u>	\$ <u>1</u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u>1</u>	\$ <u>0</u>	\$ <u>1</u>
Interest and dividends	\$ <u>0</u>	\$ <u>1</u>	\$ <u>0</u>	\$ <u>1</u>
Gifts	\$ <u>10.00</u>	\$ <u>1</u>	\$ <u>10.00</u>	\$ <u>1</u>
Alimony	\$ <u>0</u>	\$ <u>1</u>	\$ <u>0</u>	\$ <u>1</u>
Child Support	\$ <u>0</u>	\$ <u>1</u>	\$ <u>0</u>	\$ <u>1</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ <u>1</u>	\$ <u>0</u>	\$ <u>1</u>
Disability (such as social security, insurance payments)	\$ <u>0</u>	\$ <u>1</u>	\$ <u>0</u>	\$ <u>1</u>
Unemployment payments	\$ <u>0</u>	\$ <u>1</u>	\$ <u>0</u>	\$ <u>1</u>
Public-assistance (such as welfare)	\$ <u>0</u>	\$ <u>1</u>	\$ <u>0</u>	\$ <u>1</u>
Other (specify): _____	\$ <u>0</u>	\$ <u>1</u>	\$ <u>0</u>	\$ <u>1</u>
Total monthly income:	\$ <u>18.50</u>	\$ <u>N/A</u>	\$ <u>18.50</u>	\$ <u>N/A</u>

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$
			\$
			\$
			\$

4. How much cash do you and your spouse have? \$ 0 CASH

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
None	\$ NONE	\$
	\$	\$
	\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home
Value _____

Other real estate
Value _____

Motor Vehicle #1
Year, make & model _____
Value _____

Motor Vehicle #2
Year, make & model _____
Value _____

Other assets
Description _____
Value _____

NONE OF THE ABOVE

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
<u>NONE</u>	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
<u>NONE</u>	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ <u>0</u>	\$ <u>N/A</u>
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ <u>0</u>	\$ _____
Home maintenance (repairs and upkeep)	\$ <u>0</u>	\$ _____
Food	\$ <u>5.00</u>	\$ _____
Clothing	\$ <u>0</u>	\$ _____
Laundry and dry-cleaning	\$ <u>0</u>	\$ _____
Medical and dental expenses	\$ <u>3.50</u>	\$ _____

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ <u>0</u>	\$ <u>N/A</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>0</u>	\$ <u></u>
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ <u>0</u>	\$ <u></u>
Life	\$ <u>0</u>	\$ <u></u>
Health	\$ <u>0</u>	\$ <u></u>
Motor Vehicle	\$ <u>0</u>	\$ <u></u>
Other: _____	\$ <u>0</u>	\$ <u></u>
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ <u>0</u>	\$ <u></u>
Installment payments		
Motor Vehicle	\$ <u>0</u>	\$ <u></u>
Credit card(s)	\$ <u>0</u>	\$ <u></u>
Department store(s)	\$ <u>0</u>	\$ <u></u>
Other: _____	\$ <u>0</u>	\$ <u></u>
Alimony, maintenance, and support paid to others	\$ <u>0</u>	\$ <u></u>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>0</u>	\$ <u></u>
PHONE / HYGIENE		
Other (specify): <u>ACCOUNT / ITEMS BEO., SHAMPOO, TOOTHPASTE, ETC.</u>	\$ <u>10.00</u>	\$ <u></u>
Total monthly expenses:	\$ <u>18.50</u>	\$ <u></u>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: AUGUST 23RD, 2019

Dan J. Whitt
(Signature)

IN THE CIRCUIT COURT OF GREENE COUNTY
STATE OF MISSOURI

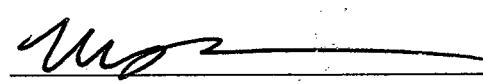
STATE OF MISSOURI,) Cause No. 0931-CR04586-01
Plaintiff)
)
v.) Division No. 1
)
DANIEL J. WHITT,)
Defendant)
)

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CIRCUIT CLERK
GREENE COUNTY, MO

ORDER TO PROCEED IN FORMA PAUPERIS

The Court, after reviewing the defendant's Motion to Proceed In Forma Pauperis filed herein and being duly advised in the premises, ORDERS that the defendant be allowed to proceed with the appeal of the above cause and that defendant not be required to deposit the applicable docket fee nor pay for preparation of the transcript of said cause.

