

No. 23-6822

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT PAUL BROZENICK — PETITIONER
(Your Name)

Supreme Court, U.S.
FILED
JAN - 3 2024
OFFICE OF THE CLERK

VS.

Commonwealth Of Pennsylvania — RESPONDENT(S)

District Attorney Stephen Zapalla

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):

WESTERN DISTRICT FEDERAL COURT/ 3RD CIRCUIT OF APPEALS

Supreme Court of Pennsylvania / Superior Court Pennsylvania

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: _____, or _____

a copy of the order of appointment is appended.

Robert Paul Brozenick
(Signature)

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SUPREME COURT, U.S.

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Robert Paul Brozenick, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>N/A</u>	\$ _____	\$ _____	\$ _____
Self-employment	\$ <u>N/A</u>	\$ _____	\$ _____	\$ _____
Income from real property (such as rental income)	\$ <u>N/A</u>	\$ _____	\$ _____	\$ _____
Interest and dividends	\$ <u>N/A</u>	\$ _____	\$ _____	\$ _____
Gifts	\$ <u>N/A</u>	\$ _____	\$ _____	\$ _____
Alimony	\$ <u>N/A</u>	\$ _____	\$ _____	\$ _____
Child Support	\$ <u>N/A</u>	\$ _____	\$ _____	\$ _____
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>N/A</u>	\$ _____	\$ _____	\$ _____
Disability (such as social security, insurance payments)	\$ <u>1606.00</u>	\$ _____	\$ <u>1606.00</u>	\$ _____
Unemployment payments	\$ <u>N/A</u>	\$ _____	\$ _____	\$ _____
Public-assistance (such as welfare)	\$ <u>N/A</u>	\$ _____	\$ _____	\$ _____
Other (specify): <u>N/A</u>	\$ <u>N/A</u>	\$ _____	\$ _____	\$ _____
Total monthly income:	\$ <u>1606.00</u>	\$ _____	\$ <u>1606.00</u>	\$ _____

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$
			\$
			\$

4. How much cash do you and your spouse have? \$ 0.00

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
N/A	\$ 0.00	\$
	\$	\$
	\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home
Value N/A

Other real estate
Value N/A

Motor Vehicle #1
Year, make & model N/A
Value _____

Motor Vehicle #2
Year, make & model N/A
Value _____

Other assets
Description N/A
Value _____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
N/A	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 1,000.00	\$ _____
Are real estate taxes included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ 70.00	\$ _____
Home maintenance (repairs and upkeep)	\$ 0	\$ _____
Food	\$ 500.00	\$ _____
Clothing	\$ 0	\$ _____
Laundry and dry-cleaning	\$ 0	\$ _____
Medical and dental expenses	\$ 0	\$ _____

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ 0	\$ _____
Recreation, entertainment, newspapers, magazines, etc.	\$ 0	\$ _____
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ 0	\$ _____
Life	\$ 0	\$ _____
Health	\$ 0	\$ _____
Motor Vehicle	\$ 0	\$ _____
Other: <u>N/A</u>	\$ 0	\$ _____
Taxes (not deducted from wages or included in mortgage payments)		
(specify): <u>N/A</u>	\$ 0	\$ _____
Installment payments		
Motor Vehicle	\$ 0	\$ _____
Credit card(s)	\$ 0	\$ _____
Department store(s)	\$ 0	\$ _____
Other: <u>N/A</u>	\$ 0	\$ _____
Alimony, maintenance, and support paid to others	\$ 0	\$ _____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 0	\$ _____
Other (specify): <u>N/A</u>	\$ 0	\$ _____
Total monthly expenses:	\$ 1606.00	\$ _____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? 0

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes No

If yes, how much? _____

If yes, state the person's name, address, and telephone number: N/A

12. Provide any other information that will help explain why you cannot pay the costs of this case.

N/A

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: December 31, 2023

Robert Paul Biognetti
(Signature)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH

ROBERT PAUL BROZENICK,)	
)	Civil Action No. 2:22-cv-1583
Petitioner,)	
)	
v.)	
)	United States Magistrate Judge
COMMONWEALTH OF)	Cynthia Reed Eddy
PENNSYLVANIA and DISTRICT)	
ATTORNEY OF ALLEGHENY)	
COUNTY,)	
)	
Respondents.)	

