

No. _____

OCTOBER TERM, 2023
In the
Supreme Court of the United States

Donte Johnson,

Petitioner,

v.

The State of Nevada,

Respondent.

*On Petition for Writ of Certiorari
to the Supreme Court of the State of Nevada*

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

CAPITAL CASE

Rene Valladares
Federal Public Defender, District of Nevada
Randolph M. Fiedler
Counsel of Record
Benjamin A. Gerson
Assistant Federal Public Defender
411 E. Bonneville Ave., Ste. 250
Las Vegas, NV 89101
(702) 388-6577
(702) 388-5819 (fax)

Counsel for Petitioner

Pursuant to Supreme Court Rule 39.1, Petitioner Donte Johnson requests leave to file the attached Petition for Writ of Certiorari without prepayment of costs and to proceed *in forma pauperis*. Mr. Johnson's Affidavit or Declaration in support of Motion for Leave to Proceed *in Forma Pauperis* is attached as Ex. 1. Mr. Johnson has been granted leave to do so in the United States District Court, District of Nevada, for federal habeas corpus proceedings, Case No. 2:18-cv-00740-JAD-NJK (Apr. 26, 2018), attached as Ex. 2.

Dated this 23rd day of February, 2024.

Respectfully submitted,

/s/ Randolph M. Fiedler

Randolph M. Fiedler
Assistant Federal Public Defender

/s/ Benjamin A. Gerson

Benjamin A. Gerson
Assistant Federal Public Defender

EXHIBIT 1

EXHIBIT 1

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

I, Dante Johnson, 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>Ø</u>	\$ _____	\$ <u>Ø</u>	\$ _____
Self-employment	\$ <u>Ø</u>	\$ _____	\$ <u>Ø</u>	\$ _____
Income from real property (such as rental income)	\$ <u>Ø</u>	\$ _____	\$ <u>Ø</u>	\$ _____
Interest and dividends	\$ <u>Ø</u>	\$ _____	\$ <u>Ø</u>	\$ _____
Gifts	\$ <u>Ø</u>	\$ _____	\$ <u>Ø</u>	\$ _____
Alimony	\$ <u>Ø</u>	\$ _____	\$ <u>Ø</u>	\$ _____
Child Support	\$ <u>Ø</u>	\$ _____	\$ <u>Ø</u>	\$ _____
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>Ø</u>	\$ _____	\$ <u>Ø</u>	\$ _____
Disability (such as social security, insurance payments)	\$ <u>Ø</u>	\$ _____	\$ <u>Ø</u>	\$ _____
Unemployment payments	\$ <u>Ø</u>	\$ _____	\$ <u>Ø</u>	\$ _____
Public-assistance (such as welfare)	\$ <u>Ø</u>	\$ _____	\$ <u>Ø</u>	\$ _____
Other (specify): _____	\$ <u>Ø</u>	\$ _____	\$ <u>Ø</u>	\$ _____
Total monthly income:	\$ <u>Ø</u>	\$ _____	\$ <u>Ø</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
unemployed			\$
			\$
			\$

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? \$
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
none	\$	\$
	\$	\$
	\$	\$

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

☐ Home
Value

☐ Other real estate
Value

☐ Motor Vehicle #1
Year, make & model
Value

☐ Motor Vehicle #2
Year, make & model
Value

☐ Other assets
Description
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

\$ _____
\$ _____
\$ _____

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)

\$ ~~0~~

\$ _____

Are real estate taxes included? ☐ Yes ☐ No

Is property insurance included? ☐ Yes ☐ No

Utilities (electricity, heating fuel,
water, sewer, and telephone)

\$ ~~0~~

\$ _____

Home maintenance (repairs and upkeep)

\$ ~~0~~

\$ _____

Food

\$ ~~0~~

\$ _____

Clothing

\$ ~~0~~

\$ _____

Laundry and dry-cleaning

\$ ~~0~~

\$ _____

Medical and dental expenses

\$ ~~0~~

\$ _____

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

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? _____

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:

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

I am incarcerated and indigent.

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

Executed on: *Dante Johnson Dec 26, 2013*

Dante Johnson
(Signature)

EXHIBIT 2

EXHIBIT 2

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Donte Johnson,
 Petitioner
 v.
 Timothy Filson, et al.,
 Respondents

Case No.: 2:18-cv-00740-JAD-NJK

**Order Granting in Part Application to
 Proceed *In Forma Pauperis* and
 Appointing Counsel**

[ECF Nos. 1, 4]

Petitioner Donte Johnson was sentenced to death after he was convicted by a jury of four counts of first-degree murder while using a deadly weapon.¹ He now petitions for a writ of habeas corpus.² I have reviewed his petition under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, and I find it worthy of service upon the respondents.

He also applies to proceed *in forma pauperis*³ and requests appointed counsel.⁴ Johnson's financial records show that he can pay the \$5.00 filing fee, so I decline to waive the filing-fee requirement. It does appear, however, that Johnson lacks the resources necessary to employ counsel for this capital habeas corpus action, so I grant him pauper status for all other purposes in this case, and I appoint counsel to represent him.

Accordingly, IT IS HEREBY ORDERED that Johnson's application to proceed *in forma pauperis* [ECF No. 1] is **GRANTED in part and DENIED in part**. Johnson is granted leave to proceed *in forma pauperis*, but he **has until May 28, 2018, to pay the \$5.00 filing fee**.

IT IS FURTHER ORDERED that Johnson's motion for appointment of counsel [ECF No. 4] is **GRANTED**. The Federal Public Defender for the District of Nevada is appointed to represent Johnson. The Federal Public Defender will have **until May 28, 2018**, to file a notice of

¹ ECF No. 2 at 3; NEV. DEP'T OF CORR. (Apr. 25, 2018) <http://doc.nv.gov/Inmates/Home/> (inmate search by name Donte Johnson or offender ID 66858).

² ECF No. 2.

³ ECF No. 1.

⁴ ECF No. 4.

1 appearance as counsel or to file a notice indicating its inability to represent Johnson in these
2 proceedings.

3 The **Clerk of Court** is directed **electronically SERVE a copy of this order on the**
4 **Federal Public Defender** for the District of Nevada. The **Clerk of Court** is also directed to
5 **ADD Adam Paul Laxalt**, Attorney General of the State of Nevada, as counsel for respondents.

6 Finally, the **Clerk of Court** is directed to **electronically SERVE** upon respondents **a**
7 **copy of Johnson's petition (ECF No. 2) and a copy of this order.** Respondents have **until**
8 **May 28, 2018, to enter a notice of appearance**, but no further action in this case is required
9 unless the Court order otherwise.

10 Dated: April 26, 2018

11 
12 U.S. District Judge Jennifer A. Dorsey
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28