

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Joe Clarence Smith, Petitioner,

vs.

Charles L. Ryan, Director of the Arizona Department of Corrections, and Ron
Credio, Warden of the Arizona State Prison-Eyman Complex, Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT**

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Pursuant to Rule 39, Rules of the Supreme Court, Petitioner Joe Clarence Smith hereby moves for leave to proceed *in forma pauperis* in the above-captioned action on the ground that he lacks sufficient funds to pay for fees and expenses. Mr. Smith is incarcerated at the Arizona State Prison Complex—Eyman-Browning Unit. By order of February 17, 2012, the United States District Court, District of Arizona appointed counsel for Joe Clarence Smith under 21 U.S.C. § 848(q)(4)(B), (q)(6), and q(8) (recodified at 18 U.S.C. § 3599). Accordingly, Mr. Smith asks that he be permitted to proceed *in forma pauperis* in this Court.

Respectfully submitted:

November 17, 2017.

JON M. SANDS
Federal Public Defender
District of Arizona

Karen S. Smith
Counsel of Record

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s/ Karen Smith
Counsel for Petitioner Smith

Smith v. Ryan

**APPENDIX TO MOTION FOR LEAVE TO PROCEED
*IN FORMA PAUPERIS***

District Court Order, February 17, 2012 [Dist. Ct. Doc. No. 7]App. A

APPENDIX A

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

8 Joe Clarence Smith,
9 Petitioner,

10 vs.

11
12 Charles L. Ryan, et al.,
13 Respondents.
14

) No. CV-12-318-PHX-CKJ

) DEATH PENALTY CASE

) **ORDER OF APPOINTMENT**
) **AND GENERAL PROCEDURES**

15
16 **IT IS ORDERED** that Petitioner's Pro Se Motion for Appointment of Counsel (Doc.
17 4) is **GRANTED**. The Federal Public Defender is appointed as counsel for Petitioner in this
18 federal habeas corpus proceeding. Appointment is made pursuant to 18 U.S.C. § 3599(a)(2).
19 Counsel shall not represent Petitioner in state forums or prepare any state court pleadings
20 without express authorization of the Court.

21 **IT IS FURTHER ORDERED** that Petitioner's Application to Proceed *In Forma*
22 *Pauperis* (Doc. 2) is **GRANTED**.

23 **IT IS FURTHER ORDERED** that the Arizona Attorney General shall file a notice
24 of appearance with the Court within **ten (10) days** from receipt of this Order.

25 **IT IS FURTHER ORDERED** that, in an effort to achieve greater uniformity in the
26 treatment of federal capital habeas corpus cases in this District and to inform counsel in
27 advance of the Court's expectations, the following procedures shall govern the briefing and
28 resolution of this matter:

1 I. Petition

2 Pursuant to 28 U.S.C. § 2244, a second or successive petition may not be filed in this
3 Court without prior authorization from the Ninth Circuit. Under § 2244(b)(3)(C), the
4 grounds for obtaining such authorization are extremely limited. Consequently, it is
5 incumbent upon Petitioner to raise in his first petition all known claims of constitutional error
6 or deprivation, setting forth “the facts supporting each ground” for habeas relief. *See* Rule
7 2(c), 28 U.S.C. foll. § 2254. In addition to the requirement of Local Rule Civil 7.1, the
8 Petition shall:

- 9 (1) separately enumerate in a sequential manner *every* claim for federal habeas
10 corpus relief (including each individual claim of ineffective assistance of
11 counsel);
- 12 (2) set forth, in a clear and concise manner, including full citations to the
13 appropriate portions of the record and application of the appropriate standards
14 of review under 28 U.S.C. § 2254(d), the legal and factual basis for each claim
15 for relief; and
- 16 (3) state with specificity when and where each claim for relief was presented to
17 or considered by the Arizona Supreme Court.

18 II. Answer

19 After the Petition is filed, Respondents shall file an Answer. Pursuant to Rule 5 of the
20 Rules Governing Section 2254 Cases, Respondents’ Answer shall specifically respond to
21 each of the allegations contained in the petition. In lieu of motions for summary judgment
22 and motions to dismiss, the Answer shall be a comprehensive responsive pleading,
23 addressing both the factual allegations and legal contentions raised in the Petition as well as
24 any procedural defenses with respect to individual claims. Accordingly, Respondents shall
25 address the merits of every enumerated claim, regardless of whether Respondents allege a
26 claim is barred from review by the federal court.

27 Respondents are advised that Petitioner is obligated under Rule 2(c) of the Rules
28 Governing Section 2254 Cases to include in his Petition all known claims for relief and facts
in support thereof. Accordingly, the Court will not entertain motions to strike any portion
of the Petition or exhibits thereto on the basis that such facts were not developed in state
court. Rather, Respondents’ arguments concerning factual development should be included

1 in the Answer as well as the response to any motion for evidentiary development filed by
 2 Petitioner.

3 III. Reply

4 Petitioner shall file a Reply to Respondents' Answer. The Reply shall respond to
 5 Respondents' allegations regarding both procedural defenses and the merits of each
 6 enumerated claim. In addition, Petitioner shall affirmatively raise in the Reply any
 7 arguments concerning availability of state remedies, cause and prejudice, fundamental
 8 miscarriage of justice, and/or equitable tolling in response to any allegations by Respondents
 9 of procedural or timeliness bars. The Reply shall not be used to raise new claims or new
 10 material facts in support of existing claims.

