

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

JEREMIAH C. JOHNSON,
Petitioner,
vs.
NICK LUDWICK, Warden
Respondent.

**No. 15-CV-3121-DEO
ORDER**

On June 8, 2015, Mr. Jeremiah Johnson filed a pro se 28 U.S.C. Section 2254 petition for habeas relief in the Federal District Court for the Southern District of Iowa. Docket No. 1. Mr. Johnson is currently serving a sentence of life imprisonment in the Iowa State Penitentiary (ISP) in Ft. Madison, Iowa, for kidnaping. See Johnson v. State, 863 N.W.2d 36 (Table) (Iowa Ct. App. 2015). On June 10, 2015, the Federal Court for the Southern District of Iowa transferred Mr. Johnson's case to the Northern District of Iowa, and the case was assigned to the undersigned judge. Docket No. 5.

I. APPLICATION TO PROCEED IN FORMA PAUPERIS

The fee to file a 28 U.S.C. § 2254 petition is \$5.00. 28 U.S.C. § 1914(a). Under Rule 3 of the Rules Governing 2254 cases, the petitioner must either pay the applicable filing fee, or file (1) a motion for leave to proceed in forma

pauperis, (2) the affidavit required by 28 U.S.C. § 1915, and (3) a certificate from the warden or other appropriate officer of the place of confinement showing the amount of money or securities that the petitioner has in any account in the institution. Sect. 2254 Rule 3a(1)-(2). 28 U.S.C. § 1915 requires that a petitioner must provide this Court an affidavit¹ with the following statements: (1) statement of the nature of the action, (2) statement that plaintiff is entitled to redress, (3) statement of the assets plaintiff possesses, and (4) statement that plaintiff is unable to pay filing fees and court costs or give security therefor. 28 U.S.C. § 1915(a)(1).² Prisoners must also meet an additional requirement: they must submit a certified copy of their prisoner trust fund account statement for a 6-month period prior to the filing of the complaint. 28 U.S.C. § 1915(a)(2).

In this case, Mr. Johnson filed both a prisoner account form (Docket No. 4), an affidavit and a Motion to Proceed In

¹ An affidavit is a "voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths." Black's Law Dictionary (9th ed. 2009), affidavit.

² Entitled to redress means that the plaintiff is entitled to relief or is entitled to a judgment in his or her favor.

Forma Pauperis (Docket No. 2) that comply with the 28 U.S.C. § 1915 requirements. Based on his filings, it is clear that Mr. Johnson deserves in forma pauperis status. Accordingly, the Court will grant his Motion, Docket No. 2, and allow his case to proceed without the prepayment of fees.

However, under 28 U.S.C. § 1915(b), a prisoner must pay the full amount of the filing fee, even though in forma pauperis status excuses him from paying other fees incident to the civil action. The filing fee for a 28 U.S.C. § 2254 petition is only \$5.00. 28 U.S.C. § 1914(a). Petitioner's 6-month statement of account indicates that, although he qualifies for in forma pauperis status, he is capable of paying the \$5.00 filing fee immediately. Therefore, the Clerk of Court is hereby ordered to make arrangements with the Iowa State Penitentiary to collect the \$5.00 forthwith.

II. 28 U.S.C. SECTION 2254

Presently before the Court is Mr. Johnson's pro se petition pursuant to 28 U.S.C. Section 2254. Docket No. 1. Rule 4 of the Rules Governing 2254 states that:

[t]he clerk must promptly forward the petition to a judge under the court's assignment procedure, and the judge must promptly examine it. If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to

relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner. If the petition is not dismissed, the judge must order the respondent to file an answer, motion, or other response within a fixed time, or to take other action the judge may order. In every case, the clerk must serve a copy of the petition and any order on the respondent and on the attorney general or other appropriate officer of the state involved.

Sect. 2254 Rule 4.

Mr. Johnson's state post-conviction relief action was denied by the Iowa Court of Appeals in March 2015. See Johnson v. State, 863 N.W.2d 36 (Table) (Iowa Ct. App. 2015). Mr. Johnson filed this action in June 2015. Accordingly, Mr. Johnson's claim appears to be timely. Additionally, there is no evidence that Mr. Johnson has filed a previous 28 U.S.C. § 2254 case. Finally, Mr. Johnson appears to have asserted facially cognizable claims for ineffective assistance of counsel. Accordingly, the Court will allow his case to proceed past the initial review stage.

III. COURT APPOINTED COUNSEL

Mr. Johnson also filed an application for court appointed counsel. Docket No. 3. 28 U.S.C. § 2254(h) states:

Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and

any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.³

The Court has considered the record in this case and determined that the appointment of counsel is appropriate.

IV. CONCLUSION

For the reasons set out above, both Mr. Johnson's Motion to Proceed In Forma Pauperis, Docket No. 2, and his Motion to Appoint Counsel, Docket No. 3 are GRANTED.

The Clerk of Court shall arrange to collect the \$5.00 filing fee from the Iowa State Penitentiary, as set out above. Additionally, the Clerk of Court, through the CJA Administrator, shall appoint Mr. Johnson counsel and allow his case to proceed without the prepayment of filing fees. It is further ordered that: (1) The Clerk of Court is directed to send a copy of Petitioner Johnson's § 2254 petition and brief, by certified mail, to the Respondent Nick Ludwick, c/o Iowa

³ 18 U.S.C.A. § 3006A(a)(2) states "[w]henver the United States magistrate judge or the court determines that the interests of justice so require, representation may be provided for any financially eligible person who...is seeking relief under section 2241, 2254, or 2255 of title 28."

