

No. 20-

IN THE
SUPREME COURT OF THE UNITED STATES

Anthony Bernard Smith, Jr.

(Your Name)

— PETITIONER

VS.

Ron Davis

— 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):

United States Court of Appeals for the Ninth Circuit

United States District Court for the Eastern District of California

☐ 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: 18 U.S.C. § 3006A(a)(2)(B), or

☐ a copy of the order of appointment is appended.



(Signature)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 6 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ANTHONY SMITH,

Petitioner-Appellant,

v.

RON DAVIS,

Respondent-Appellee.

No. 17-15874

D.C. No. 2:15-cv-01785-JAM-AC
Eastern District of California,
Sacramento

ORDER

Before: BERZON and FRIEDLAND, Circuit Judges.

After reviewing the underlying petition and concluding that it states at least one federal constitutional claim debatable among jurists of reason, namely ineffective assistance of counsel, we grant the request for a certificate of appealability with respect to the following issue: whether the district court properly determined that the petition was barred by the statute of limitations. *See* 28 U.S.C. § 2253(c)(3); *Gonzalez v. Thaler*, 565 U.S. 134 (2012); *Slack v. McDaniel*, 529 U.S. 473, 483-85 (2000); *Lambright v. Stewart*, 220 F.3d 1022, 1026 (9th Cir. 2000); *see also* 9th Cir. R. 22-1(e); *Luna v. Kernan*, 784 F.3d 640, 651-52 (9th Cir. 2015); *Gibbs v. Legrand*, 767 F.3d 879, 891-93 (9th Cir. 2014).

This court sua sponte appoints counsel for purposes of this appeal. *See* 18 U.S.C. § 3006A(a)(2)(B); *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983). Counsel will be appointed by separate order.

If appellant does not wish to have appointed counsel, appellant shall file a motion asking to proceed pro se within 14 days of the date of this order.

The Clerk shall electronically serve this order on the appointing authority for the Eastern District of California, who will locate appointed counsel. The appointing authority shall send notification of the name, address, and telephone number of appointed counsel to the Clerk of this court at counselappointments@ca9.uscourts.gov within 14 days of locating counsel.

The opening brief is due October 18, 2017; the answering brief is due November 17, 2017; the optional reply brief is due within 21 days after service of the answering brief.

Counsel in this case may access the state lodged documents by logging into Appellate ECF and then choosing Reports > PACER Report.

The Clerk shall serve on appellant a copy of the “After Opening a Case - Couseled Cases” document.

If Ron Davis is no longer the appropriate appellee in this case, counsel for appellee shall notify this court by letter of the appropriate substitute party within 21 days of the filing date of this order. *See* Fed. R. App. P. 43(c).

From: [David Porter](#)
To: [Smith, SJ](#); [Salem, Rana](#)
Subject: FW: Appointment of Counsel, Smith v. Davis, CA 17-15874
Date: Wednesday, August 5, 2020 6:27:30 PM
Attachments: [image001.png](#)

Hi SJ,

The third email below is the one we sent to the Ninth Circuit on July 6, 2017 letting it know that I was appointed to represent Mr. Smith. I hope this is sufficient.

David

From: Alex Moyle <Alex_Moyle@fd.org>
Sent: Wednesday, August 5, 2020 3:24 PM
To: David Porter <David_Porter@fd.org>
Subject: FW: Appointment of Counsel, Smith v. Davis, CA 17-15874



Alex J. Moyle

Assistant Paralegal
Federal Defender's Office
801 I Street, 3rd Floor
Sacramento, CA 95814
916-498-5700

From: Ann McClintock
Sent: Thursday, July 6, 2017 2:39 PM
To: Alex Moyle <Alex_Moyle@fd.org>
Cc: David M Porter
Subject: Fw: Appointment of Counsel, Smith v. Davis, CA 17-15874

Hey--

An FYI. This is a habeas appeal new appointment in the Ninth Circuit. We gave it to David.

I will want you to download that state record that is lodged in the Ninth electronically once David is added formally to the docket.

Ann C. McClintock
Assistant Federal Defender
Federal Defender's Office
801 I Street, 3rd Floor
Sacramento, CA 95814
916-498-5700

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----- Forwarded by Ann McClintock/CAEF/09/FDO on 07/06/2017 02:36 PM -----

From: Ann McClintock/CAEF/09/FDO
To: counselappointments@ca9.uscourts.gov,
Cc: David M Porter/DCA/AO/USCOURTS@USCOURTS@FDO
Date: 07/06/2017 02:04 PM
Subject: Appointment of Counsel, Smith v. Davis, CA 17-15874

Our office will accept appointment as counsel for Mr. Anthony Smith. Assistant Federal Defender David M. Porter will be assigned to the case. His contact information is the same as mine, given below.

Yours,

Ann C. McClintock
Assistant Federal Defender
Federal Defender's Office
801 I Street, 3rd Floor
Sacramento, CA 95814
916-498-5700

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY SMITH,

Petitioner,

v.

RON DAVIS,

Respondent.

No. 2:15-cv-1785 JAM AC P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with an application to proceed in forma pauperis.

Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. See ECF No. 5. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

Since petitioner may be entitled to relief if the claimed violation of constitutional rights is proved, respondent will be directed to file a response to petitioner's habeas petition.

In accordance with the above, IT IS HEREBY ORDERED that:

1. Petitioner's motion to proceed in forma pauperis (ECF No. 5) is granted;
2. Respondent is directed to file a response to petitioner's habeas petition within sixty days from the date of this order. See Rule 4, 28 U.S.C. foll. § 2254. An answer shall be accompanied by all transcripts and other documents relevant to the issues presented in the

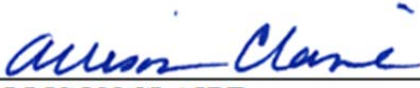
petition. See Rule 5, 28 U.S.C. foll. § 2254;

3. If the response to the habeas petition is an answer, petitioner's reply, if any, shall be filed and served within thirty days after service of the answer;

4. If the response to the habeas petition is a motion, petitioner's opposition or statement of non-opposition to the motion shall be filed and served within thirty days after service of the motion, and respondent's reply, if any, shall be filed and served within fourteen days thereafter; and

5. The Clerk of the Court shall serve a copy of this order, the form Consent to Proceed Before a United States Magistrate Judge, and a copy of the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on Michael Patrick Farrell, Senior Assistant Attorney General.

DATED: October 7, 2015


ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE