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

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Kraig Clark,

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No. CV 08-1844-PHX-GMS (LOA)

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Petitioner,

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ORDER

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vs.

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Dora B. Schriro, et al.,

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Respondents.

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Petitioner Kraig Clark, 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 and an Application to Proceed *In Forma Pauperis*. The Court will require an answer to the Petition.

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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 Application to Proceed *In Forma Pauperis* will be granted. See LRCiv 3.5(b).

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II. Petition

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Petitioner was convicted in Maricopa County Superior Court, case #CR 2005-011789-001DT and #CR 2004-022524-001DT, of first-degree murder, sexual conduct with a minor, child molestation, and furnishing obscene materials to a minor. Petitioner

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1 states that he was sentenced to terms of imprisonment of life, 17 years, and 20 years.
2 Petitioner names Dora B. Schriro as Respondent to the Petition and the Arizona Attorney
3 General as an Additional Respondent.

4 Petitioner raises two grounds for relief: (1) Petitioner's plea agreement was
5 unconstitutional because Petitioner was not mentally competent to enter into the
6 agreement; and (2) Petitioner's trial counsel was ineffective in violation of the Sixth
7 Amendment.

8 Petitioner states that he has presented these claims to the Arizona Court of
9 Appeals. The Court will require Respondents to answer the Petition. 28 U.S.C. § 2254(a).

10 **III. Warnings**

11 **A. Address Changes**

12 Petitioner must file and serve a notice of a change of address in accordance with
13 Rule 83.3(d) of the Local Rules of Civil Procedure. Petitioner must not include a motion
14 for other relief with a notice of change of address. Failure to comply may result in
15 dismissal of this action.

16 **B. Copies**

17 Petitioner must serve Respondents, or counsel if an appearance has been entered, a
18 copy of every document that he files. Fed. R. Civ. P. 5(a). Each filing must include a
19 certificate stating that a copy of the filing was served. Fed. R. Civ. P. 5(d). Also,
20 Petitioner must submit an additional copy of every filing for use by the Court. LRCiv
21 5.4. Failure to comply may result in the filing being stricken without further notice to
22 Petitioner.

23 **C. Possible Dismissal**

24 If Petitioner fails to timely comply with every provision of this Order, including
25 these warnings, the Court may dismiss this action without further notice. See Ferdik v.
26 Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action
27 for failure to comply with any order of the Court).

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1 **IT IS ORDERED:**

2 (1) Petitioner's Application to Proceed *In Forma Pauperis* (Doc. #3) is
3 **granted.**

4 (2) The Clerk of Court must serve a copy of the Petition (Doc. #1) and this
5 Order on the Respondent and the Attorney General of the State of Arizona by certified
6 mail pursuant to Rule 4, Rules Governing Section 2254 Cases.

7 (3) Respondents must answer the Petition within 40 days of the date of service.
8 Respondents must not file a dispositive motion in place of an answer but may file an
9 answer limited to relevant affirmative defenses, including but not limited to, statute of
10 limitations, procedural bar, or non-retroactivity. If the answer is limited to affirmative
11 defenses, only those portions of the record relevant to those defenses need be attached to
12 the answer. Failure to set forth an affirmative defense in an answer may be treated as a
13 waiver of the defense. Day v. McDonough, 126 S. Ct. 1675, 1684 (2006). If not limited
14 to affirmative defenses, the answer must fully comply with all of the requirements of Rule
15 5 of the Rules Governing Section 2254 Cases.

16 (4) Petitioner may file a reply within 30 days from the date of service of the
17 answer.

18 (5) This matter is referred to Magistrate Judge Lawrence O. Anderson pursuant
19 to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure for further proceedings and a
20 report and recommendation.

21 DATED this 23rd day of October, 2008.

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24 G. Murray Snow
25 United States District Judge
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