

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

THOMAS E. CREECH,
Petitioner,

v.

IDAHO COMMISSION OF PARDONS AND PAROLE, JAN M. BENNETTS, ADA COUNTY
PROSECUTING ATTORNEY, IN HER OFFICIAL CAPACITY,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

THIS IS A CAPITAL CASE WITH AN EXECUTION
SCHEDULED FOR FEBRUARY 28, 2024 AT 10 AM MST

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Pursuant to Supreme Court Rule 39, Petitioner Thomas E. Creech asks for leave to file the accompanying petition for writ of certiorari without prepayment of costs and to proceed in forma pauperis. Mr. Creech is an indigent prisoner on Idaho's death row, where he has been since 1982. Mr. Creech has proceeded in forma pauperis in both state and federal courts on numerous occasions throughout the last forty-two years.

Mr. Creech's attorneys with the Federal Defender Services of Idaho, who exclusively represent indigent clients, were appointed to the case by the United States District Court for the District of Idaho on June 14, 1999, *see* Ex. 1 at 4, and have continued to operate under the same order since.

Respectfully submitted this 26th day of February.



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EXHIBIT 1

U.S. COURTS

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REC'D _____ FILED _____
CAMERON S. BURKE
CLERK IDAHO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

THOMAS EUGENE CREECH)	
)	
)	CIVIL NO. 99-0224-S-BLW
Petitioner,)	
)	
v.)	
)	ORDER GRANTING A STAY OF
DAVE PASKETT, Warden of the)	EXECUTION AND APPOINTING
Idaho Maximum Security Institute,)	COUNSEL
Department of Correction, State of Idaho)	
)	
Respondent.)	
)	
_____)	

On June 10, 1999, Thomas Eugene Creech filed an application to proceed in forma pauperis and for appointment of counsel (docket # 2), and an application for stay of execution (docket # 3). In addition, the Capital Habeas Unit has filed a Statement of Issues (docket #1) on behalf of the petitioner. This Statement of Issues was authorized by the petitioner. The petitioner now comes before this court seeking a stay of execution for the purpose of pursuing habeas corpus relief.

Order - page 1

1. Background.

On May 13, 1991, while serving a life sentence at the Idaho State Correctional Institution for two counts of first degree murder, the petitioner killed inmate David Dale Jensen. Following a plea of guilty, the petitioner was sentenced to the death penalty in January 1982. The Idaho Supreme Court vacated the sentence because the petitioner was not present, and the petitioner was resentenced to the death penalty on March 17, 1983, by the state district court in Ada County, Idaho. This sentence was affirmed by the Idaho Supreme Court. *State v. Creech*, 105 Idaho 362 (1983). On May 19, 1983, the petitioner sought to withdraw his guilty plea pursuant to Idaho Criminal Rule 33. The district court denied this motion and the denial was affirmed by the Idaho Supreme Court. *State v. Creech*, 109 Idaho 592 (1985).

The petitioner next filed a Petition for Writ of Habeas Corpus before the United States District Court. This petition was dismissed on June 18, 1986. The petitioner appealed this dismissal to the Ninth Circuit Court of Appeals which reversed the dismissal on three grounds: (1) the trial court erred in not allowing additional mitigating evidence, (2) the trial court found two aggravating circumstances without making the findings beyond a reasonable doubt, and (3) the aggravating factor "utter disregard" was unconstitutionally vague. *Creech v. Arave*, 947 F.2d 873 (9th Cir. 1991). The State of Idaho appealed to the United States Supreme Court on the limited issue of whether the aggravating factor "utter disregard" was unconstitutional. The United States Supreme Court held the factor to be constitutional, reversing in part the Ninth Circuit decision. *Arave v. Creech*, 507 U.S. 463 (1993). Pursuant to the Ninth Circuit remand the United States District Court ordered the petitioner to be resentenced. The

petitioner was resentenced to the death penalty on March 13, 1995. On May 9, 1995, the petitioner filed a petition for post-conviction relief in the state district court which was denied. The petitioner then appealed his conviction and sentence and the denial of his post-conviction petition to the Idaho Supreme Court. The Idaho Supreme Court affirmed the conviction and sentence and the dismissal of the post-conviction petition. *State v. Creech*, 132 Idaho 1 (1998). The petitioner appealed to the United States Supreme Court which denied his petition for Writ of Certiorari on June 1, 1999. A death warrant was issued by the state district court setting an execution date of June 24, 1999.