So Ordered this Date: 09/29/2011



Judge

TEST A TRUE COPY
AT TEST A TRUE COPY
CIRCUIT CLERK
GREENE COUNTY
GREENE COUNTY DEPUTY
BY DEPUTY
5-3-11

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI
THIRTY-FIRST JUDICIAL CIRCUIT

FILED

DANIEL J. WHITT,)
)
)
Movant,)
)
)
vs.) Case No. 1231-CV14891
)
)
STATE OF MISSOURI ,)
)
)
Respondent,)
)

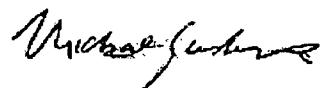
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GREENE COUNTY
CIRCUIT COURT

ORDER

The Court, having considered the motion to perfect appeal as a poor person for Daniel J. Whitt, finds that same is totally without means or resources of any nature to pay costs or filing fees for prosecuting his application for an appeal and is a poor person within the meaning of the law.

NOW, THEREFORE, IT IS ORDERED that Daniel J. Whitt be permitted to perfect his appeal as a poor person.
SO ORDERED on this 9/9/2016, 2016.



Judge Michael Cordonnier

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

DANIEL J. WHITT,)
Petitioner,)
vs.) Case No. 18-3178-CV-S-BP-P
JEFF NORMAN,)
Respondent.)

ORDER GRANTING PETITIONER LEAVE TO PROCEED IN FORMA PAUPERIS,
DENYING PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL, AND
DIRECTING RESPONDENT TO SHOW CAUSE

Petitioner, a convicted state prisoner currently confined at the South Central Correctional Center in Licking, Missouri, has filed *pro se* a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has requested leave to proceed *in forma pauperis* and has included a financial affidavit in support thereof. Petitioner also has filed a motion for appointment of counsel. Doc. 4.

As to Petitioner's request for appointment of counsel, pursuant to 28 U.S.C. § 1915(e)(1), the Court may ask an attorney to represent a petitioner who is proceeding *in forma pauperis* if the Court determines that Petitioner's claims are potentially meritorious and that justice demands it. *See Hoggard v. Purkett*, 29 F.3d 469, 471 (8th Cir. 1994) (district court does not abuse its discretion in denying counsel where issues properly can be resolved on the basis of the state court record). If an evidentiary hearing is required, the Court must appoint counsel for a petitioner who qualifies for appointment under the Criminal Justice Act. *See* Rule 8(c) of the Rules Governing Section 2254 Cases. At the present time, it does not appear that an evidentiary hearing will be required in this matter under 28 U.S.C. § 2254(d), (e), or that appointment of counsel is required for the fair presentation of Petitioner's claims.

Accordingly, it is **ORDERED** that:

- (1) Petitioner is granted provisional leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915;
- (2) Petitioner's motion for appointment of counsel (Doc. 4) is denied without prejudice; and
- (3) Respondent answer Petitioner's allegations and show cause on or before July 16, 2018, why the relief Petitioner seeks should not be granted.

/s/ Beth Phillips

BETH PHILLIPS
UNITED STATES DISTRICT JUDGE

Dated: June 15, 2018.

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

DANIEL J. WHITT,)
Petitioner,)
vs.) Case No. 18-3178-CV-S-BP-P
JEFF NORMAN,)
Respondent.)

**ORDER DENYING LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL
AND TRANSFERRING CASE TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

On November 26, 2018, this Court entered its Order and Judgment denying a writ of habeas corpus, denying a certificate of appealability, and dismissing this case. Docs. 18, 19. Petitioner has now filed a notice of appeal and a motion for a certificate of appealability. Docs. 20, 21. Although Petitioner did not also file a request to proceed *in forma pauperis* on appeal, this Court assumes he intended to do so.

Under 28 U.S.C. § 1915, an appeal *in forma pauperis* may be permitted if an affidavit, including a statement of all assets possessed and a certified copy of the inmate account statement for the preceding six months are submitted and if the appeal is taken in good faith. *See Fed. R. App. P. 24(a)*. Good faith requires that Petitioner's argument on appeal must not be frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). Because Petitioner has presented no non-frivolous issues deserving of appellate review, Petitioner will be denied leave to proceed *in forma pauperis* on appeal. Petitioner's request for a certificate of appealability is denied for the reasons set forth in this Court's November 26, 2018, Order. Petitioner may renew his requests to proceed *in forma pauperis* on appeal and for a certificate of appealability directly with the United States Court of Appeals for the Eighth Circuit.

Accordingly, it is **ORDERED** that:

- (1) Petitioner is denied leave to proceed *in forma pauperis* on appeal;
- (2) Petitioner's motion for a certificate of appealability (Doc. 21) is denied for the reasons set forth in this Court's November 26, 2018, Order (Doc. 18); and
- (3) the Clerk of the Court shall electronically forward this case to the United States Court of Appeals for the Eighth Circuit for further processing of Petitioner's appeal.

/s/ Beth Phillips

BETH PHILLIPS

UNITED STATES DISTRICT JUDGE

Dated: December 7, 2018.