

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-1380

Kenneth Ray Sheffey

Plaintiff - Appellant

v.

State of Iowa

Defendant - Appellee

Appeal from U.S. District Court for the Southern District of Iowa - Des Moines
(4:19-cv-00022-JEG)

JUDGMENT

Before COLLTON, KELLY, and STRAS, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

July 02, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

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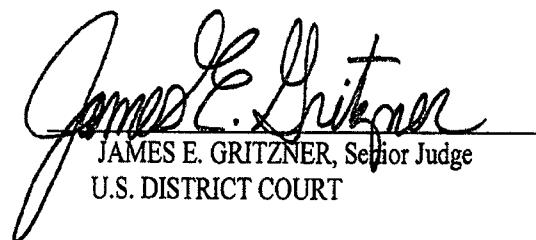
at the time the petition was filed, which is why he never received any legal mail. *Id.* at ¶ 5. Sheffey also submits the affidavit of a fellow inmate, Eric Thompson, who avers he spoke to a third inmate who claimed he filed the § 2254 petition at the request of Sheffey's brother. *Id.* at ¶¶ 10–11. Sheffey argues that “at minimum,” his claims of fraud “require this court to investigate the 2254 document’s signature and documents itself.” *Id.* at ¶ 3.

“To prevail on a Rule 60(b)(3) motion, the *movant must show*, with clear and convincing evidence, that the opposing party engaged in a fraud or misrepresentation that prevented the movant from fully and fairly presenting its case.” *United States v. Metro. St. Louis Sewer L.* 440 F.3d 930, 935 (8th Cir. 2006) (internal quotations omitted) (emphasis added). That is, the burden is on Sheffey to demonstrate fraud, and the Court will not investigate for him. Moreover, under Rule 60(b)(3), the fraud must have been committed “by an opposing party.” Rule 60(b)(3).

Sheffey has presented no evidence to demonstrate the 1987 habeas petition was filed by someone other than himself. He also has failed to demonstrate that the opposing party here engaged in any fraud to prevent him from fully and fairly presenting his case. The motion for relief from judgment, ECF No. 21, is **DENIED**. The request for counsel is **DENIED** as moot.

IT IS SO ORDERED.

Dated this 21st day of November, 2019.



JAMES E. GRITZNER, Senior Judge
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

KENNETH RAY SHEFFEY,

Petitioner,

vs.

STATE OF IOWA,

Respondent.

No. 4:19-cv-00022-JEG

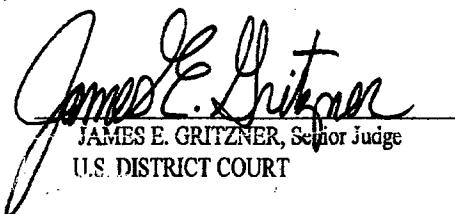
ORDER

The Court dismissed this petition under 28 U.S.C. § 2254 because it was a second or successive petition and Sheffey had not received authorization for this Court to review the petition. Order, ECF No. 4 (citing 28 U.S.C. § 2244(b)(3)(A)).

Sheffey appealed, ECF No. 10, and now seeks leave to appeal in forma pauperis. ECF No. 15. Based on Sheffey's motion, leave to appeal in forma pauperis is granted. The filing fee is waived. See Malave v. Hedrick, 271 F.3d 1139, 1140 (8th Cir. 2001) (per curiam) ("PLRA's filing-fee provisions are ~~inapplicable~~ to habeas corpus actions.").

IT IS SO ORDERED.

Dated this 25th day of April, 2019.


JAMES E. GRITZNER, Senior Judge
U.S. DISTRICT COURT

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-1380

Kenneth Ray Sheffey

Appellant

v.

