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

Carl Dwight Davis,

Petitioner,

vs.

Charles L. Ryan, et al.,

Respondents.

No. CV 12-132-PHX-GMS (MHB)

**ORDER**

Petitioner Carl Dwight Davis, 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**

Petitioner was convicted in Maricopa County Superior Court, case #CR 2005-127207-001 DT, of six counts of child molestation and one count of sex abuse and was sentenced to

1 a 28-year term of imprisonment. Petitioner names Charles L. Ryan as Respondent to the  
2 Petition and the Arizona Attorney General as an Additional Respondent.

3 Petitioner raises four grounds for relief:

- 4 (1) The trial court lacked subject matter jurisdiction because the indictment was  
5 factually deficient, in violation of Petitioner's due process rights;
- 6 (2) Petitioner's trial counsel was ineffective;
- 7 (3) Petitioner's due process rights and right to a fair trial were violated by  
8 numerous errors by the trial court; and
- 9 (4) Petitioner is actually innocent of the crimes for which he was convicted.

10 It is unclear whether Petitioner has exhausted each of these claims in state court. Even  
11 if the exhaustion requirement has not been met, it appears that any unexhausted claims may  
12 be procedurally barred. In light of the possibility of procedural bar, a summary dismissal  
13 would be inappropriate. See Castille v. Peoples, 489 U.S. 346, 351-52 (1989) (remanding  
14 where petitioner failed to exhaust claims and it was not clear whether the claims were  
15 procedurally barred). Accordingly, the Court will require Respondents to answer the  
16 Petition. 28 U.S.C. § 2254(a).

### 17 **III. Warnings**

#### 18 **A. Address Changes**

19 Petitioner must file and serve a notice of a change of address in accordance with Rule  
20 83.3(d) of the Local Rules of Civil Procedure. Petitioner must not include a motion for other  
21 relief with a notice of change of address. Failure to comply may result in dismissal of this  
22 action.

#### 23 **B. Copies**

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

1           **C.     Possible Dismissal**

2           If Petitioner fails to timely comply with every provision of this Order, including these  
3 warnings, the Court may dismiss this action without further notice. See Ferdik v. Bonzelet,  
4 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to  
5 comply with any order of the Court).

6           **IT IS ORDERED:**

7           (1)     Petitioner’s Application to Proceed *In Forma Pauperis* (Doc. 2) is **granted**.

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

11          (3)     Respondents must answer the Petition within 40 days of the date of service.  
12 Respondents must not file a dispositive motion in place of an answer but may file an answer  
13 limited to relevant affirmative defenses, including but not limited to, statute of limitations,  
14 procedural bar, or non-retroactivity. If the answer is limited to affirmative defenses, only  
15 those portions of the record relevant to those defenses need be attached to the answer.  
16 Failure to set forth an affirmative defense in an answer may be treated as a waiver of the  
17 defense. Day v. McDonough, 547 U.S. 198, 209-11 (2006). If not limited to affirmative  
18 defenses, the answer must fully comply with all of the requirements of Rule 5 of the Rules  
19 Governing Section 2254 Cases.

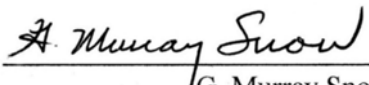
20          (4)     Petitioner may file a reply within 30 days from the date of service of the  
21 answer.

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(5) This matter is referred to Magistrate Judge Michelle H. Burns 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 27th day of February, 2012.

  
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G. Murray Snow  
United States District Judge