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NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Larry Joe Prince,)	No. CV08-1299-PHX-SRB
)	
Petitioner,)	ORDER
)	
vs.)	
)	
Dora B. Schriro, et al. ,)	
)	
Respondents.)	
_____)	

Petitioner filed a typewritten Petition for Writ of Habeas Corpus on July 14, 2008, while incarcerated in New Mexico pursuant to an interstate compact agreement with the Arizona Department of Corrections. He was housed at a New Mexico Corrections Department Correctional Facility in Santa Rosa, New Mexico. In August 2008, Petitioner filed a typewritten motion for appointment of counsel while incarcerated at the same facility in Santa Rosa, New Mexico. In September 2008, Petitioner filed a typewritten response to motion for extension of time to file answer to petition for writ of habeas corpus from the same facility in Santa Rosa, New Mexico. On October 29, 2008, Petitioner filed a typewritten response to Defendants' second motion for extension of time to file answer to petition for writ of habeas corpus from the same facility in Santa Rosa, New Mexico.

Sometime after Petitioner filed a typewritten notice of change of address from the Santa Rosa, New Mexico facility, he was transferred within the New Mexico corrections

1 system to a location in Hobbs, New Mexico. Since that time his filings are no longer
2 typewritten but are handwritten, including his December 22, 2008 Motion for Pro Se Legal
3 Materials (Typewriter). In that motion, Petitioner advises the Court that his personal
4 typewriter, which he had been permitted to use for years, had been taken away from him. He
5 requested that it be returned or that he be permitted to use it in the prison law library. He
6 attached to his motion court orders, dating back to 1999, from state court judges in Arizona
7 ordering first the Arizona Department of Corrections and then the Maricopa County Sheriff's
8 Office to allow the Petitioner to possess and use his own personal typewriter and typewriting
9 supplies. He claimed these court orders were issued as a result of a disability he suffers due
10 to hand injuries he sustained many years earlier.

11 Respondents oppose the present motion based on arguments related to security. They
12 concede that individuals with qualifying disabilities are allowed to use a personal typewriter
13 pursuant to court order. Respondents also argue that despite a nearly ten year old court order
14 authorizing Petitioner's use of a personal typewriter Petitioner had shown no legitimate basis
15 for the court to order that he be allowed the use of his typewriter, question the permanent
16 right-hand injury Petitioner claims and suggest that because Respondents' counsel has no
17 difficulty reading his handwriting the Court should deny the motion. Petitioner filed a reply
18 in opposition and attached some records documenting his hand injuries from 1986 and 1998
19 as well as evidence that up until late 2008 he had been allowed the use of his personal
20 typewriter in the law library while in prison in New Mexico.

21 On March 2, 2009, the Magistrate Judge issued his Report and Recommendation
22 recommending that Respondents be directed to take steps necessary so that during the
23 pendency of these habeas proceedings Petitioner be permitted access to his typewriter for
24 reasonable periods of time for the purpose of preparing filings in this case. Respondents filed
25 an objection to the Magistrate Judge's Report and Recommendation again arguing that
26 Petitioner has failed to provide proof of his hand injury and suggesting that the New Mexico
27 Correctional Health Care Providers have no documentation of it. Respondents even attached
28 an affidavit from the New Mexico Corrections Department General Counsel wherein he

1 admitted that the New Mexico Corrections Department had previously allowed Petitioner
2 access to his own personal typewriter until they learned that Petitioner's access was based
3 on old state court orders directed to the Maricopa County jail and the Arizona Department
4 of Corrections and were not based on any New Mexico court order. The general counsel
5 states that he determined that those orders were not binding and not an appropriate basis for
6 allowing Petitioner continued access to his personal typewriter. He avows that he personally
7 instructed Petitioner's current prison not to allow access to the typewriter for these reasons
8 and for prison safety and security concerns. He further states, "NMCD has no evaluation
9 from any physician or medical services provider indicating that Petitioner's hand injury
10 prevents him from handwriting his legal pleadings."

11 Petitioner responded to these objections and attached thereto copies of his medical
12 records from the New Mexico Department of Corrections from his arrival there in 2006.
13 From the Court's review of those records it appears that when Petitioner was first sent to
14 New Mexico by Arizona an evaluation of his hand injury was initiated by the New Mexico
15 authorities to determine whether he needed to have access to his personal typewriter as had
16 been previously ordered in Arizona. This evaluation was apparently prompted by several
17 letters that were sent on Petitioner's behalf by attorneys for the Justice Project. In August
18 2006, Dr. Donna Deming, a physician with the New Mexico Department of Corrections, took
19 a history from Petitioner concerning his problems with writing legibly and the pain that he
20 experiences when he has to write documents. His history included various right-hand
21 injuries Petitioner had suffered over the years. Her diagnosis was, "Probable post-traumatic
22 arthritis right hand." She ordered an x-ray of both the right and left hand. The x-ray report
23 dated August 25, 2006, which was reviewed by Dr. Deming on August 29, 2006, found
24 several deformities in Petitioner's right hand related to previous injuries. Dr. Deming
25 apparently reported her findings to the appropriate authorities and shortly after that, on or
26 about September 25, 2006, Petitioner's typewriter was returned to him and he was allowed
27 to use it for more than two years.

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