State of Iowa

Appellee

Appeal from U.S. District Court for the Southern District of Iowa - Des Moines
(4:19-cv-00022-JEG)

ORDER

Sheffey's motion for an extension of time within which to file a petition for rehearing is granted. Any petition for rehearing must be filed by August 13, 2020. The motion for appointment of counsel is denied. *Cf. Iowa Sup. Ct. Comm'n on Unauthorized Practice of Law v. Sullins*, 893 N.W.2d 864, 878 (Iowa 2017) ("[A] party does not practice law when he or she merely assumes the role of a 'scrivener.'").

July 22, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-1380

Kenneth Ray Sheffey

Appellant

v.

State of Iowa

Appellee

Appeal from U.S. District Court for the Southern District of Iowa - Des Moines
(4:19-cv-00022-JEG)

MANDATE

In accordance with the judgment of 07/02/2020, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

September 09, 2020

Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-1380

Kenneth Ray Sheffey

Appellant

v.

State of Iowa

Appellee

Appeal from U.S. District Court for the Southern District of Iowa - Des Moines
(4:19-cv-00022-JEG)

ORDER

The petition for rehearing by the panel is denied.

August 31, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Motion for Continuance = No: 20-1380

Kenneth Sheffey,
Applicant-Appellant,

v.

State of Iowa

Motion for Continuance

3

Appointment of assistance

Appeal from U.S. District Court for Southern district of Iowa
(4:19-cv-00022-Jeg)

The petitioner-Applicant is illiterate, and the law library has posted a Scott County No. PCCE129936 (ORDER) as of 1-14-2018. That the appellant shall prepare and file parts on his own behalf. That leaves the applicant with "NO" assistance at this time!

Respectfully Submitted

Kenneth R. Sheffey

11-6-2021

Notary *Don Q. T. Tandy*
Notary Public Lee County, IA
7-10-2020

IN THE SUPREME COURT OF IOWA

No. 18-0540

Scott County No. PCCE129936

ORDER

**KENNETH SHEFFEY,
Applicant-Appellant,**

vs.

**STATE OF IOWA,
Respondent-Appellee.**

This matter comes before the court, Wiggins, Mansfield, and Christensen, JJ., upon the appellant's "notice of appeal of order."

Treating the appellant's motion as a motion for three-justice review of a single-justice order, the court's order filed on January 2, 2019, dismissing his appeal, is confirmed as the order of this court.

Copies to:

Thomas James Ogden
Assistant Attorney General
Hoover Building Second Floor
Des Moines, IA 50319

Kenneth Sheffey
#0103735
Iowa State Penitentiary
P.O. Box 316
Fort Madison, IA 52627



THE IOWA SUPREME COURT

State of Iowa Courts

Case Number
18-0540

Case Title
Sheffey v. State

So Ordered

A handwritten signature of David S. Wiggins.

David S. Wiggins
Justice

Electronically signed on 2019-01-16 13:20:51

Corrections, <https://doc.iowa.gov/offender/search/results> (last visited March 25, 2019). The inmate number reflected on the Iowa Department of Corrections site is the same as reflected in this Court's filing.

Apart from Sheffey's ~~conclusory statement~~, the Court finds no reason to believe the first petition was fraudulently filed. The motions for reconsideration, ECF Nos. 6 and 9, are denied. Sheffey's requests for counsel, *id.*, is denied as moot.

IT IS SO ORDERED.

Dated this 26th day of March, 2019.



JAMES E. GRITZNER, Senior Judge
U.S. DISTRICT COURT

11/14/18

IN THE SUPREME COURT OF IOWA

No. 18-0540

Scott County No. PCCE129936

ORDER

KENNETH SHEFFEY,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

This matter comes before the court upon the State's motion to strike the appellant's amended proof brief.

Upon consideration, the State's motion to strike is granted, and the appellant's September 4, 2018, amended proof brief is stricken because it appears to have been written by another inmate. An inmate's preparation of legal documents on another's behalf may constitute the unauthorized practice of law. *See, e.g., Iowa Supreme Ct. Comm'n on Unauthorized Practice of Law v. Sullins*, 893 N.W.2d 864, 873 (Iowa 2017). Within 21 days of the filing date of this order, the appellant shall prepare and file his proof brief and designation of parts on his own behalf. The State's deadline for filing its proof brief and any designation shall run from the filing date of the appellant's amended proof brief.

