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MAY 29 2003	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Roger Wayne Murray,

Petitioner,

vs.

Charles Ryan, et al.,

Respondents.

No. CV 03-775-PHX-SMM

DEATH PENALTY CASE

**ORDER OF APPOINTMENT
AND GENERAL PROCEDURES**

IT IS ORDERED granting Petitioner's Motion for Appointment of Counsel (file doc. 1-2) and appointing John Charland, Esq., 7301 N. 16th Street, Suite 103, Phoenix, AZ 85020, (602) 944-7499, as Counsel for Petitioner in his federal habeas corpus proceedings. Counsel shall be compensated at the rate of \$125.00 per hour for legal representation of Petitioner before this Court. Counsel shall not be compensated under the Criminal Justice Act (CJA) for representation of Petitioner in state forums. Appointment is made pursuant to 21 U.S.C. § 848(q)(4)(B), and the fee is established pursuant to General Order No. 98-46 of this Court.

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.

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1 **IT IS FURTHER ORDERED** that, in addition to the requirement of Local Rule
2 1.9(f), the parties shall file with the Clerk of Court an additional copy of every pleading or
3 other document filed from this date forward for use by the Capital Case Staff Attorney. The
4 notation "Capital Case Staff Attorney Copy" shall be clearly marked on the first page of such
5 copy.

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

8 I. Case Management Conferences (CMC)

9 A case management conference will be held on **June 9, 2003, at 4:30 p.m. in**
10 **Courtroom 502.** Prior to the conference, Petitioner's counsel is expected to meet with
11 Petitioner and to review any published case decisions. Counsel is further expected to contact
12 Petitioner's state court counsel to obtain preliminary information about the case and to begin
13 assembly of the files and records from the state proceedings. Absent a motion detailing
14 significant delays, problems or obstacles encountered in obtaining copies of pertinent files
15 and records, the Court will not assist directly in obtaining such materials.

16 At the conference, Petitioner's counsel will be expected to discuss the status of file
17 and record assembly and any problems encountered in that regard, whether assistance
18 regarding the record is needed from Respondents, and the estimated time needed to complete
19 review of the file and record. Both parties should be prepared to articulate their positions
20 regarding the statute of limitations and to discuss any other issues which may affect the
21 filing of the Amended Petition or efficient resolution of this matter. After case management
22 issues are addressed, the Court may meet separately with Petitioner's counsel regarding case
23 budgeting.

24 Following the conference, the Court will issue a Case Management Order scheduling
25 CMC #2. At CMC#2, the Court will set firm deadlines for the filing of the Amended
26 Petition, responsive pleadings, motions for further evidentiary development and other
27 pleadings as the Court may deem necessary.

1 II. Amended Petition

2 The Amended Petition shall include and set forth all known claims of constitutional
3 error or deprivation entitling Petitioner to federal habeas relief. See Rule 2(c), 28 U.S.C.
4 foll. § 2254. In addition to the requirement of Local Rule 1.9, the Amended Petition shall:

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

15 III. Answer

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

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25 ¹ Following the filing of the Amended Petition, the Court will, on its own
26 motion, seek a certified copy of the state court record from the Arizona Supreme Court,
27 which includes trial, appeal and post-conviction pleadings as well as transcripts.
28 Accordingly, the parties may cite to appropriate state court documents in their pleadings
without reproducing such documents as exhibits.

1 IV. Traverse

2 Petitioner will be given an opportunity to file a Traverse in reply to Respondents'
3 Answer. The filing of a Traverse is optional.

4 V. Evidentiary Development

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

- 10 (1) specifically identify which enumerated claim(s) Petitioner contends needs
11 further factual development;
12 (2) describe with specificity the facts sought to be developed;
13 (3) explain why the facts sought to be developed were not developed in state
14 court; and
15 (4) explain why the failure to develop such facts in state court was not the result
16 of lack of diligence, in accordance with the Supreme Court's decision in
17 Williams v. Taylor, 529 U.S. 420 (2000).

18 In addition, any motion for evidentiary hearing shall address (1) whether the factual
19 allegations would, if proved, entitle Petitioner to relief on a specific habeas claim; and
20 (2) whether the state court trier of fact has reliably found the relevant facts after a full and
21 fair hearing. See Jones v. Wood, 114 F. 3d 1002, 1010 (9th Cir. 1997). Any motion for
22 evidentiary development that is filed prior to the filing of Respondents' Answer or that fails
23 to address the above-listed requirements will be summarily denied. If a motion is filed, a
24 response or reply thereto, if any, shall be filed in accordance with Local Rule 1.10(c) and (d),
25 respectively.

26 VI. Miscellaneous

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

1 (1) The parties shall not include photographs, charts or graphs in the body of any
2 pleading. Any such exhibit must be contained within an appendix to an
3 appropriate pleading (i.e., a motion for evidentiary development).

4 (2) The parties shall not refer to either party by informal name. All references to
5 a party shall be in the form of "Petitioner" or "Respondents," or by formal
6 name (i.e., Mr. Doe).

7 **IT IS FURTHER ORDERED** that this case is subject to the District's Budgeting
8 and Case Management Plan. To this end, Petitioner's counsel must prepare a budget for
9 tasks to be performed by attorneys and paralegals, and expenses to be incurred for
10 investigative, expert, and other services for each of the four phases of the case: Phase
11 I-Review of Record; Phase II-Preparation of Amended Petition; Phase III-Preparation of
12 Traverse and Other Pleadings; and Phase IV-Evidentiary Development (if authorized by the
13 Court). An *ex parte* cost management order explaining the budgeting process to Petitioner's
14 counsel is issued separately this same date. The District's Budgeting and Case Management
15 Plan is also available on the Court's website at www.azd.uscourts.gov. Petitioner's counsel
16 should be prepared to discuss budgeting issues with the Court at the conclusion of CMC#1.

17 **IT IS FURTHER ORDERED** that this case, having been randomly reassigned, by
18 lot, to Judge Susan R. Bolton, pursuant to Rule 1.2(e) of the Local Rules of Practice, shall
19 be redesignated as No. CV 03-775-PHX-SRB.

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

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

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

1 **IT IS FURTHER ORDERED** that the Clerk of Court forward a copy of this Order
2 to the CJA Voucher Review Analyst.

3 DATED this 23 day of May, 2003.

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7 STEPHEN M. McNAMEE
8 Chief United States District Judge
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