

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3  
4 DEMETROIS TERRELL DIXSON,  
5 Petitioner,  
6 v.  
7 JEFFREY BEARD, ,  
8 Respondent.

Case No. [14-cv-05069-CW](#) (PR)  
ORDER DENYING MOTION FOR  
LEAVE TO PROCEED AS "NEXT  
FRIEND"

9 Petitioner, Demetrois Terrell Dixson, an inmate incarcerated  
10 at the Tallahatchie County Correctional Facility in Tutwiler,  
11 Mississippi, filed a pro se petition for a writ of habeas corpus  
12 pursuant to 28 U.S.C. § 2254, challenging his state criminal  
13 conviction from the Alameda County Superior Court. In an Order  
14 dated January 12, 2015, the Court directed Respondent to show  
15 cause why the petition should not be granted. Respondent has  
16 filed a motion to dismiss the petition on the grounds that it is  
17 procedurally defaulted or, in the alternative, that it is  
18 untimely. In an Order dated August 5, 2015, the Court granted  
19 Petitioner's request for a sixty-day extension of time to file  
20 his opposition. Petitioner has since filed a motion for leave to  
21 grant a friend, James C. Lewis, leave to file papers and assist  
22 Petitioner in the instant matter as his "next friend." (Docket  
23 No. 16.)

24 A person other than the detained person may file an  
25 application for a writ of habeas corpus and establish standing as  
26 a "next friend." Whitmore v. Arkansas, 495 U.S. 149, 163 (1990).  
27 A next friend does not himself become a party to the habeas  
28 petition, "but simply pursues the cause on behalf of the detained

1 person, who remains the real party in interest." Id. There are  
2 two firmly rooted prerequisites to "next friend" standing:

3  
4 First, a next friend must provide an adequate  
5 explanation--such as inaccessibility, mental  
6 incompetency, or other disability--why the real  
7 party in interest cannot appear on his own behalf to  
8 prosecute the action. Second, the next friend must  
9 be truly dedicated to the best interests of the  
10 person on whose behalf he seeks to litigate and it  
11 has been further suggested that a next friend must  
12 have some significant relationship with the real  
13 party in interest. The burden is on the next friend  
14 clearly to establish the propriety of his status and  
15 thereby justify the jurisdiction of the court.

16 Id. at 163-64 (citations omitted). Petitioner has not met the  
17 first prong. He does not show inaccessibility, mental  
18 incompetency,<sup>1</sup> or other disability. Rather, his request seems to  
19 be based on the fact that because he is incarcerated in a  
20 "private prison outside of California" and pro se, it takes extra  
21 time to send work product to and from Mr. Lewis, who is not an  
22 attorney<sup>2</sup> but who "informally" assisted Petitioner "since the last  
23 superior court filing [on] October 21, 2013," and this makes it  
24 difficult to meet court deadlines. Pet'r Next Friend Mot. at 1-  
25 2. These circumstances make Petitioner no different from the  
26 many pro se prisoners who appear in federal court. To the extent  
27 Petitioner requires more time to meet court deadlines, he may  
28 obtain extensions of time upon a showing of good cause, like the

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<sup>1</sup> Petitioner's claim of incompetency is unavailing as it is not based on mental incompetency and, instead, it is based on the fact that the state superior court denied his pro se petition as "improperly brought" and "untimely." Pet'r Next Friend Mot. at 3.

<sup>2</sup> Petitioner states that Mr. Lewis is a "person with a paralegal history." Pet'r Next Friend Mot. at 2.

1 extension he was granted in the Court's August 5, 2015 Order.

2 Petitioner seems to meet the second prong of the test, which  
3 requires that the putative next friend have both a significant  
4 relationship with the real party in interest and true dedication  
5 to his or her interests. See Coalition of Clergy, Lawyers and  
6 Professors v. Bush, 310 F.3d 1153, 1161-62 (9th Cir. 2002).

7 Petitioner has included a document entitled, "Proxy Agreement,"  
8 which describes the nature of their relationship or avers that he  
9 trusts that Mr. Lewis is truly dedicated to his interests. Pet'r  
10 Next Friend Mot., Attach. at 5-7. The Court notes that Mr. Lewis  
11 has submitted a declaration indicating that he is willing to  
12 "accept the proxy" and continue helping Petitioner, who he  
13 believes is an "innocent man." Id. at 10. However, given the  
14 ready availability of reasonable time extensions to allow  
15 Petitioner to continue to receive help from Mr. Lewis if he  
16 wishes to do so and still meet Court deadlines, and his failure  
17 to satisfy the first prong of the "next friend" test,  
18 Petitioner's motion is DENIED.

19 As mentioned above, Petitioner has been granted an extension  
20 of time to file his opposition to Respondent's pending motion to  
21 dismiss. His opposition is due on October 5, 2015. Respondent  
22 shall file with the Court and serve on Petitioner a reply within  
23 fourteen days of receipt of an opposition.

24 This Order terminates Docket No. 16.

25 IT IS SO ORDERED.

26 Dated: September 9, 2015



27  
28 CLAUDIA WILKEN  
United States District Judge

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DEMETROIS TERRELL DIXSON,  
Plaintiff,

v.

JEFFREY BEARD,  
Defendant.

Case No. [14-cv-05069-CW](#)

**CERTIFICATE OF SERVICE**


I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 9, 2015, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Demetrois Terrell Dixon ID: DOC No. F-23400  
La Palma Correctional Center (LPCC)  
5501 North La Palma Road  
Eloy, AZ 85131

Dated: September 9, 2015

Susan Y. Soong  
Clerk, United States District Court

By:   
Nichole Peric, Deputy Clerk to the  
Honorable CLAUDIA WILKEN