**Iowa Department of Corrections
Custody Reclassification - Male Score Sheet**

Offender Name: Sheffey, Kenneth Ray
Assessed Date: 02/14/2020
Work Unit: Iowa State Penitentiary

Offender Number: 0103735
Assessment Reason: Initial Assessment
Staff Assessing: Foehring, Dave

	Score
1. Offense Severity:	3
2. Number of Current Violent Offenses:	1
3. Severity of Prior Felony/Aggravated Misdemeanor Convictions:	0
4. Time to Serve:	1
5. Severity of Past Institutional Behavior:	0
6. Number of Reports for A, B, and C Infractions during last 3 calendar years:	-2
7. Current Age:	1
8. Escape History:	0
9. STG Involvement:	0
10. Compliance with Work or Program Plan:	-2

Result Custody Level: Minimum Custody

Override: Housing

Override Reason:

4.7 Not appropriate for lower custody at this time (Document justification in "Comments" section)

Final Custody Level: Maximum Custody

Next Custody Classification Date: 02/14/2021

Case Manager Comments: Annual review. Evaluations exceed expectations. Lifer; no transfer requested.

Total Score

2

Individual Report for SHEFFEY KENNETH

ID Number: 0103735

TABE

Test Date: 08/06/13

TABE 9/10 Basic Ed

Run Date: 08/06/13

Page No: 1

Entire group

Skill Areas	L/F	RS	NA	SS	GE	NP	NRS	NS	OM	Predicted GED
Reading	D9	30	45	508	5.6	45	3	5	40	Reading 350 R

L/F=Test Lev & Frm RS=Raw Score
 SS=Scale Score GE=Grade Equiv
 NRS=Literary Level NS=National Stan

NA=No. Attempted
 NP=National %ile
 OM=% Obj. Mastered

I = Instruct
 R = Review
 T = Test

Objectives Score MST Percent

Reading

D01 Intrp Graph	4/ 4	+	100
D02 Wd In Contx	1/ 4	-	25
D03 Recall Info	9/13	P	69
D04 Const Mean	7/17	-	41
D05 Eval/Ex Mng	9/12	+	75
Subtest Avg			60

Total Average 60

'MST'=Mastery Level ' - ' =Non-Mastery 'P'=Partial Mastery '+'=Mastery

FEB 12 2010

CLERK OF DISTRICT COURT
SCOTT COUNTY, IOWA

IN THE IOWA DISTRICT COURT FOR Scott COUNTY

Kenneth Sheffey,
Applicant,
vs.
STATE OF IOWA,
Respondent.

Cause No. 58392

**APPLICATION FOR POSTCONVICTION
RELIEF PURSUANT TO
IOWA CODE CHAPTER 822****I.****Conviction and sentence upon which post-conviction relief is being demanded:**

- A) The Defendant was charged with First Degree Murder in violation of Iowa Code Section 690.2 in Scott County District Court.
- B) Criminal Case No. L06169001
- C) District Court and judge that entered judgment of conviction or sentence:
- D) Date of entry of judgement of conviction or sentence: March 26, 1975
- E) Length of sentence(s) state whether consecutive or concurrent if more than one: Life
- F) Place of confinement: I.S.P
- G) Applicant's plea was: Guilty Not guilty
- H) The Applicant's trial was by: Jury Judge only

II.
Prior proceedings

- A) The conviction or sentence: was was not appealed
 - 1. To Appellate, District, & Supreme court.
 - 2. Grounds raised: Evidence of a beer can being withheld, that would show fingerprints and place the other individual there, an eyewitness to the scene
 - 3. Result: Affirmed
 - 4. Date of result: February 16, 1977

- B) Describe any other Petitions, Applications, or Motions, or relating to this conviction or sentence in any state or federal court:
 - 1. Name of court:
 - 2. Nature of proceedings:

IV.