2. Application to proceed in forma pauperis.

The Court has examined the application to proceed in forma pauperis and has determined that it adequately establishes petitioner's indigence. Petitioner will be allowed to proceed without the filing of costs or fees.

3. Appointment of counsel.

This district's Local Rules provide for the appointment of counsel in death penalty cases prior to the filing of a petition for a writ of habeas corpus. D.Id.LR 9.4(D). The petitioner has requested the appointment of the Federal Public Defenders of Eastern Washington and Idaho. The Court therefore approves the appointment of the Capital Habeas Unit as lead counsel.

4. Stay of Execution.

As the Local Rules further provide, a stay of execution shall be granted during the pendency of a petition in this Court. Local Rule 9.4(f)(2). Accordingly, this Court will issue a stay of petitioner's execution for the duration of the proceedings before this Court.

ORDER

Based upon the foregoing, the Court being fully informed in the premises;

IT IS HEREBY ORDERED that petitioner's application to proceed in forma pauperis (docket # 2) is GRANTED.

IT IS FURTHER ORDERED that the Capital Habeas Unit of the Federal Public Defender's Unit of Eastern Washington and Idaho is appointed as lead counsel for petitioner in all proceedings in this court and shall be the designated attorney of record.

IT IS FURTHER ORDERED that petitioner's application for a stay of execution (docket # 3) is GRANTED and **A STAY OF EXECUTION IS IMPOSED** for the duration of the proceedings in this court.

IT IS FURTHER ORDERED that counsel for petitioner shall file a Petition for Writ of Habeas Corpus, raising all reasonably known federal constitutional issues, on or before September 20, 1999.

IT IS FURTHER ORDERED that the respondent shall file an Answer within 30 days of the filing of the petition.

IT IS FURTHER ORDERED that the petitioner may file a Traverse 30 days after the respondent has filed an Answer.

IT IS FURTHER ORDERED, pursuant to Local Rule 9.4(e)(6), that the respondent must state any intent to rely on the doctrine of procedural default to bar a claim in the Answer. If the respondent relies on the procedural default doctrine, the petitioner has 30 days from the filing of the Answer to file a brief containing any opposition to the procedural default bar. The respondent shall then have 20 days to file a response brief. The petitioner will then have

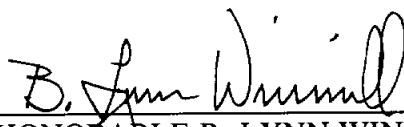
10 days to file a reply brief. The Court will take the matter under submission without oral argument.

IT IS FURTHER ORDERED that any request for evidentiary hearing shall be made within 60 days of the filing of the Answer.

IT IS FURTHER ORDERED that respondent shall file one copy of the state court record with this Court pursuant to Local Rule 9.4(e)(1).

IT IS FURTHER ORDERED that no extensions of time shall be granted by the Court except upon a showing of extraordinary circumstances.

DATED this 14~~th~~ day of June, 1999.



HONORABLE B. LYNN WINMILL
UNITED STATES DISTRICT JUDGE

United States District Court
for the
District of Idaho
June 14, 1999

* * CLERK'S CERTIFICATE OF MAILING * *

Re: 1:99-cv-00224

I certify that a copy of the attached document was mailed to the following named persons:

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Cameron S. Burke, Clerk

Date: 6/14/99

BY: *CS Burke*
(Deputy Clerk)