

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Beau John Greene, Petitioner,

vs.

State of Arizona, Respondent.

****CAPITAL CASE****

**ON PETITION FOR WRIT OF CERTIORARI
TO THE ARIZONA SUPREME COURT**

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Julie Hall
Counsel of Record
779 S. Cody Loop Rd
Oracle, AZ 85623-6121
(520) 609-2415
JulieSHall@hotmail.com

Counsel for Petitioner Greene

Pursuant to Rule 39 of this Court's Rules, Petitioner Beau John Greene hereby seeks leave to proceed in forma pauperis in the above-captioned case on the ground that he lacks sufficient funds to pay for fees and expenses. Mr. Greene is a death-row prisoner incarcerated at the Arizona State Prison Complex in Florence, Arizona. He has been repeatedly deemed eligible for court-appointed counsel throughout his capital proceedings in state and federal court. (App. A, B, C, & D.) Mr. Greene thus respectfully requests that he be permitted to proceed in forma pauperis before this Court.

Respectfully submitted: September 11, 2023.

Julie Hall
Counsel of Record
779 S. Cody Loop Rd
Oracle, AZ 85623-6121
(520) 609-2415
JulieSHall@hotmail.com

/s/Julie Hall
Counsel for Petitioner Greene

APPENDIX

Appendix A:

State v. Greene, No. CR48730 Doc. No. 20 (Pima County Super. Ct. 1995) (order appointing trial counsel)..... a001

Appendix B:

State v. Greene, No. CR96-0502-AP Doc. No. 2 (Ariz. 1996) (minute entry order appointing direct appeal counsel)..... a003

Appendix C:

State v. Greene, No. CR96-0502-AP Doc. No. 22 (Ariz. 2000) (order appointing state post-conviction counsel)..... a004

Appendix D:

Greene v. Schriro, No. CV-03-605-TUC-CKJ, Doc. No. 7 (D.Ariz. Dec. 24, 2003) (order appointing federal habeas counsel)..... a006

APPENDIX A

STATE

CR. 48730

JP95-502894

NO: &

JP95-502894

ORDER RE COURT APPOINTED COUNSEL

FILED JUDGE H. CORBETT SUPERIOR COURT

95 MAR 28 PM 2:28 95

Beau John Greene

() SUPERIOR COURT (**) JUSTICE COURT () CITY COURT DEPUTY

BY: S. CARRANZA

Having considered the Defendant's Financial Statement and finding that the defendant is charged with Class _____, (**) Felony () Misdemeanor

IT IS ORDERED in the above numbered cause(s):

(xx) Appointing the below-named attorney to represent the defendant for all further proceedings through the filing of a Notice Of Appeal if required:

(xx) Court Appointed Attorney PD/WD; Appoint David Darby

() Reserving the right to later assess attorney fees and/or reset review hearing for _____, at _____ a.m./p.m.

() Assessing attorney fees of \$_____ to offset the costs of legal services provided, with the defendant to pay the assessed fees at the rate of \$_____ per month, commencing_____.

() Denying the defendant's request for court appointed counsel, with the defendant being:

() Directed to the Pima County Bar Association Criminal Lawyers' Referral Program.

() Required to hire his or her own attorney.

JUDGE/COMMISSIONER/MAGISTRATE DATE 3/10/95

IF YOUR REQUEST FOR COURT APPOINTED COUNSEL HAS BEEN DENIED, YOU MAY ASK THE COURT TO RECONSIDER YOUR REQUEST AT A LATER TIME, IF YOU TRY BUT FIND THAT YOU CANNOT AFFORD TO HIRE YOUR OWN LAWYER. IF YOU WANT TO APPEAL YOUR ASSESSMENT, YOU MUST REQUEST A RE-HEARING WITHIN 10 DAYS.