Facts supporting the application within the personal knowledge of the Applicant:

See attached

Will be provided in Pro Se Brief, when I am appointed an attorney
to help as I have a 5th grade level education and am illiterate, legally ^{term, literacy}
V

The following documents, exhibits, affidavits, records, or other evidence supporting this application are attached to the application (list):

Not Available

VI.

The following documents, exhibits, affidavits, records, or other evidence supporting this Application are not attached (list):

These items are not attached for the following reasons:

Not available was never given at the time of trial

VII.

Relief requested (state clearly):

See attached

VIII.

I, the undersigned applicant, am: able not able to pre-pay costs and expenses of representation and do do not desire that an attorney be appointed to represent me concerning this Application: (If applicant indicates inability to pay court costs and expenses of representation and does desire to have counsel appointed, applicant shall attach a financial statement to this application. See Iowa Code ss815.9 and 815.10.)

3. Grounds Raised:

4. Result: Affirmed

5. Date of result:

III.

Grounds upon which this Application is based:

- A. The conviction or sentence was in violation of the Constitution of the United States or the Constitution or laws of this State.
- B. The court was without jurisdiction to impose sentence.
- C. The sentence exceeds the maximum authorized by law.
- D. There exists evidence of material facts, not previously presented or heard that required vacation of the conviction or sentence in the interest of justice.
- E. Applicants sentence has expired.
- F. Applicants probation, parole, or conditional release has been unlawfully revoked.
- G. Applicant is otherwise unlawfully held in custody or other restraint.
- H. The conviction or sentence is otherwise subject to collateral attack upon grounds(s) of alleged error formerly available under any common law, statutory, or other writ, motion, proceeding or remedy.

Specific explanation of grounds and allegation of facts: Well go into further details in my Pro Se Brief, and after I get a lawyer to help with the required motions, and everything as I only have a 5th grade education and am illiterate in such pleadings.

It's how I got in the position I am in now, due to ineffective assistance of counsel, and with holding evidence.



State of Iowa Courts

Case Number

PCCE129936

Type:

Case Title

SHEFFEY, KENNETH VS STATE OF IOWA
OTHER ORDER

So Ordered

A handwritten signature in black ink, appearing to read "Marlita A. Greve".

Marlita A. Greve, Chief District Judge,
Seventh Judicial District of Iowa

Electronically signed on 2018-03-15 09:55:51

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

KENNETH SHEFFEY

Applicant,

vs.

STATE OF IOWA

Respondent.

Case No: 07821 PCCE129936

ORDER

**DISMISSING APPLICATION FOR
POST-CONVICTION RELIEF**

This matter comes before the Court for review. On February 13, 2018, this Court entered an order notifying Applicant of the Court's intent to dismiss his post-conviction relief application pursuant to Iowa Code section 822.6. Applicant filed a reply to the Court's order on February 28, 2018.

Applicant's response raises additional claims regarding the ineffectiveness of counsel and alleging that Applicant was incompetent to stand trial for first degree murder in 1975. Each of the new claims raised by Applicant were known or could have been known and raised in Applicant's original, supplemental or amended post-conviction relief application. See Iowa Code section 822.8. Therefore, these additional claims are time-barred pursuant to Iowa Code section 822.3..

In light of the application, Applicant's subsequent filings, and the record, the Court confirms its finding that no legitimate purpose would be served by appointing counsel. The Court further confirms its finding that Applicant is not entitled to post-conviction relief, no purpose would be served by any further proceedings, and no material issue of fact exists that has not already been litigated or is not time-barred. The Court further finds that Applicant remains indigent and unable to pay costs of this action.

IT IS THEREFORE ORDERED that Applicant's request for court appointed counsel is DENIED.

IT IS FURTHER ORDERED that this matter is DISMISSED with costs assessed to the State due to Applicant's current incarceration and indigency.

