

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

KM

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

Gary William Church,	)	No. CV 07-1236-PHX-FJM (MEA)
Petitioner,	)	<b>ORDER</b>
vs.	)	
Dora Schriro, et al.,	)	
Respondents.	)	

---

Petitioner Gary William Church, 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.

**I. Application to Proceed *In Forma Pauperis***

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).

**II. Petition**

On December 19, 2002, Petitioner was convicted in Maricopa County Superior Court, case #CR 2001-012295, of sexual conduct with a minor, sexual exploitation of a minor, public sexual indecency, and indecent public exposure and was given three life sentences.

TERMPSREF

1 Petitioner names Dora Schriro as Respondent and the Arizona Attorney General as an  
2 Additional Respondent.

3 Petitioner raises 10 grounds for relief: (1) Petitioner’s trial counsel was ineffective in  
4 violation of the Sixth and Fourteenth Amendments; (2) Petitioner was denied his Sixth and  
5 Fourteenth Amendment rights to have guilt established beyond a reasonable doubt and to  
6 have the state prove every element of the offense charged in the indictment; (3) Petitioner  
7 was denied his Fourth Amendment right to be free from unreasonable search and seizure and  
8 his First Amendment right to possess constitutionally protected materials; (4) Petitioner’s  
9 Sixth Amendment rights were violated when the indictment was not specific enough to allow  
10 Petitioner a fair opportunity to present a defense; (5) Petitioner was denied his Fourteenth  
11 Amendment right to a fair trial before an impartial judge; (6) Petitioner’s Fourteenth  
12 Amendment due process rights were violated by unreliable witnesses’ statements during trial;  
13 (7) Petitioner was denied his Sixth Amendment right to confront witnesses; (8) the  
14 prosecution illegally shifted the burden of proof to Petitioner during trial, in violation of the  
15 Fourteenth Amendment; (9) Petitioner’s Sixth and Fourteenth Amendment rights to be  
16 convicted only for the crimes for which he was charged in the indictment were violated; and  
17 (10) Petitioner’s Sixth and Fourteenth Amendment rights to a fair trial were violated when  
18 he was identified by witnesses while handcuffed, shackled and wearing prison clothing.

19 Petitioner states that he has presented each of these claims to the Arizona Supreme  
20 Court. A review of the Petition indicates an answer is required. 28 U.S.C. § 2254(a).

21 **III. Warnings**

22 **A. Address Changes**

23 Petitioner must file and serve a notice of a change of address in accordance with Rule  
24 83.3(d) of the Local Rules of Civil Procedure. Petitioner must not include a motion for other  
25 relief with a notice of change of address. Failure to comply may result in dismissal of this  
26 action.

27 **B. Copies**

28 Petitioner must serve Respondents, or counsel if an appearance has been entered, a

1 copy of every document that he files. Fed. R. Civ. P. 5(a). Each filing must include a  
2 certificate stating that a copy of the filing was served. Fed. R. Civ. P. 5(d). Also, Petitioner  
3 must submit an additional copy of every filing for use by the Court. LRCiv 5.4. Failure to  
4 comply may result in the filing being stricken without further notice to Petitioner.

5 **C. Possible Dismissal**

6 If Petitioner fails to timely comply with every provision of this Order, including these  
7 warnings, the Court may dismiss this action without further notice. See Ferdik v. Bonzelet,  
8 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to  
9 comply with any order of the Court).

10 **IT IS ORDERED:**

11 (1) Petitioner's Application to Proceed *In Forma Pauperis*, filed with the Petition,  
12 is **granted**.

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

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

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

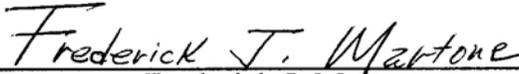
27 . . .

28 . . .

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(5) This matter is referred to Magistrate Judge Mark E. Aspey pursuant to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure for further proceedings and a report and recommendation.

DATED this 12<sup>th</sup> day of July, 2007.

  
\_\_\_\_\_  
Frederick J. Martone  
United States District Judge