
IN THE
SUPREME COURT OF THE UNITED STATES

GERALD ROSS PIZZUTO, JR.,
Petitioner,

v.

STATE OF IDAHO,
Respondent.

On Writ of Certiorari to the
Idaho Supreme Court

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Jonah J. Horwitz*
FEDERAL DEFENDER SERVICES OF IDAHO, INC.
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***Counsel of Record**

Pursuant to Supreme Court Rule 39, Petitioner Gerald Ross Pizzuto asks leave to file the accompanying petition for writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Mr. Pizzuto is indigent and the costs of the appeal below were ordered to be at county expense. A copy of the order is attached as Exhibit 1.

In addition, Mr. Pizzuto was granted *in forma pauperis* status by the United States District Court for the District of Idaho on July 20, 2006. A copy of the order is attached as Exhibit 2. In that same order, the Federal Defenders were appointed to represent Mr. Pizzuto. *See* Exhibit 2. Mr. Pizzuto continues to be represented by his lawyers with the Federal Defenders in various state and federal courts pursuant to his *in forma pauperis* status and Federal Rule of Appellate Procedure 24(a)(3).

Respectfully submitted this 23rd day of September, 2021.

/s/ Jonah J. Horwitz

Jonah J. Horwitz
Counsel for Petitioner

EXHIBIT 1

**(Order Granting Motion That Costs of Appeal
be at County Expense, *Pizzuto v. State*, Case
No. CV 03-34748)**

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of February 2020, I served the foregoing document by method indicated below, postage prepaid where applicable, addressed to the following:

L. LaMont Anderson
Deputy Attorney General
Chief, Capital Litigation Unit
Statehouse Mail, Room 10
PO Box 83720
Boise, ID 83720-0010

U.S. Mail
 Hand Delivery
 Facsimile
 Overnight Mail (Fed Ex)
 iCourt File and Serve

Roland Gammill
Trial Court Administrator
Second Judicial District
P.O. Box 896
Lewiston, ID 83501

U.S. Mail
 Hand Delivery
 Facsimile
 Overnight Mail (Fed Ex)
 iCourt File and Serve

Nancy Towler
Court Reporter
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 Hand Delivery
 Facsimile
 Overnight Mail (Fed Ex)
 iCourt File and Serve



Deputy Clerk

EXHIBIT 2

**(Order Granting *In Forma Pauperis* Status and
Appointing Counsel, *Pizzuto v. Hardison*,
Case No. CV 05-516-S-BLW)**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

GERALD ROSS PIZZUTO, JR.,)	
)	Case No. CV 05-516-S-BLW
Petitioner,)	
)	
v.)	<u>CAPITAL CASE</u>
)	
JOHN HARDISON, Warden,)	ORDER
Idaho Maximum Security Institution,)	
)	
Respondent.)	
_____)	

The Court of Appeals for the Ninth Circuit has authorized Gerald Ross Pizzuto, an Idaho capital inmate, to file a “second or successive” Petition for Writ of Habeas Corpus in the District Court. (Docket No. 2.) In his Petition, Petitioner alleges that he is mentally retarded and that his execution would violate the Eighth Amendment under *Atkins v. Virginia*, 536 U.S. 304 (2002).¹

This Court has conducted an initial review of the Petition, as required by Rule 4 of the Rules Governing Section 2254 Cases, and concludes that the Petition will not be summarily dismissed. Accordingly, Petitioner’s request for the appointment of counsel shall be granted, and attorneys Joan Fisher and Robert

¹ Petitioner’s earlier attempt to file a second or successive petition, on grounds other than those presented here, was dismissed for lack of jurisdiction. *See* Case No. CV 01-374-S-BLW.

Gombiner shall be appointed to represent Petitioner during these proceedings. 21 U.S.C. § 848(q)(4)(B); D. Idaho. L. Civ. R. 9.2(d)(1).

Petitioner has informed the Court that he has included the *Atkins* claim in a pending state court appeal. It appears that Petitioner filed his federal Petition at this time in an effort to comply with the statute of limitations and to secure a place in line while he attempts to exhaust his state court remedies. *See Pace v. DiGugliemlo*, 544 U.S. 408, 416 (2005) (suggesting such a procedure). As a result, Petitioner and Respondent have filed a joint Motion and Stipulation to Hold Proceedings in Abeyance. (Docket No. 6.) The Court finds good cause to stay the federal matter, and the Motion shall be granted. Petitioner shall file quarterly status reports, and the parties shall immediately notify the Court when the state court proceeding has concluded.

ORDER


NOW THEREFORE IT IS HEREBY ORDERED that Petitioner's Application to Proceed In Forma Pauperis and for Appointment of Counsel (Docket No. 3) is GRANTED. Joan Fisher of the Capital Habeas Unit, Federal Defenders of Eastern Washington and Idaho, and Robert Gombiner of the Federal Defenders of Western Washington, shall be appointed to represent Petitioner during the pendency of these proceedings.

IT IS FURTHER ORDERED that the Capital Habeas Unit's Motion for Permission to Continue to Represent Petitioner in State Courts (Docket No. 5) is GRANTED to the extent that counsel has requested the Court's authorization, and not an order of appointment, to appear in state court on Petitioner's behalf in matters related to the federal proceeding.

IT IS FURTHER ORDERED that Petitioner and Respondent's joint Motion and Stipulation to Hold Proceedings in Abeyance (Docket No. 6) is GRANTED. This case shall be stayed pending completion of the state court matter currently on appeal in Idaho Supreme Court Case No. 32679. Petitioner shall file quarterly status reports, and the parties shall immediately notify the Court upon completion of the state court matter.

DATED: **July 20, 2006**




B. LYNN WINMILL
Chief Judge
United States District Court