ALL ABOVE IS SO ORDERED this 15th day of March, 2018.

The Clerk shall notify all self-represented litigants and attorneys of record.

Offender Movement Summary

Offender Code: 0103735

Offender Name: Kenneth Ray Sheffey

Date	Code	Description	From	To
08/12/2013	33	Transfer to New Institution	IMCC	ISP
07/26/2013	122	Supervised in Other State Ended		IMCC
09/18/1981	121	Supervised in Other State	ISC	
09/18/1981	43	Case Release to Compact Housing	ISP	
11/05/1974	1	New Court Commitment	ISP	ISP

Other Orders/Judgments**4:19-cv-00022-JEG Sheffey v. State of Iowa**Paper recipients: 1 Mailing Labels**U.S. District Court****Southern District of Iowa****Notice of Electronic Filing**

The following transaction was entered on 3/4/2019 at 11:53 AM CST and filed on 3/4/2019

Case Name: Sheffey v. State of Iowa**Case Number:** 4:19-cv-00022-JEG**Filer:****Document Number:** 4**Docket Text:****ORDER denying petition; case is dismissed. See order for particulars. Signed by Senior Judge James E. Gritzner on 3/4/2019. (nlh) Copy of order mailed by chambers to pro se petitioner.****4:19-cv-00022-JEG Notice has been electronically mailed to:**

Aaron James Rogers tim.hau@ag.iowa.gov, catie.johnson@ag.iowa.gov, aaron.rogers@ag.iowa.gov, kristle.finck@ag.iowa.gov, benjamin.parrott@ag.iowa.gov, elizabeth.dickey@ag.iowa.gov

Kevin Cmelik aaron.rogers@iowa.gov, benjamin.parrott@iowa.gov, mary.robertson@iowa.gov, kcめlik@ag.state.ia.us

4:19-cv-00022-JEG Notice has been delivered by other means to:Kenneth Ray Sheffey #0103735
IOWA STATE PENITENTIARY
P.O. Box 316
Fort Madison IA 52627

IN THE SUPREME COURT OF IOWA
11\21\18

**Kenneth Ray Sheffey,
 Applicant/Appellant,**

V.

**State of Iowa,
 Respondent/Appellee.**

Sup. Ct. No. 18-0540

Scott County No. PCCE129936

Appeal from the Iowa District Court

For Scott County

Honorable Marilita A. Greve, Judge.

Pro se Amended Proof Brief

NUMBER TWO

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Routing Statement

This case should be retained by the Iowa Supreme Court, instead of the Appellate court, as it contains matters of law not previously addressed in a comprehensive or otherwise meaningful manner that addresses illiterate inmates seeking to attack their convictions in post conviction relief proceedings, and said inmates being denied the assistance of counsel in said proceedings.

Statement of the Case

The Applicant Was Denied The Right To Assist His Counsel In His Defense; The Applicant Was Denied Effective Assistance Of Counsel; Nature of the case:

This is an appeal by Defendant-Appellant, Kenneth Ray Sheffey from the order dismissing his post-conviction relief on February 12th, 2018, in the District Court for Scott County, Iowa, from the order dismissing said action by the Honorable Chief District Judge, Marilita A Greve.

Course of proceedings: On February 12th, 2018, Appellant Sheffey filed a post-conviction (2254) application, in that he is and was incompetent and illiterate. All of this is new to Sheffey. Sheffey is in need of an appellant defense and an interpreter. This is obvious in the case of Sheffey, Scott County Cause No. (s) L06169001; L06169002; and L06169003. This is why Sheffey should not be time barred, because of his incompetency and illiteracy. Sheffey was in confinement and separated from his lawyer and the Courts outside of Iowa from September of 1981 until 2013, when he was returned to Iowa. At no time did any of the other states provide legal assistance for Sheffey's Iowa criminal charges. This remained as new to the applicant. The applicant could not have assisted in any way with his defense, or his appeals.