State Penitentiary, 3 John Bennett Drive 52627, P.O. Box 316, Fort Madison, Iowa 52627-0316; and to the Iowa Attorney General, c/o Habeas Division, Hoover State Office Building, 1305 E. Walnut Street, 2nd Floor, Des Moines, Iowa 50319, in accordance with Rule 4 of the Rules Governing Section 2254 cases.


(2) The Attorney General's Office shall file an appearance in this case within ten (10) days of the date of this Order so that all future electronic filings are received.

(3) Petitioner's appointed counsel, shall have thirty (30) days from the date of this Order to file an amended petition. If appointed counsel is unable to comply with this deadline, appointed counsel shall file a motion to extend time prior to the expiration of the deadline.

(4) Respondent's counsel shall have thirty (30) days from the date Petitioner's counsel files the amended petition within which to file an answer or dispositive motion to the amended petition in accordance with Rule 5 of the Rules Governing Section 2254 cases. If Defendant is unable to comply with this deadline, a motion to extend time shall be filed prior to the expiration of the deadline.

(5) After Respondent's Answer is filed, the Clerk of Court shall issue a briefing schedule.

IT IS SO ORDERED this 17th day of August, 2015.

A handwritten signature in black ink, reading "Donald E. O'Brien". The signature is written in a cursive style with a horizontal line underneath it.

Donald E. O'Brien, Senior Judge
United States District Court
Northern District of Iowa

**NOTICE OF LAWSUIT
and REQUEST FOR
WAIVER OF SERVICE OF SUMMONS**

TO THE NAMED DEFENDANT(S) IN THE FOLLOWING CAPTIONED ACTION:

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

JEREMIAH C. JOHNSON,
Petitioner,
vs.
NICK LUDWICK, Warden,
Respondent.

No. 15-CV-3121-DEO

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the Petition and a copy of the corresponding order from this Court are attached. This Petition has been filed in the United States District Court for the Northern District of Iowa.

Pursuant to Rule 4 of the Federal Rules of Civil Procedure, you have an obligation to cooperate in saving unnecessary costs of service of summons and Petition. Please sign the enclosed document where appropriate acknowledging receipt of the Petition and notice of this pending lawsuit and waiving formal service of summons. After signing the enclosed document, please return it to the United States Clerk's Office in the envelope provided within thirty (30) days of this date: 8/17/15.

I affirm that this notice and request for waiver of service of summons is being sent to you on behalf of the petitioner, this August 17, 2015.

/s/ djs, Deputy Clerk
Signature (Clerk's Office Official)
Northern District of Iowa

**ACKNOWLEDGMENT OF RECEIPT OF
NOTICE OF LAWSUIT,
and WAIVER OF SERVICE OF SUMMONS**

(**Return **this** document within thirty days after 08/17/15, to the United States Clerk's Office in the envelope provided.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
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JEREMIAH C. JOHNSON,

Petitioner,

vs.

NICK LUDWICK, Warden,

Respondent.

No. 15-CV-3121-DEO

I acknowledge receipt of the Petition and notice of the lawsuit in which I (or the entity on whose behalf I am addressed) have been named a respondent. I have received and/or read the Petition accompanying this document.

I agree to save the cost of service of a summons and an additional copy of the Petition by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4 of the Federal Rules of Civil Procedure. I hereby waive service of summons.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the Court except for objections based on a defect in the service of summons. I understand that a judgment may be entered against me (or the entity on whose behalf I am acting) if an answer or motion under Rule 12 of the Federal Rules of Civil Procedure is not served within 60 days after 08/17/15, (the date Notice, Waiver and corresponding documents were sent).

Date _____

Signature _____

Printed name _____

As _____ of _____

(Title)

(Entity)

**TO: Nick Ludwick, Warden
Iowa State Penitentiary
Fort Madison, Iowa**

NOTICE OF COLLECTION OF FILING FEE

You are hereby given notice that Jeremiah C. Johnson, #1158612, an inmate at your facility, filed the following lawsuit in the United States District Court for the Northern District of Iowa: Johnson v. Ludwick, Case No. C15-3121-DEO. The inmate was granted in forma pauperis status pursuant to 28 U.S.C. § 1915(b), which requires partial payment of filing fees. Based on the prisoner account information, the court has assessed a filing fee of \$5.00, which the inmate must pay now to the Clerk of Court. 28 U.S.C. § 1915(b)(1). Please make the appropriate arrangements to have the \$5.00 deducted and sent to the court as directed.

/s/ djs, Deputy Clerk

Robert Phelps
U.S. District Court Clerk
Northern District of Iowa

Address Form

Case Number: 15-CV-3121-DEO

Date: 08/17/15

To: Clerk of Court
RE: Service on Named Defendants

Below, please find the known (or likely) addresses for the following persons/entities who have been named as defendants to this action:

Defendant: **ALL DEFENDANTS**

**Nick Ludwick, Warden
c/o Iowa State Penitentiary
3 John Bennett Drive 52627
P.O. Box 316
Fort Madison, Iowa 52627-0316**

**Iowa Attorney General
c/o Habeas Division
2nd Floor-Hoover State Office Building
1305 E. Walnut Street
Des Moines, Iowa 50319**