

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Clarence Wayne Dixon, Petitioner,

vs.

David Shinn, et al., Respondents.

****CAPITAL CASE****

**ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

JON M. SANDS
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District of Arizona

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Counsel for Petitioner Dixon

Pursuant to Rule 39, Rules of the Supreme Court, Petitioner Clarence Wayne Dixon hereby seeks leave to proceed *in forma pauperis* before this Court in the above-captioned case on the ground that he lacks sufficient funds to pay for fees and expenses. Mr. Dixon is a death-row prisoner incarcerated at the Arizona State Prison Complex in Florence, Arizona.

On February 12, 2014, the United States District Court for the District of Arizona appointed federal habeas counsel for Mr. Dixon pursuant to his request for appointed counsel pursuant to 18 U.S.C. § 3599(a)(2). Appendix A. Mr. Dixon thus respectfully requests that he be permitted to proceed *in forma pauperis* before this Court.

Respectfully submitted: March 16, 2020.

JON M. SANDS
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District of Arizona

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Counsel for Petitioner Dixon

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

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APPENDIX A

Order of Appointment and General Procedures,
Dixon v. Ryan, 14-cv-00258-PHX-CKJ (D. Ariz. Feb. 14, 2014), ECF No. 6

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 Clarence Wayne Dixon,) No. CV-14-00258-PHX-CKJ
9 Petitioner,) DEATH PENALTY CASE
10 vs.)
11)
12 Charles L. Ryan, et al.,) **ORDER OF APPOINTMENT**
13 Respondents.) **AND GENERAL PROCEDURES**
14)
15

16 **IT IS ORDERED** that Petitioner's Motion for Appointment of Counsel (Doc. 4) is
17 **GRANTED**. Jon M. Sands, Federal Public Defender for the District of Arizona, is appointed
18 as Counsel for Petitioner in this federal habeas corpus proceeding. The Federal Public
19 Defender is authorized to designate an Assistant Federal Public Defender to handle the case.
20 Appointment is made pursuant to 18 U.S.C. § 3599(a)(2). Counsel shall not represent
21 Petitioner in state forums or prepare any state court pleadings without express authorization
22 of the Court.

23 **IT IS FURTHER ORDERED** that Petitioner's Application to Proceed *In Forma*
24 *Pauperis* (Doc. 3) is **GRANTED**.

25 **IT IS FURTHER ORDERED** that the designated Assistant Federal Public Defender
26 shall file a notice of appearance or substitution with the Court within **ten (10) days** from
27 receipt of this Order.

28 **IT IS FURTHER ORDERED** that the Arizona Attorney General shall file a notice

1 of appearance with the Court within **ten (10) days** from receipt of this Order.

2 **IT IS FURTHER ORDERED** that the following procedures shall govern the briefing
3 and resolution of this matter:

4 I. Case Management Conference (CMC)

5 A case management conference will be held on **Thursday, May 29, 2014, at 2:00**
6 **p.m.** in Courtroom 504 of the Sandra Day O'Connor United States Courthouse in Phoenix.
7 Non-local counsel may, if requested, appear by telephone. Any request to appear by
8 telephone must be filed at least ten (10) days prior to the scheduled conference.

9 Prior to the conference, Petitioner's counsel is expected to personally meet with
10 Petitioner and to review any state court rulings in Petitioner's case. Counsel is further
11 expected to obtain information about the case from Petitioner's state court counsel and to
12 assemble and substantially complete review of prior counsel's files and records from the state
13 proceedings. Absent a motion detailing significant delays, problems, or obstacles
14 encountered in obtaining copies of pertinent files and records, the Court will not assist
15 directly in obtaining such materials.

16 No later than **May 19, 2014**, the parties shall meet and confer and file with the Court
17 a joint report addressing the statute of limitations, a proposed briefing schedule, and any
18 other matter that may affect the filing of the Petition or efficient resolution of this matter.
19 At the conference, the Court intends to set firm deadlines for the filing of the Petition,
20 responsive pleadings, motions for evidentiary development, and any other pleadings the
21 Court deems necessary. Absent extraordinary circumstances justifying a continuance, the
22 parties are expected to adhere to the deadlines set at this case management conference.