There are lawyers and interpreters that deal with illiteracy and incompetency. Applicant Sheffey knows the rules of procedure are not waived because Sheffey is unrepresented. By reading old letters to the applicant Sheffey, , there are three issues. The Trial should never have started. There were pretrial orders in discovery. These were Orders that should have been followed. The State

was ordered three times to disclose. A competent Judge would not have let the argument occur in front of a jury.

- (1) A competent lawyer for the applicant would not have started the trial without a defense. There is not much to say about the respondent, except he was incompetent and that a hearing will show that all the Applicant says is in the transcripts.
- (2) Up until this court and the filing of the motion to strike by the respondents, and the court's ruling on that order. The applicant feels that he has been treated by incompetence, and that the lower court never even read the argument. It is known by the respondent that Sheffey is illiterate and incompetent, and he has been an out of state prisoner, and has not had access to the courts for 40 years or more. Applicant has been in the custody of the respondents since 7/24/1974. See Bounds v. Smith, 52 L.Ed.2d 72, 430 U.S. 817.

Facts: The applicant is illiterate and incompetent. persist as best as he can. The fact is the respondent has blocked the applicant from the courts, has had the knowledge of the applicant's illiteracy and incompetency. A hearing in Scott County would show all of the issues to be true.

The Applicant Was Denied The Right To Assist His Counsel In His Defense. The Applicant Was Also Denied The Effective Assistance Of Counsel. The Respondent Was In Contempt Of Court. All Errors Were Preserved By The Respondent's Own Objections. The Judge Was Criminally Incompetent For Letting The Trial Begin.

Preservation of error: The respondent filed for summary judgment, which was inappropriately granted by the Court. None of the issues have been adjudicated.

Argument: The beer can issue in the Iowa Supreme Court could not have been adjudicated because the trial was held in contempt of court, as the State was ordered to turn over the fingerprints, but failed to do so. That is not the issue. The applicant knew his prints were not on the beer can because the applicant was not there. The prints belonged to an eyewitness to the crime. The applicant had a right to question that witness and still wants to question that witness. The applicant believes and asserts that the State knows who those fingerprints belongs to. But this is not the issue. The issue is that the applicant deserves a hearing, and a hearing without doubletalk. The applicant is still incompetent and illiterate, and is requesting a hearing in Scott County.

To save the court any confusion, the respondent has copies of all trial transcripts and prison records, but the applicant is going by witnesses' recall of applicant's trial. During questioning of applicant, the respondent asked, "Were you receiving written evidence at the county jail?" Answer "Yes." Question, "Did you read them?" Answer "Yes." Question, "What did they say?" Answer "You're a killer." Before I could say that other inmates were reading them to me, the respondent objected to me testifying at my own trial and began to argue in front of the jury. The judge just sat there and did not rule on the objection. Then the respondent asked me where I got my suntan, knowing that I was in prison, and sent me to the farthest prison away from my counsel. Then another argument broke out in front of the judge and jury concerning fingerprints that the two pretrial judge's order given to applicant, which was never received by the applicant or his counsel.

Applicant is not saying that illiteracy alone should create a reversal, but at the least, the courts should take a look at the evidence and the evidence will then show that the applicant is innocent. If a true hearing was heard in Scott County today, the evidence would show that the trial judge was incompetent in letting the trial go any further.

Appellant also asserts that he was not informed of his right to filing a post-conviction relief application, and furthermore, had no idea of what legal rights he had in post-trial motions, litigation and seeking relief from his conviction in general. Solely due to the Iowa Department of Corrections being neglectful in providing required legal assistance as it's mandated by law to do after it transferred him out of the State of Iowa to other prisons within the nation. The Iowa Department of Corrections has a long established history of such deprivations of legal access to the Courts. See for example Walter v. Kautzky, 680 N.W.2d 1, 2-4.