I UNDERSTAND THAT FAILURE TO COMPLY WITH THE ABOVE LISTED PAYMENT CONTRACT MAY RESULT IN COURT ACTION AGAINST ME. IN ADDITION, THE COURT HAS THE OPTION OF CIVIL LAWSUITS TO GARNISH WAGES AND ATTACHMENTS. THE COURT MAY TAKE WHATEVER ACTION IS NECESSARY TO COLLECT THE AMOUNT DUE.

FURTHER, I AGREE TO REPORT ANY CHANGE OF ADDRESS, PHONE, OR EMPLOYMENT TO THE COURT WITHIN FIVE DAYS OF SAID CHANGE.

DEFENDANT DATE 3/10/95

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12 3/10/95

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STATE

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v

NO: CR-48730

FILED
JAMES A. CORBETT
SUPERIOR COURT
95 MAR 31 PM 2:18

BEAU JOHN GREENE

ORDER RE
COURT APPOINTED COUNSEL

BY: S. CARRANZA
DEPUTY CLERK

(X) SUPERIOR COURT () JUSTICE COURT () COUNTY COURT

Having considered the Defendant's Financial Statement and finding that the defendant is charged with Class _____, () Felony () Misdemeanor

IT IS ORDERED in the above numbered cause(s):

(X) Appointing the below-named attorney to represent the defendant for all further proceedings through the filing of a Notice Of Appeal if required:

(X) Court Appointed Attorney David Darby

() Reserving the right to later assess attorney fees and/or reset review hearing for _____, at _____ a.m./p.m.

(X) Assessing attorney fees of \$ 100.00 to offset the costs of legal services provided, with the defendant to pay the assessed fees at the rate of \$ _____ per month, commencing _____.

() Denying the defendant's request for court appointed counsel, with the defendant being:

() Directed to the Pima County Bar Association Criminal Lawyers' Referral Program.

() Required to hire his or her own attorney.

payment to be set by trial judge
Stayed 3/31/95
JUDGE/COMMISSIONER/MAGISTRATE DATE

IF YOUR REQUEST FOR COURT APPOINTED COUNSEL HAS BEEN DENIED, YOU MAY ASK THE COURT TO RECONSIDER YOUR REQUEST AT A LATER TIME, IF YOU TRY BUT FIND THAT YOU CANNOT AFFORD TO HIRE YOUR OWN LAWYER. IF YOU WANT TO APPEAL YOUR ASSESSMENT, YOU MUST REQUEST A RE-HEARING WITHIN 10 DAYS.

I UNDERSTAND THAT FAILURE TO COMPLY WITH THE ABOVE LISTED PAYMENT CONTRACT MAY RESULT IN COURT ACTION AGAINST ME. IN ADDITION, THE COURT HAS THE OPTION OF CIVIL LAWSUITS TO GARNISH WAGES AND ATTACHMENTS. THE COURT MAY TAKE WHATEVER ACTION IS NECESSARY TO COLLECT THE AMOUNT DUE.

FURTHER, I AGREE TO REPORT ANY CHANGE OF ADDRESS, PHONE, OR EMPLOYMENT TO THE COURT WITHIN FIVE DAYS OF SAID CHANGE.

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DEFENDANT

DATE

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APPENDIX B

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CLERK SUPREME COURT

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ARIZONA SUPERIOR COURT, PIMA COUNTY

JUDGE: HON. BERNARDO VELASCO

CASE NO. **CR-48730**

COURT REPORTER: NONE

DATE: November 8, 1996

THE STATE OF ARIZONA
Plaintiff

vs.

BEAU JOHN GREENE
Defendant

CR-96 0502 AP

FILED
NOV 12 1996
NOEL K. DESSAINT CLERK SUPREME COURT

MINUTE ENTRY

IN CHAMBERS RULING RE APPOINTMENT OF APPELLATE COUNSEL:

A Notice of Appeal having been filed by trial counsel David Alan Darby,

IT IS ORDERED that Harriette Levitt is appointed appellate counsel nunc pro tunc,

August 26, 1996.