11 IV. Evidentiary Development

12 Following the filing of the Petition, Answer, and Reply, Petitioner will be provided
 13 an opportunity to file a motion for evidentiary development. Such motions include, but are
 14 not limited to, requests for Discovery, Expansion of the Record, and Evidentiary Hearing
 15 under Rules 6, 7, and 8 of the Rules Governing Section 2254 Cases. A motion for
 16 evidentiary development shall not recite legal authority on the merits or present new material
 17 facts in support of the claims raised in the petition; nor shall the motion raise new claims for
 18 habeas relief. Rather, the motion shall be limited to the identification of the claims for which
 19 development is sought, the evidence or facts sought to be developed, and the applicable
 20 standards governing evidentiary development. To this end, any motion for evidentiary
 21 development shall:

- 22 (1) not exceed sixty (60) pages cumulatively (excluding appendices);¹
- 23 (2) identify the enumerated claim(s) Petitioner contends need further factual
 24 development;
- 25 (3) provide an offer of proof (i.e., declarations, documentary evidence, summaries
 26 of proposed testimony) setting forth the facts to be developed and the source
 of the proffered evidence; and

27 ¹ Responses to motions for evidentiary development shall not exceed sixty (60)
 28 pages cumulatively, and replies shall not exceed forty (40) pages cumulatively.

- 1 (4) apply the applicable standards for obtaining evidentiary development,
 2 including an explanation of why the claim was not developed in state court and
 3 why the failure to develop the claim in state court was not the result of lack of
 4 diligence, in accordance with 28 U.S.C. § 2254(e)(2) and *Williams v. Taylor*,
 529 U.S. 420 (2000).

5 Any motion for evidentiary development that is filed prior to the filing of
 6 Respondents' Answer or that fails to address the above-listed requirements will be summarily
 7 denied.

8 V. State Court Record

9 As has been the custom in this District, following the filing of Respondents' Answer,
 10 the Court will *sua sponte* request from the Arizona Supreme Court a certified copy of the
 11 state court record. In the ordinary case, this record will include the pretrial, trial, and
 12 sentencing transcripts as well as the complete record on appeal from the trial court. It will
 13 not include any post-conviction record on appeal, post-conviction hearing transcripts, or
 14 filings in proceedings before the Arizona Supreme Court.

15 Accordingly, Respondents are relieved from their obligation under Rule 5(c) of the
 16 Rules Governing Section 2254 Cases to provide the Court with trial transcripts. However,
 17 pursuant to Rule 5(d), Respondents shall file with their Answer the following parts of the
 18 state court record:

- 19 (1) The appellate and post-conviction briefs;
 20 (2) The opinions and dispositive orders of the post-conviction and appellate courts;
 21 (3) A complete copy of the post-conviction record on appeal; and
 22 (4) Any post-conviction hearing transcripts.

23 In addition, the Court encourages the parties to file any additional parts of the state
 24 court record that the parties believe are relevant to resolving allegations in the Petition,
 25 Answer, Reply, and/or Motions for Evidentiary Development.

26 VI. Electronic Case Filing

27 Pursuant to Section II.D.3 of the Electronic Case Filing Administrative Policies and
 28 Procedures Manual, a paper courtesy copy of any electronically-filed document **exceeding**

1 **ten (10) pages** in length that would normally be sent to the assigned judge shall instead be
2 directed to the “Capital Case Staff Attorney Office.” **Any filing that exceeds 50 pages in**
3 **length, including appendices, shall be spiral bound on the left and shall include a table**
4 **of contents, an exhibits list (if any), and tabs between exhibits (if any).**

5 VII. Miscellaneous

6 In addition to the requirements of Local Rule Civil 7.1, the following shall apply to
7 any filing in this matter:

- 8 (1) The parties shall not include photographs, charts, or graphs in the body of any
9 pleading. Any such exhibit must be contained within an appendix to an
10 appropriate pleading.
11 (2) The parties shall not refer to either party by informal first name only. All
12 references to a party shall be by last name, by governmental name (i.e.,
13 “State”) or by formal title, such as “Petitioner” or “Respondents.”

14 **IT IS FURTHER ORDERED** that pursuant to Local Rule Civil 3.8(e) this case is
15 reassigned to **Judge Paul G. Rosenblatt** and shall be redesignated as **No. CV-12-318-PHX-**
16 **PGR.**

17 **IT IS FURTHER ORDERED** that the Clerk of Court send a copy of this Order to
18 Kent Cattani, Assistant Arizona Attorney General.

19 **IT IS FURTHER ORDERED** that the Clerk of Court forward a copy of this Order
20 to Petitioner Joe Clarence Smith, ADOC # 036085, Arizona State Prison Eyman/Browning
21 Unit, P.O. Box 3400, Florence AZ 85312-3400.

22 DATED this 17th day of February, 2012.

23 
Cindy K. Jorgenson
United States District Judge

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Joe Clarence Smith, Petitioner,

vs.

Charles L. Ryan, Director of the Arizona Department of Corrections, and Ron Credio, Warden of the Arizona State Prison-Eyman Complex, Respondents.

CERTIFICATE OF SERVICE

I, Karen S. Smith, a member of the bar of this Court, hereby certify that on November 17, 2017, the original and 10 copies of the Petition for Writ of Certiorari and supporting documents were sent by Federal Express, postage prepaid, to the Clerk of Court, 1 First Street NE, Washington DC 20543. I certify that one copy of these documents was mailed first-class mail to John Todd, at 1275 West Washington, Phoenix, AZ 85007.

I further certify that all parties required to be served have been served.

Respectfully submitted:

November 17, 2017.

JON M. SANDS
Federal Public Defender
District of Arizona

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Counsel of Record
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Assistant Federal Public Defenders
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Counsel for Petitioner Smith

s/ Karen S. Smith
Counsel of Record