

1 (1) “Prosecutorial misconduct/malicious prosecution [i]n violation of the
2 Constitution, laws, or treaties of the United States ‘(Right of due process)’”;

3 (2) “Ineffective assistance of counsel [i]n violation of the Constitution, laws, or
4 treaties of the United States[] (Violation of rules and procedures)”;

5 (3) “Sentence of a prior conviction is in violation of the United States of Arizona
6 Constitution [i]n violation of the Constitution, laws, or treaties of the United States (1973
7 Rules of criminal procedure/‘appellant[] will not be penalized for exercising the right to
8 appeal’”); and

9 (4) “Malicious arrest [i]n violation of the Constitution, laws, or treaties of the
10 United States.”

11 Petitioner affirmatively alleges that the issues raised in all of his grounds have been
12 presented to the Arizona Court of Appeals. The Court will require an answer to the Petition.

13 **II. Warnings**

14 **A. Address Changes**

15 Petitioner must file and serve a notice of a change of address in accordance with Rule
16 83.3(d) of the Local Rules of Civil Procedure. Petitioner must not include a motion for other
17 relief with a notice of change of address. Failure to comply may result in dismissal of this
18 action.

19 **B. Copies**

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

25 **C. Possible Dismissal**

26 If Petitioner fails to timely comply with every provision of this Order, including these
27 warnings, the Court may dismiss this action without further notice. See Ferdik v. Bonzelet,
28 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to

1 comply with any order of the Court).

2 **IT IS ORDERED:**

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

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

15 (3) Petitioner **may file** a reply within 30 days from the date of service of the
16 answer.

17 (4) This matter is **referred** to Magistrate Judge David K. Duncan pursuant to Rules
18 72.1 and 72.2 of the Local Rules of Civil Procedure for further proceedings and a report and
19 recommendation.

20 DATED this 8th day of June, 2010.

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23 _____
24 G. Murray Snow
25 United States District Judge
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