

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2019

In Re DAVID GULBRANDSON, Petitioner

**MOTION FOR LEAVE TO PROCEED
*IN FORMA PAUPERIS***

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Pursuant to Rule 39.1 of the Rules of the Supreme Court of the United States, Petitioner David Gulbrandson requests to file the attached Petition for Writ of Habeas Corpus without prepayment of costs and to proceed *in forma pauperis*.

Mr. Gulbrandson is incarcerated in the Arizona State Prison Complex-Florence, in Florence, Arizona, and has been so incarcerated since he was convicted in state court of first degree murder and sentenced to death on February 19, 1993. The Arizona Supreme Court imposed a sentence of death on *de novo* review on direct appeal on November 2, 1995. *See State v. Gulbrandson*, 906 P.2d 579 (Ariz. 1995).

After state post-conviction relief was denied on November 19, 1998, the United States District Court for the District of Arizona appointed as counsel for Mr. Gulbrandson in his federal capital habeas corpus case Stephen E. Eberhardt, Esq., and Richard Lougee, Esq. *See Gulbrandson v. Stewart*, Dist. Ct. No. CIV 98-2024-PHX-SMM, ECF No. 6. The appointments were made

pursuant to 21 U.S.C. § 848(q)(4)(B), (q)(6), and (q)(8). In the same order, the court further ordered that Gulbrandson be permitted to proceed *in forma pauperis*. *Id.* On May 30, 2007, Mr. Gulbrandson moved in the Ninth Circuit for Mr. Lougee to withdraw for health reasons and for the Federal Public Defender for the District of Arizona (“FPD”) to be appointed as co-counsel with Mr. Eberhardt. *Gulbrandson v. Schriro*, Ninth Cir. No. 07-99012, ECF No. 3. On June 19, 2007, the Ninth Circuit granted that motion, and the Court ordered the Federal Public Defender for the District of Arizona, Jon M. Sands, to appear for Mr. Gulbrandson. *Id.*, ECF No. 4. Arizona Assistant FPD Timothy M. Gabrielsen entered his appearance on June 22, 2007, and represented Mr. Gulbrandson continuously until this Court denied the petition for writ of certiorari that was filed after the Ninth Circuit affirmed the district court’s denial of relief in *Gulbrandson v. Ryan*, 738 F. 3d 976 (2013), and later denied a petition for rehearing on August 11, 2014. *See Orders, Gulbrandson v. Ryan*, U.S. S. Ct. No. 13-9631, June 6, 2014, and August 11, 2014.

On January 23, 2014, the district court, pursuant to the relevant protocol and *Harbison v. Bell*, 556 U.S. 180, 190 n.7 (2009), filed an order allowing the FPD to appear in successive state post-conviction relief (“PCR”) proceedings. *See Gulbrandson*, Dist. Ct. No. CIV 98-2024-PHX-SMM, ECF No. 97. Arizona Assistant FPD Cary Sandman appeared on June 23, 2014, and filed a PCR petition in the Superior Court of Maricopa County, Arizona, *see State v. Gulbrandson*, Maricopa Cty. Super. Ct. No. CR-91-90974, and remained his counsel through the denial of a petition for review in the Arizona Supreme Court on July 13, 2016. Order, *State v. Gulbrandson*, Ariz. S. Ct. No. CR-15-0196-PC (July 13, 2016). Undersigned counsel petitioned this Court for a writ of certiorari, which this Court denied on February 21, 2017. U.S. S. Ct. No. 16-7083.

On June 16, 2017, Mr. Gulbrandson, again through undersigned counsel, filed a second-in-time petition for writ of habeas corpus under 28 U.S.C. § 2254 in the United States District

Court for the District of Arizona. *See Gulbrandson v. Ryan*, U.S.D.C. No. CV-17-01891, ECF No. 1. The district court denied relief on the basis that the petition was second or successive (“SOS”) and Mr. Gulbrandson had not obtained authorization to file the petition from the Ninth Circuit as required under 28 U.S.C. § 2244(b)(3)(A), and the court denied a certificate of appealability (“COA”). *Id.*, ECF No. at 9. The Ninth Circuit also denied a COA. *See Gulbrandson v. Ryan*, Ninth Cir. No. 18-15829, ECF No. 12 (Aug. 15, 2018). On November 9, 2018, Mr. Gulbrandson filed a Petition for Writ of Certiorari in which he sought this Court’s review of the Ninth Circuit’s denial of the COA. U.S. Sup. Ct. No. No. 18-6766. The Court denied certiorari on February 19, 2019.

On June 21, 2019, Mr. Gulbrandson, through undersigned counsel filed in the Ninth Circuit, No. 19-71578, an Application for Authorization to File a Second or Successive § 2254 Petition in the District Court. The Application was denied on September 3, 2019.

Thus, counsel appointed to represent Mr. Gulbrandson due to his indigency in the federal habeas proceedings have continuously represented him since 1998. Mr. Gulbrandson has remained in prison for more than 26 years. Mr. Gulbrandson asks that this Court grant this motion and allow him to proceed *in forma pauperis* with respect to the petition for writ of habeas corpus filed on this date.

Respectfully submitted this 17th day of January, 2020.

Jon M. Sands
Federal Public Defender
Timothy M. Gabrielsen
Assistant Federal Public Defender

By: 
Timothy M. Gabrielsen
Counsel of Record for Petitioner