- cc: Hon. Bernardo Velasco
- Criminal Calendaring
- County Attorney - Rick Unklesbay, Esq.
- David Darby, Esq.
- Jill Thorpe, Esq.
- Clerk of Court - Appeals
- Indigent Defense Services
- Clerk of the Supreme Court-402 Arizona Courts Bldg, 1501 W. Washington, Phoenix, AZ 85007
- Harriette P. Levitt, Esq. - 485 S. Main Ave., Tucson, AZ 85737 (phone 624-0400)
- Attorney General
- Court of Appeals - Div. Two

NOV 8 1996

Sharon Coil/sid
Deputy Clerk

a003

APPENDIX C

SUPREME COURT OF ARIZONA

22 Feb

STATE OF ARIZONA,

) Supreme Court
) No. CR-96-0502-AP

Appellee,

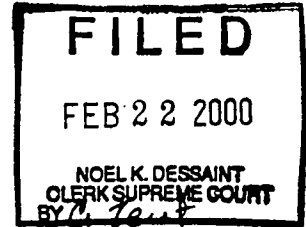
vs.

) Pima County
) No. CR-48730

BEAU JOHN GREENE,

) O R D E R

Appellant.



Upon the Court's own motion,

IT IS ORDERED that Michael Villarreal, Esq., is appointed to represent Beau John Greene in post-conviction proceedings pursuant to A.R.S. § 13-4041 and Rule 6.8(c), Ariz. R. Crim. P.

IT IS FURTHER ORDERED that counsel shall be compensated at the rate of \$100.00 per hour plus reasonable costs incurred in the representation. If counsel's work hours are over two hundred hours, the superior court shall review and approve additional reasonable fees and costs pursuant to A.R.S. § 13-4041(H). Counsel shall direct requests for the appointment of investigators and experts to the superior court pursuant to A.R.S. § 13-4013(B) and § 13-4041(J).

DATED this 22nd day of February, 2000.

THOMAS A. ZLAKET
Chief Justice

TO:

Hon. Janet Napolitano, Arizona Attorney General
Attn: Paul J. McMurdie, Esq., and Dawn Northup, Esq.
Michael Villarreal, Esq.
Beau John Greene, DOC 123048, Eyman Complex, SMU II, Arizona
State Prison, Florence
Hon. Bernardo Velasco, Judge, Pima County Superior Court
Hon. Gordon T. Alley, Presiding Judge, Pima County Superior
Court
Hon. John S. Leonardo, Presiding Criminal Judge, Pima
County Superior Court
Patricia Noland, Clerk, Pima County Superior Court
Phil Maloney, Indigent Defense Services, 32 N. Stone Ave., Suite
1902, Tucson, AZ 85701
Mike Baumstark, AOC, Supreme Court
Hon. Michael D. Ryan, Court of Appeals [Info Copy]
Jennifer Might, Administrator, Arizona Capital Representation
Project [Information Copy Only]
Jonathan Bass, Staff Attorney (Southern Counties), Arizona Capital
Litigation Law Clerk Project [Information Copy Only]

APPENDIX D

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DEC 24 2003
FEDERAL PUBLIC DEFENDER
DISTRICT OF ARIZONA

FILED _____ LODGED _____
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DEC 24 2003
CLERK U.S. DISTRICT COURT
DISTRICT OF ARIZONA
BY _____ DEPUTY

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Beau John Greene,
Petitioner,
vs.
Dora Schriro, et al.,
Respondents.

No. CV 03-605-TUC-CKJ
DEATH PENALTY CASE

**ORDER OF APPOINTMENT
AND GENERAL PROCEDURES**

IT IS ORDERED granting Petitioner's Application for Appointment of Counsel and appointing Fredric F. Kay, Federal Public Defender, District of Arizona, as Counsel for Petitioner in his federal habeas corpus proceedings. The Federal Public Defender is authorized to designate an Assistant Federal Public Defender to handle the case. Appointment is made pursuant to 21 U.S.C. § 848(q)(4)(B).

