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

Frederick King, Jr.,
Petitioner,

vs.
Charles Ryan, et al.,
Respondents.

No. CV 14-1229-PHX-SMM (MHB)

ORDER

On June 4, 2014, Petitioner Frederick King, Jr., who is confined in the Arizona State Prison Complex-Lewis, filed a *pro se* “Motion for Stay of Habeas Proceedings” and lodged a Proposed Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. On June 24, 2014, the Court gave Petitioner 30 days to either pay the \$5.00 filing fee or file a complete Application to Proceed *In Forma Pauperis*. That same day, the Clerk of Court filed Petitioner’s lodged Petition (Doc. 5). On August 11, 2014, the Clerk of Court dismissed this action without prejudice and entered judgment against Petitioner for failure to comply with the Court’s Order. On October 6, 2014, Petitioner paid the \$5.00 filing fee. The Court will vacate the Judgment entered on August 11, 2014, and order the Clerk of Court to reopen this action. The Court will require an answer to the Petition.

I. Petition

After a jury trial, Petitioner was convicted in Maricopa County Superior Court, case #CR 2002-098228, of first-degree felony murder, attempted armed robbery, and two counts of attempted second-degree murder. Petitioner was sentenced to multiple terms of

1 imprisonment, the longest of which is 25 years to life. In his Petition, Petitioner names
2 Charles Ryan as Respondent and the Arizona Attorney General as an Additional
3 Respondent. Petitioner raises four grounds for relief. In Ground One, Petitioner asserts a
4 claim of actual innocence because the evidence at trial showed that he was acting in self-
5 defense. In Ground Two, Petitioner claims that the prosecutor engaged in misconduct
6 during the trial. In Ground Three, Petitioner asserts a claim of ineffective assistance of
7 trial counsel. In Ground Four, Petitioner claims that the trial court abused its discretion
8 when it denied Petitioner’s motion for judgment of acquittal.

9 It is not clear whether Petitioner presented the issues raised in Ground One to any
10 Arizona appellate court. In the Petition, Petitioner asserts that he raised the issue of
11 “actual innocence” in his second Rule 20 petition (Doc. 5 at 4), but then seems to indicate
12 that this issue was not brought before the Arizona Court of Appeals (Doc. 5 at 6).
13 However, even if the exhaustion requirement has not been met, it appears that any
14 unexhausted claims may be procedurally barred. In light of the possibility of procedural
15 bar, a summary dismissal would be inappropriate. *See Castille v. Peoples*, 489 U.S. 346,
16 351-52 (1989) (remanding where petitioner failed to exhaust claims and it was not clear
17 whether the claims were procedurally barred). Thus, the Court will require Respondents
18 to answer the Petition. 28 U.S.C. § 2254(a).

19 **II. Warnings**

20 **A. Address Changes**

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

25 **B. Copies**

26 Because Petitioner is currently confined in an Arizona Department of Corrections
27 unit subject to General Order 14-17, Petitioner is not required to serve Respondents with
28 a copy of every document he files or to submit an additional copy of every filing for use

1 by the Court, as would ordinarily be required by Federal Rule of Civil Procedure 5 and
2 Local Rule of Civil Procedure 5.4. If Petitioner is transferred to a unit other than one
3 subject to General Order 14-17, he will be notified of the requirements for service and
4 copies for the Court that are required for inmates whose cases are not subject to General
5 Order 14-17.

6 **C. Possible Dismissal**

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

11 **IT IS ORDERED:**

12 (1) The Judgment entered August 11, 2014 (Doc. 7) is **vacated**. The Clerk of
13 Court must **re-open** this case.

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

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

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

28 . . .

1 (5) This matter is referred to Magistrate Judge Michelle H. Burns pursuant to
2 Rules 72.1 and 72.2 of the Local Rules of Civil Procedure for further proceedings and a
3 report and recommendation.

4 DATED this 14th day of November, 2014.

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9 Stephen M. McNamee
10 Senior United States District Judge
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