ORDER OF COURT¹

Before the Court is Petitioner Robert Paul Brozenick's motion for leave to appeal *in forma pauperis* (ECF No. 25). For the reasons that follow, the Court will grant Petitioner's motion.

On November 9, 2022, Petitioner filed with this Court a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 in connection with his 2018 convictions in the Court of Common Pleas of Allegheny County, at Case No. CP-02-0002351-2017, of four misdemeanor counts of Terroristic Threats and four misdemeanor counts of Simple Assault. Contemporaneously with the filing of the Petition, Petitioner paid in full the \$5.00 filing fee. (ECF No. 1, receipt number 200001176). On December 2, 2022, Petitioner filed an Amended Petition. (ECF No. 6).

By Memorandum Opinion and Order filed May 15, 2023, the Court dismissed the

¹ In accordance with the provisions of 28 U.S.C. § 636(c)(1), the parties voluntarily consented to jurisdiction by a United States Magistrate Judge, including entry of final judgment. (ECF Nos. 19 and 20).

APPENDIX B Pg. 1-3 FORMA PAUPERIS GRANTED ORDER OF COURT
WESTERN DISTRICT PENNSYLVANIA FEDERAL COURT

Petition for lack of subject matter jurisdiction finding that Petitioner was not "in custody" at the time the federal habeas petition was filed. (ECF Nos. 21 and 22). On June 5, 2023, Petitioner filed a Notice of Appeal (ECF No. 23) and on June 28, 2023, filed the instant Motion for Leave to Appeal *in forma pauperis* (ECF No. 25).

The Federal Rules of Appellate Procedure set forth the manner in which a litigant is permitted to seek leave to appeal *in forma pauperis*. Specifically, Rule 24(a)(1) of the Federal Rules of Appellate Procedure provides, in relevant part:

[A] party to a district-court action who desires to appeal *in forma pauperis* must file a motion in the district court. The party must attach an affidavit that:

(A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs;

(B) claims an entitlement to redress; and

(C) states the issues that the party intends to present on appeal.

Fed. R.App. P. 24(a)(1).

In his motion to appeal *in forma pauperis*, Petitioner lists his income source as a monthly disability payment of \$1605.00. He lists no other income or assets. His monthly expenses total \$1570.00, which includes \$1000.00 for rent or home-mortgage payments, \$70.00 for utilities, and \$500.00 for food. (ECF No. 25). The Court thus finds that Petitioner adequately sets forth his inability to pay fees and costs associated with this appeal.

The Court observes, however, that Petitioner does not include with his motion an entitlement to redress, nor does he state the issues he intends to present on appeal. However, the Court is cognizant that it must liberally construe a *pro se* litigant's pleadings, and the Court believes Petitioner does clearly set forth in his Notice of Appeal the issues that he intends to pursue in appealing the Court's Memorandum Opinion and Order. (See ECF No. 23.)

Accordingly, because Petitioner has made an adequate showing of financial need, the Court will grant Petitioner's motion for leave to appeal *in forma pauperis*. *See Mauro v. New Jersey Supreme Court, Case No. 56,900*, 238 F. App'x 791, 793 (3d Cir. 2007) ("The decision whether to grant an appeal *in forma pauperis* depends solely on whether the applicant is economically eligible; we do not consider whether the action or appeal is frivolous.")

An appropriate Order follows.

ORDER

AND NOW, this 28th day of June, 2023, IT IS HEREBY ORDERED that Petitioner's motion for leave to appeal *in forma pauperis* is GRANTED.

s/ Cynthia Reed Eddy
Cynthia Reed Eddy
United States Magistrate Judge

cc: ROBERT PAUL BROZENICK
P.O. Box 393
Carnegie, PA 15106
(via U.S. First Class Mail)

Samantha Renee Bentley
Office of the District Attorney of
Allegheny County
(via CM/ECF electronic transmission)