23 II. Petition

24 Pursuant to 28 U.S.C. § 2244, a second or successive petition may not be filed in this
25 Court without prior authorization from the Ninth Circuit. Under § 2244(b)(3)(C), the
26 grounds for obtaining such authorization are extremely limited. Consequently, it is
27 incumbent upon Petitioner to raise in his first petition all known claims of constitutional error
28 or deprivation, setting forth "the facts supporting each ground" for habeas relief. *See* Rule

1 2(c), 28 U.S.C. foll. § 2254. In addition to the requirement of Local Rule Civil 7.1, the
2 Petition shall:

- 3 (1) separately enumerate in a sequential manner *every* claim for federal habeas
4 corpus relief (including each individual claim of ineffective assistance of
counsel);
- 5 (2) set forth, in a clear and concise manner, including full citations to the
6 appropriate portions of the record and application of the appropriate standards
of review under 28 U.S.C. § 2254(d), the legal and factual basis for each claim
for relief; and
- 7 (3) state with specificity when and where each claim for relief was presented to
8 or considered by the Arizona Supreme Court.

9 **III. Answer**

10 After the Petition is filed, Respondents shall file an Answer. Pursuant to Rule 5 of the
11 Rules Governing Section 2254 Cases, Respondents' Answer shall specifically respond to
12 each of the allegations contained in the petition. In lieu of motions for summary judgment
13 and motions to dismiss, the Answer shall be a comprehensive responsive pleading,
14 addressing both the factual allegations and legal contentions raised in the Petition as well as
15 any procedural defenses with respect to individual claims. Accordingly, Respondents shall
16 address the merits of every enumerated claim, regardless of whether Respondents allege a
17 claim is barred from review by the federal court.

18 Respondents are advised that Petitioner is obligated under Rule 2(c) of the Rules
19 Governing Section 2254 Cases to include in his Petition all known claims for relief and facts
20 in support thereof. Accordingly, the Court will not entertain motions to strike any portion
21 of the Petition or exhibits thereto on the basis that such facts were not developed in state
22 court. Rather, Respondents' arguments concerning factual development should be included
23 in the Answer as well as the response to any motion for evidentiary development filed by
24 Petitioner.

25 **IV. Reply**

26 Petitioner shall file a Reply to Respondents' Answer. The Reply shall respond to
27 Respondents' allegations regarding both procedural defenses and the merits of each
28 enumerated claim. In addition, Petitioner shall affirmatively raise in the Reply any

1 arguments concerning availability of state remedies, cause and prejudice, fundamental
2 miscarriage of justice, or equitable tolling in response to any allegations by Respondents of
3 procedural or timeliness bars. The Reply shall not be used to raise new claims or new
4 material facts in support of existing claims.

5 V. Evidentiary Development

6 Following the filing of the Petition, Answer, and Reply, Petitioner will be provided
7 an opportunity to file a motion for evidentiary development. Such motions include, but are
8 not limited to, requests for Discovery, Expansion of the Record, and Evidentiary Hearing
9 under Rules 6, 7, and 8 of the Rules Governing Section 2254 Cases. A motion for
10 evidentiary development shall not recite legal authority on the merits or present new material
11 facts in support of the claims raised in the petition; nor shall the motion raise new claims for
12 habeas relief. Rather, the motion shall be limited to the identification of the claims for which
13 development is sought, the evidence or facts sought to be developed, and the applicable
14 standards governing evidentiary development. To this end, any motion for evidentiary
15 development shall:

- 16 (1) not exceed sixty (60) pages cumulatively (excluding appendices);¹
- 17 (2) identify the enumerated claim(s) Petitioner contends need further factual
development;
- 18 (3) provide an offer of proof (i.e., declarations, documentary evidence, summaries
of proposed testimony) setting forth the facts to be developed and the source
of the proffered evidence; and
- 19 (4) apply the applicable standards for obtaining evidentiary development,
including an explanation of why the claim was not developed in state court and
why the failure to develop the claim in state court was not the result of lack of
diligence, in accordance with 28 U.S.C. § 2254(e)(2) and *Williams v. Taylor*,
529 U.S. 420 (2000).

