

No. _____

OCTOBER TERM, 2019

IN THE SUPREME COURT OF THE UNITED STATES

Kitrich A. Powell, Petitioner,

v.

William Gittere, Warden, et al., Respondent.

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

CAPITAL CASE

RENE L. VALLADARES
Federal Public Defender of Nevada
TIMOTHY R. PAYNE*
Assistant Federal Public Defender
411 E. Bonneville, Ste. 250
Las Vegas, Nevada 89101
(702) 388-6577
(702) 388-5819 (Fax)
Tim_Payne@fd.org
* Counsel of Record

Pursuant to Supreme Court Rule 39.1, Petitioner Kitrich A. Powell requests leave to file the attached Petition for Writ of Certiorari without prepayment of costs and to proceed *in forma pauperis*. Mr. Powell has previously been granted leave to proceed *in forma pauperis* in the United States District Court for the District of Nevada on October 12, 2006, in *Powell v. McDaniel*, Case No. 2:06-cv-01264-KJD-DJA, and in the Eighth Judicial District Court, Clark County, Nevada on February 25, 2008, in *State v. Powell*, Case No. 90C092400-1. No affidavit or declaration from Mr. Powell is attached to this Motion because both of those courts appointed undersigned counsel to represent Mr. Powell in state and federal proceedings. Copies of the appointment orders are appended to this Motion. *See* Exs. 1 and 2.

Dated this 31st day of March, 2020.

Respectfully submitted,


TIMOTHY R. PAYNE
Assistant Federal Public Defender

EXHIBIT 1

EXHIBIT 1

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KITRICH A. POWELL,)	
)	
Petitioner,)	2:06-CV-1264-KJD-LRL
)	
vs.)	ORDER
)	
E.K. McDANIEL, <i>et al.</i> ,)	
)	
Respondents.)	
)	
	/	

This action is a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 by Kitrich A. Powell, a Nevada prisoner under sentence of death. Powell’s *pro se* habeas corpus petition (docket ##1-11) was filed on October 11, 2006. He has paid the \$5 filing fee for this action.

Despite the fact that he paid the \$5 filing fee, Powell also filed an Application to Proceed *In Forma Pauperis* (docket #13). In view of the financial information Powell has provided with his application, the court will grant his motion in part and deny it in part. The court will not waive payment of the \$5 filing fee, but will grant petitioner leave to proceed *in forma pauperis* with respect to subsequent fees and costs.

Powell also filed a Motion for Appointment of Counsel (docket #12). Powell’s Application to Proceed *In Forma Pauperis* shows that he lacks the resources necessary to employ counsel to prosecute this capital habeas corpus proceeding. Therefore, pursuant to 21 U.S.C. §848(q)(4)(B), in the interest of justice, the Federal Public Defender for the District of Nevada

1 (“FPD”) shall be appointed to represent petitioner. If the FPD is unable to represent petitioner (due
2 to a conflict of interest or any other reason), then alternate counsel for petitioner will be located, and
3 appointed by the court. Petitioner’s appointed counsel will represent him in all future federal
4 proceedings in this court relating to this matter (including subsequent actions) and appeals therefrom,
5 pursuant to 21 U.S.C. §848(q)(8), until allowed to withdraw.

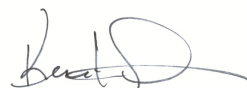
6 **IT IS THEREFORE ORDERED** that petitioner’s Application to Proceed
7 *In Forma Pauperis* (docket #13) is **GRANTED IN PART AND DENIED IN PART**. The
8 Application to Proceed *In Forma Pauperis* is **DENIED** with respect to waiver of payment of the
9 filing fee, but **GRANTED** with respect to subsequent fees and costs.

10 **IT IS FURTHER ORDERED** that petitioner’s Motion for Appointment of Counsel
11 (docket #12) is **GRANTED**. The Federal Public Defender for the District of Nevada is appointed to
12 represent petitioner, and shall have **thirty (30) days** from the date of entry of this Order to undertake
13 representation of petitioner or to indicate to the court its inability to represent petitioner in these
14 proceedings.

15 **IT IS FURTHER ORDERED** that the Clerk of Court shall **SERVE** a copy of this
16 Order on Michael Pescetta, Capital Habeas Division, Office of the Federal Public Defender,
17 411 East Bonneville Ave., Ste. 250, Las Vegas, NV 89101.

18 **IT IS FURTHER ORDERED** that the Clerk shall **SERVE** the respondents, by
19 certified mail, with a copy of this Order and a copy of the habeas corpus petition and accompanying
20 exhibits (docket ##1-11). Respondents’ counsel shall file a Notice of Appearance of Counsel within
21 **thirty (30) days** from the date of entry of this Order, but shall not answer the habeas corpus petition
22 until the court orders otherwise.

23 DATED: October 12, 2006

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UNITED STATES DISTRICT JUDGE

EXHIBIT 2

EXHIBIT 2

REGISTER OF ACTIONS

CASE No. 90C092400-1

The State of Nevada vs Kitrich Powell

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Case Type: **Felony/Gross Misdemeanor**
Date Filed: **01/11/1990**
Location: **Department 10**
Cross-Reference Case Number: **C092400**
Defendant's Scope ID #: **644939**
Lower Court Case # Root: **89F06523**
Lower Court Case Number: **89F06523A**
Supreme Court No.: **74168**

RELATED CASE INFORMATION

Related Cases
90C092400-2 (Multi-Defendant Case)

PARTY INFORMATION

Defendant	Powell, Kitrich	Lead Attorneys Rene L. Valladares <i>Retained</i> 702-388-6577(W)
Plaintiff	State of Nevada	Steven B Wolfson 702-671-2700(W)

CHARGE INFORMATION

Charges: Powell, Kitrich	Statute	Level	Date
1. MURDER IN THE FIRST DEGREE.	200.0301	Felony	01/01/1900
1. DEGREES OF MURDER	200.030	Felony	01/01/1900

EVENTS & ORDERS OF THE COURT

02/25/2008 **Motion for Appointment** (9:00 AM) ()
FPD'S MTN FOR APPOINTMENT OF COUNSEL/82 Court Clerk: Cheryl Case Reporter/Recorder: Bev Sigurnik Heard By: Ken Cory

Minutes
02/25/2008 9:00 AM
- Gary Taylor, Deputy Federal Public Defender, also present. There being no opposition, COURT ORDERED, Motion GRANTED. Colloquy regarding Writ. Mr. Owens stated a Motion To Dismiss would be filed. COURT ORDERED, March 24, 2008, hearing VACATED and RESET. State's response and Motion are due April 28; Defendant's response is due May 16; State's reply is due May 30; matter set for Argument. NDC 6/4/08 11:00 AM ARGUMENT: DEFT'S PETITION FOR WRIT OF HABEAS CORPUS... FURTHER PROCEEDINGS: STATE'S MOTION TO DISMISS

[Parties Present](#)
[Return to Register of Actions](#)