IT IS FURTHER ORDERED that the designated Assistant Federal Public Defender file a notice of appearance with the Court within 10 days from the entry of this Order.

IT IS FURTHER ORDERED granting Petitioner's application to proceed *in forma pauperis*.

IT IS FURTHER ORDERED that the Arizona Attorney General file a notice of appearance with the Court within 10 days from the entry of this Order.

IT IS FURTHER ORDERED that, in addition to the requirement of Local Rule 1.9(f), the parties shall file with the Clerk of Court an additional copy of every pleading or

1 other document filed from this date forward for use by the Capital Case Staff Attorney. The
2 notation "Capital Case Staff Attorney Copy" shall be clearly marked on the first page of such
3 copy.

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

6 I. Case Management Conference

7 A case management conference will be held on **Monday, February 9, 2004, at 2:00**
8 **p.m. in Courtroom 5A, Evo A. DeConcini United States Courthouse, Tucson.** Non-local
9 counsel may, if requested, appear by telephone. Any request to appear by telephone must be
10 filed at least ten (10) days prior to the scheduled conference. Prior to the conference,
11 Petitioner's counsel is expected to meet with Petitioner and to review any published case
12 decisions. Counsel is further expected to contact Petitioner's state court counsel to obtain
13 information about the case and to assemble the files and records from the state proceedings.
14 Absent a motion detailing significant delays, problems or obstacles encountered in obtaining
15 copies of pertinent files and records, the Court will not assist directly in obtaining such
16 materials. Also prior to the conference, counsel for both parties are expected to confer
17 regarding a proposed briefing schedule in this matter.

18 At the conference, Petitioner's counsel will be expected to discuss the status of file
19 and record assembly and review, any problems encountered in this regard, and whether
20 assistance regarding the state court record is needed from Respondents. Both parties should
21 be prepared to articulate their positions regarding the statute of limitations, to discuss any
22 other issues which may affect the filing of the Amended Petition or efficient resolution of
23 this matter, and to propose a briefing schedule.

24 Following the conference, the Court will issue a Case Management Order setting firm
25 deadlines for the filing of the Amended Petition, responsive pleadings, motions for further
26 evidentiary development, and other pleadings as the Court may deem necessary.

27 II. Amended Petition

28 The Amended Petition shall include and set forth all known claims of constitutional

1 error or deprivation entitling Petitioner to federal habeas relief. See Rule 2(c), 28 U.S.C. foll.
2 § 2254. In addition to the requirement of Local Rule 1.9, the Amended Petition shall:

- 3 (1) separately enumerate *every* claim for federal habeas relief (related claims such
4 as ineffective assistance of counsel may be separately enumerated as sub-
5 claims);
- 6 (2) include a table of contents;
- 7 (3) state with specificity the facts and legal authority supporting each claim;
- 8 (4) state with specificity whether, when and where each claim was presented to or
9 considered by the state's highest court;
- 10 (5) include, in any appendices, a table of contents and tabs between exhibits; and
- 11 (6) not contain, as exhibits or otherwise, significant portions of the state court
12 record (i.e., copies of transcripts);¹

13 III. Answer

14 After the Amended Petition is filed, Respondents shall file an Answer. Pursuant to
15 Rule 5 of the Rules Governing Section 2254 Cases, Respondents' Answer shall specifically
16 respond to the allegations of the petition. The Court intends the Answer to be a
17 comprehensive responsive pleading, addressing both the factual allegations and legal
18 contentions raised in the Amended Petition as well as any procedural defenses with respect
19 to individual claims. Accordingly, Respondents shall address the merits of every enumerated
20 claim and sub-claim, regardless of whether Respondents allege the claim is barred from
21 review by the federal court. In addition, Respondents' Answer shall include a table of
22 contents.

