

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 15 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

GEARY WAYNE WALTON,

Petitioner - Appellant,

v.

RYAN THORNELL, Director of the
Arizona Department of Corrections,
Rehabilitation and ATTORNEY
GENERAL OF THE STATE OF
ARIZONA,

Respondents - Appellees.

No. 23-3196

D.C. No. 2:23-cv-02070-DLR--JFM
District of Arizona, Phoenix

ORDER

Before: R. NELSON and COLLINS, Circuit Judges.

The request for a certificate of appealability (Docket Entry Nos. 4 & 6) is denied because appellant has not shown that “jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

All pending motions are denied as moot.

DENIED.

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GENERAL OF THE STATE OF
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Respondents - Appellees.

No. 23-3196

D.C. No. 2:23-cv-02070-DLR--JFM
District of Arizona,
Phoenix

ORDER

Before: WARDLAW and H.A. THOMAS, Circuit Judges.

Appellant's motion for reconsideration (Docket Entry No. 9), as amended
(Docket Entry No. 10), is denied. *See* 9th Cir. R. 27-10.

No further filings will be entertained in this closed case.

1 Case 2:23-cv-02070-DLR--JFM Document 8 Filed 10/25/23 Page 1 of 1

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 Geary Wayne Walton, **NO. CV-23-02070-PHX-DLR (JFM)**
10 Petitioner,
11 v.
12 Ryan Thornell, et al.,
13 Respondents.

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15 **JUDGMENT IN A CIVIL CASE**

16 **Decision by Court.** This action came for consideration before the Court. The
17 issues have been considered and a decision has been rendered.

18 **IT IS ORDERED AND ADJUDGED** that pursuant to the Court's Order filed
19 October 25, 2023, Petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U. S. C.
20 § 2254 is denied. Petitioner to take nothing and this action is hereby dismissed without
prejudice.

21 Debra D. Lucas
22 District Court Executive/Clerk of Court

23 October 25, 2023

24 s/ Kathren Gray
25 By Deputy Clerk

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Geary Wayne Walton,

No. CV-23-02070-PHX-DLR (JFM)

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Petitioner,

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v.

ORDER

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Ran Thornell, et al.,

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Respondents.

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Petitioner Geary Wayne Walton, who is confined in the Arizona State Prison Complex-Eyman, has filed a pro se Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 1), an Application to Proceed In Forma Pauperis (Doc. 2), and a Motion to Appoint Counsel (Doc. 4). The Court will dismiss the Petition without prejudice.

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I. Application to Proceed In Forma Pauperis

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Petitioner's Application to Proceed In Forma Pauperis indicates that his inmate trust account balance is less than \$25.00. Accordingly, the Court will grant Petitioner's Application to Proceed In Forma Pauperis. *See* LRCiv 3.5(c).

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II. Petition

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This is at least Petitioner's **fifth** petition for a writ of habeas corpus challenging his conviction in Maricopa County Superior Court, case #CR1987-009953, for one count of attempted sexual abuse, eight counts of sexual conduct involving a minor, and one count of sexual indecent exposure with a minor. On August 7, 1995, Petitioner filed his first petition for a writ of habeas corpus regarding that conviction, *Walton v. Lewis*, CV 2:95-

1 01606-PHX-EHC (D.Ariz. 1995). In a September 30, 1996 Order (Doc. 28 in CV 2:95-
 2 01606-PHX-EHX), the Court denied the petition, and the Clerk of Court entered Judgment
 3 accordingly (Doc. 29 in CV 2:95-01606-PHX-EHC). Petitioner subsequently filed at least
 4 three further § 2254 Petitions.¹

5 Under 28 U.S.C. § 2244, a petitioner may not file a second or successive § 2254
 6 petition in this Court unless the petitioner has obtained certification from the Ninth Circuit
 7 Court of Appeals authorizing the Court to consider the second or successive § 2254
 8 petition. 28 U.S.C. § 2244(b)(3)(A). The current Petition is a “second or successive”
 9 petition because (1) the original petition was dismissed with an adjudication on the merits,
 10 (2) the current Petition challenges the same judgment as the initial petition, and (3) the
 11 facts underlying the claims in the current Petition accrued by the time of the initial petition.²
 12 *Slack v. McDaniel*, 529 U.S. 473, 485-486 (2000); *Brown v. Muniz*, 889 F.3d 661, 667 (9th
 13 Cir. 2018). Because the current Petition is a second or successive petition and because
 14 Petitioner has not presented a certification order from the Ninth Circuit authorizing the
 15 Court to consider it,³ the Court will dismiss the current Petition and this action.

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¹ See *Walton v. Stewart*, CV 2:03-00111-PHX-EHC (LOA) (D.Ariz. 2003); *Walton v. Ryan*, CV 2:09-02418-PHX-FJM (LOA) (D.Ariz. 2009); and *Walton v. Ryan*, CV 2:11-00578-PHX-ROS (D.Ariz. 2011). Case CV 2:03-00111-PHX-EHC (LOA) was dismissed as second or successive (Doc. 3 in CV 2:03-00111-PHX-EHC (LOA)); case CV 2:09-02418-PHX-FJM (LOA) was voluntarily dismissed by Petitioner (Docs. 9, 10 in CV 2:09-02418-PHX-FJM (LOA)); and, after obtaining leave from the Ninth Circuit to file a second or successive § 2254 Petition (Doc. 1 in CV 2:11-00578-PHX-ROS), was dismissed on the merits. (Doc. 151 in CV 2:11-00578-PHX-ROS).

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² Petitioner alleges that he “suffered from traumatic brain injury and PTSD and other mental health/medical issues prior to and at the time of his crimes alleged,” that a “government agent or prosecutorial misconduct interfere[d] with defense witness(es),” that he was subjected to “double jeopardy/multiple punishment [for the] same offense,” and that these claims are “newly discovered” because of “counsel’s failure to conduct investigation into [Petitioner’s] mental health/medical issues...” (Doc. 1 at 6-9).

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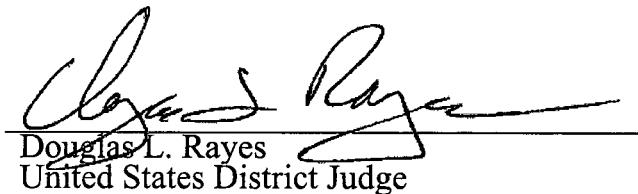
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³ Petitioner indicates that he applied for authorization to file a second or successive § 225 Petition with the Ninth Circuit, referencing Ninth Circuit case no. 23-1152. (Doc. 1 at 10). Upon review of the docket in that case, the Court notes that by Order dated October 2, 2023, the Ninth Circuit denied Petitioner’s application. (See Doc. 8 in Ninth Circuit case no. 23-1152).

1 **IT IS ORDERED:**

2 (1) Petitioner's Application to Proceed In Forma Pauperis (Doc. 2) is **granted**.
3 (2) Petitioner's Petition for Writ of Habeas Corpus (Doc. 1) and this action are
4 **dismissed without prejudice**, and the Clerk of Court must **enter judgment** accordingly.
5 (3) Petitioner's Motion to Appoint Counsel (Doc. 4) is **denied as moot**.
6 (4) Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, in the
7 event Petitioner files an appeal, the Court declines to issue a certificate of appealability
8 because reasonable jurists would not find the Court's procedural ruling debatable. *See*
9 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

10 Dated this 25th day of October, 2023.

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Douglas L. Rayes
United States District Judge

**Additional material
from this filing is
available in the
Clerk's Office.**