The District Court Erred When It Granted Summary Judgment In Favor Of The Respondent And Dismissed The Applicant's Post conviction Relief Application Without First Appointing Counsel To Assist Him

Preservation of Error: Error was preserved by the District Court's ruling dismissing the applicant's post conviction relief on March 15th, 2018, when it did so without appointing counsel to investigate all claims by the undersigned, and amending the application pursuant to Iowa Code §822.8 respectively.

Standard of review: "Because there is no constitutional right to counsel in post conviction cases, we review the appointment of counsel for an abuse of discretion." Wise v. State, 708 N.W.2d 66, 69 (Iowa 2006).

Argument: The undersigned filed a second application for post-conviction relief on February 12th, 2018. (See Scott County Docket No. PCCE129936 on said date).

In said application, the undersigned made it clear to the Courts that he had a “5th grade education” and was “illiterate,” in addition to stating clearly, “will go into further details in my pro se brief and after I get a lawyer to help with the required motions.” (See Scott County Docket No. PCCE129936 filed “Application for Postconviction” relief filed on 2/12/18 at Pg. 2-3).

It was made clear to the court, that the applicant was unable to properly present his claims to the Court for postconviction relief, and required the assistance of counsel due to the inability of his indigency, coupled with his lower level education, and illiteracy to properly present his claims for relief. All combining to present an insurmountable obstacle to overcome in seeking relief inter alia post conviction without the assistance of court appointed counsel.

The appellant asserts that the District greatly erred when it dismissed his application without first appointing counsel to assist him in preparing and presenting viable claims.

To begin with, the appointment of counsel, aside from including all viable issues in an amended application pursuant to Iowa Code §822.8, it would of assisted the district court and aided the district court, and benefited the applicant.

The Iowa Supreme Court stated, “In general, counsel should be appointed because “it benefits the applicant, aids the trial court, is conducive to a fair hearing,

and certainly helpful in the event of an appeal.” Furgison v. State, 217 N.W.2d 613, 615 (Iowa 1974).” Armstrong v. State, 868 N.W.2d 881.

Additionally, The District Court itself acknowledged Appellant’s indigency status. In Wright v. Cedar Falls, 424 N.W.2d 456 at 459, the Court held, “Under section 663A.5 an indigent petitioner is entitled to counsel to challenge a conviction at the county’s expense.”

“The Iowa Supreme Court has recognized a statutory right to counsel in chapter 822 proceedings and a corresponding statutory right to the effective assistance of postconviction counsel. See Dunbar v. State, 515 N.W.2d 12, 15.” Moore v. State, 902 N.W.2d 590.

The complexity of the issues that the applicant wished to presented, taking into consideration his “5th grade education” and “illiteracy,” was more than sufficient to warrant the appointment of counsel. See generally Phillips v. Jasper County Jail, 437 F.3d 791, 794 (8th Cir. 2006) (“The relevant criteria for determining whether counsel should be appointed include the factual complexity of the issues, the ability of the indigent person to investigate the facts, the existence of conflicting testimony, the ability of the indigent person to present the claims, and the complexity of the legal arguments.”); Edgington v. Missouri Dep’t of Corr., 52 F.3d 777, 780 (8th Cir. 1995), abrogated on other grounds, Doe v. Cassel, 403 F.3d 986, 989 (8th Cir. 2005), (reviewing factors to consider when appointing counsel in pro se civil case). See also Ward v. Smith, 721 F.3d 940 (8th Cir. 2013).

For all of the reasons stated above, applicant-Appellant, Kenneth Ray Sheffey, respectfully requests that this Court enter a judgment for a remand to the District Court for dismissal of those charges; alternatively the appellant requests that this matter be remanded back to the District Court, where counsel is appointed to investigate and amend his application for postconviction relief as he is unable to do so himself due to his illiteracy and own incompetence.

Request for Non-Oral Submission

Counsel requests not to be heard in oral argument.

Certificate of Compliance with Typeface Requirements and Type-Volume Limitation

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903 (1) (d) and 6.903(1) (g) or (2) because: this brief has been prepared in a proportionally spaced typeface using Times New Roman in Font Size 14 and contains 2,025 words, excluding the parts of the brief exempted by Iowa R. App. 6.903(1)(g)(1).