23 IV. Traverse

24 Petitioner will be given an opportunity to file a Traverse in reply to Respondents'
25 Answer. The filing of a Traverse is optional. If a Traverse is filed, it shall include a table
26 of contents.

27 ¹ Following the filing of the Amended Petition, the Court will, on its own motion, seek a certified
28 copy of the state court record from the Arizona Supreme Court, which includes trial, appeal and post-
conviction pleadings as well as transcripts. Accordingly, the parties may cite to appropriate state court
documents in their pleadings but should not reproduce such documents as exhibits.

1 V. Evidentiary Development

2 Following the filing of the Amended Petition, Answer and Traverse (if any), Petitioner
3 shall file any requests for further evidentiary development of a claim. Such motions include,
4 but are not limited to, requests for Discovery, Expansion of the Record and Evidentiary
5 Hearing under Rules 6, 7 and 8 of the Rules Governing Section 2254 Cases. Any motion for
6 evidentiary development shall:

- 7 (1) separately identify which enumerated claim(s) and sub-claim(s) Petitioner
8 contends needs further factual development;
- 9 (2) with respect to each claim or sub-claim identified in #1, (i) describe with
10 specificity the facts sought to be developed; (ii) identify the specific exhibit(s)
11 Petitioner contends demonstrate or support the existence of each fact sought
12 to be developed; and (iii) explain why such fact(s) and exhibit(s) are relevant
13 with respect to each claim or sub-claim;
- 14 (3) with respect to each exhibit and each fact identified in #2, explain in complete
15 detail why such exhibit(s) and such fact(s) sought to be developed were not
16 developed in state court;
- 17 (4) with respect to each exhibit and each fact identified in #2, explain in complete
18 detail why the failure to develop such exhibit(s) and such fact(s) in state court
19 was not the result of lack of diligence, in accordance with the Supreme Court's
20 decision in Williams v. Taylor, 529 U.S. 420 (2000);

21 Any motion for evidentiary hearing shall further address:

- 22 (5) with respect to each claim or sub-claim identified in #1, explain how the
23 factual allegations, if proved, would entitle Petitioner to relief; and
- 24 (6) with respect to each claim or sub-claim identified in #1, whether the state court
25 trier of fact reliably found the relevant facts after a full and fair hearing. See
26 Jones v. Wood, 114 F. 3d 1002, 1010 (9th Cir. 1997).

27 Any motion for evidentiary development that is filed prior to the filing of
28 Respondents' Answer or that fails to address the above-listed requirements will be summarily
denied. If a motion is filed, a response or reply thereto, if any, shall be filed in accordance
with Local Rule 1.10(c) and (d), respectively.

29 VI. Miscellaneous

30 In addition to the requirements of Local Rule 1.9, the following shall apply to any
pleading filed in this matter:

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

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appropriate pleading (i.e., a motion for evidentiary development).

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

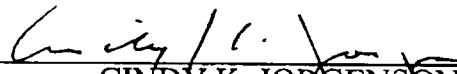
IT IS FURTHER ORDERED that this case, having been randomly reassigned, by lot, to Judge Frank R. Zapata, pursuant to Rule 1.2(e) of the Local Rules of Practice, shall be redesignated as No. CV 03-605-TUC-FRZ.

IT IS FURTHER ORDERED that the Clerk of Court forward a copy of the Petition for Writ of Habeas Corpus, the Order Staying Execution, and this Order to Petitioner's counsel.

IT IS FURTHER ORDERED that a copy of the Petition for Writ of Habeas Corpus and this Order be served by the Clerk of Court upon Respondents Dora Schriro and Charles Goldsmith and upon Kent Cattani, Assistant Arizona Attorney General, by certified mail pursuant to Rule 4, Rules Governing Section 2254 Cases.

IT IS FURTHER ORDERED that the Clerk of Court forward a copy of this Order to Petitioner.

DATED this 23rd day of December, 2003.


CINDY K. JORGENSON
United States District Judge