20 Any motion for evidentiary development that is filed prior to the filing of
21 Respondents' Answer or that fails to address the above-listed requirements will be summarily
22 denied.

23 ¹ Responses to motions for evidentiary development shall not exceed sixty (60)
24 pages cumulatively, and replies shall not exceed forty (40) pages cumulatively.

1 VI. State Court Record

2 As has been the custom in this District, the Court will *sua sponte* request from the
3 Arizona Supreme Court a certified copy of the state court record. In the ordinary case, this
4 record will include the pretrial, trial, and sentencing transcripts as well as the complete record
5 on appeal from the superior court. It will not include any post-conviction records, post-
6 conviction hearing transcripts, or filings in proceedings before the Arizona Supreme Court.

7 Accordingly, Respondents are relieved from their obligation under Rule 5(c) of the
8 Rules Governing Section 2254 Cases to provide the Court with trial transcripts. However,
9 pursuant to Rule 5(d), Respondents shall file with their Answer the following parts of the
10 state court record:

11 (1) All briefs filed in the Arizona Supreme Court during direct appeal and post-
12 conviction petition for review proceedings;

13 (2) A complete copy of the post-conviction record on appeal (i.e., all documents
14 filed in the superior court, including all post-conviction petitions and exhibits
15 thereto); and

16 (3) Any post-conviction hearing transcripts.

17 In addition, the Court encourages the parties to file any additional parts of the state
18 court record that the parties believe are relevant to resolving allegations in the Petition,
19 Answer, Reply, or any motion for evidentiary development.

20 VII. Electronic Case Filing

21 Pursuant to Section II.D.3 of the Electronic Case Filing Administrative Policies and
22 Procedures Manual, available at www.azd.uscourts.gov (under “E-Filing” and then
23 “Administrative Policies & Procedures Manual”), a paper courtesy copy of any
24 electronically-filed document **exceeding ten (10) pages** in length that would normally be
25 sent to the assigned judge shall instead be directed to the “Capital Case Staff Attorney.” **The**
26 **paper courtesy copy of any filing that exceeds 100 pages in length, including**
27 **appendices, shall be bound on the left and shall include a table of contents, an exhibits**
28 **list (if any), and tabs between exhibits (if any).**

1 VIII. Miscellaneous

2 In addition to the requirements of Local Rule Civil 7.1, the following shall apply to
3 any filing in this matter:

4 (1) The parties shall not include photographs, charts, or graphs in the body of any
5 pleading. Any such exhibit must be contained within an appendix to an
appropriate pleading.

6 (2) The parties shall not refer to either party by informal first name only. All
7 references to a party shall be by last name, by governmental name (i.e.,
“State”) or by formal title, such as “Petitioner” or “Respondents.”

8 **IT IS FURTHER ORDERED** that pursuant to Local Rule Civil 3.8(e) this case is
9 reassigned to **Judge Neil V. Wake** and shall be redesignated as **No. CV-14-258-PHX-NVW**.

10 **IT IS FURTHER ORDERED** that the Clerk of Court send a copy of this Order
11 either electronically or through postal mail to Jeffrey Zick, Assistant Arizona Attorney
12 General.

13 **IT IS FURTHER ORDERED** that the Clerk of Court forward a copy of this Order
14 to Petitioner Clarence Wayne Dixon, ADOC #038977, Arizona State Prison
15 Eyman/Browning Unit, P.O. Box 3400, Florence AZ 85312-3400.

16 DATED this day of 14th day of February, 2014.

18 _____
19 Cindy K. Jorgenson
20 United States District Judge