Certificate of Cost

For purposes of costs, appellant waives any fees associated with the filing and preparation associated with his own pro se filing.

Respectfully submitted,

**Kenneth Ray Sheffey #0103735
Iowa State Penitentiary
P.O. Box 316
Ft. Madison, IA 52627**

State of Iowa }
 } ss.
County of Lee }

The foregoing instrument was Subscribed and Sworn to before me this ___th day of _____, 201__.

Notary Public In and For the State of Iowa

Certificate of Service

I, the undersigned, hereby certify, that all parties that bear interest in the above captioned cause, have been served a copy of this herein document, by placing said document in a postage pre-paid envelope, addressed to each respective party, and having service of said delivery performed by the united State Postal Service this ___ day of _____, 20__.

Signature: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

KENNETH RAY SHEFFEY,

Petitioner,

vs.

STATE OF IOWA,

Respondent.

No. 4:19-cv-00022—JEG

O R D E R

Petitioner Kenneth Ray Sheffey brings this pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Sheffey challenges his 1977 conviction for first degree murder, assault with intent to murder, and breaking and entering. ECF No. 1.

Sheffey previously filed a § 2254 petition in 1987. *See Sheffey v. State of Iowa*, 4:87-cv-50235-DEO (S.D. Iowa) (“Sheffey I”). Records from the Clerk of Court indicate the petition was denied on December 28, 1990. *Sheffey I*, ECF No. 26. The decision of the district court was affirmed by the Court of Appeals. *Sheffey I*, ECF No. 31 (mandate returned from Court of Appeals on November 7, 1991).

“Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A) (also known as Antiterrorism and Effective Death Penalty Act of 1996 or AEDPA). Permission is required even though Sheffey’s first § 2254 petition was filed prior to the effective date of AEDPA, which limited the filing of a second or successive petition. *See Vancleave v. Norris*, 150 F.3d 926, 927 (8th Cir. 1998) (petition filed after effective date of AEDPA subject to filing restrictions); *see also Libby v. Magnusson*, 177 F.3d 43, 46-47 (1st Cir. 1999) (AEDPA applies to second habeas

petition filed after AEDPA's effective date even though first petition was filed prior to that date, and is not violation of Ex Post Facto Clause).

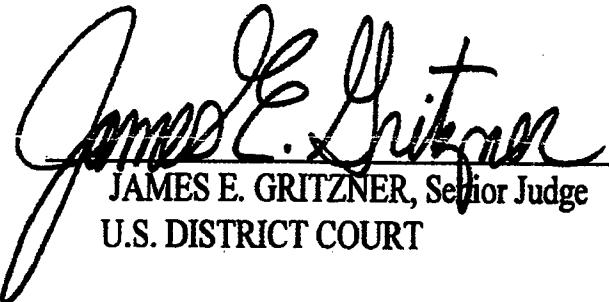
Sheffey has not obtained authorization for this Court to consider his successive petition. The Court must, therefore, dismiss the case. *See, e.g., Boyd v. United States*, 304 F.3d 813, 814 (8th Cir. 2002) (per curiam) (if, after brief initial inquiry district court determines motion is actually second or successive habeas petition, district court should dismiss it for failure to obtain authorization from the court of appeals or exercise its discretion to transfer it to the court of appeals).

The petition is denied, and this case is dismissed.

Because Sheffey has not "made a substantial showing of the denial of a constitutional right," *see* 28 U.S.C. § 2253(c)(2), no certificate of appealability shall be issued. He may request issuance of a certificate of appealability by a judge of the Eighth Circuit Court of Appeals. *See* Fed. R. App. P. 22(b).

IT IS SO ORDERED.

Dated this 4th day of March, 2019.



JAMES E. GRITZNER, Senior Judge
U.S. DISTRICT COURT