

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

xxxxxxxxxxxxxxxxxx,)	Case No. 00-cv-00000-XXX
)	
Petitioner,)	<u>DEATH PENALTY CASE</u>
)	
vs.)	ORDER GRANTING PETITIONER'S
)	REQUEST FOR LEAVE TO PROCEED IN
Warden of California State Prison)	FORMA PAUPERIS, APPOINTMENT OF
)	COUNSEL, AND TEMPORARY STAY OF
at San Quentin, Respondent)	EXECUTION
)	

Petitioner commenced this action on [DATE] pursuant to 28 U.S.C. §2254 by electronically filing separate requests for leave to proceed in forma pauperis, appointment of counsel and a temporary stay of execution. Assistant Federal Defender XXX XXXX assisted Petitioner in the preparation and electronic filing of his moving papers and has informed the Court he will advise Deputy Attorneys General assigned to this case on behalf of Respondent of these filings.

I. Application for Leave to Proceed in Forma Pauperis

Rule 3(a)(2) of the Rules Governing §2254 Cases provide that a motion for leave to proceed in forma pauperis shall be accompanied by “the affidavit required by 28 U.S.C. § 1915, and 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.” The affidavit described in 28 U.S.C. §1915(a) shall “include a statement of all assets such prisoner possesses [and] that the person is unable to pay such fees or give security therefor.”

Petitioner has filed a supporting declaration with his request for in forma pauperis status asserting he is indigent and has only minimal assets. He also has filed a certificate from an officer of the prison stating the amount of money on deposit in his prisoner trust account.

II. Request for Appointment of Counsel

Section 3599(a)(2) of Title 18 of the United States Code provides:

In any post conviction proceeding under section 2254 or 2255 of Title 28, seeking to vacate or set aside a death sentence, any defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services shall be entitled to the appointment of one or more attorneys, and the furnishing of such other services in accordance with subsections (b) through (f).

Rule 81-191(c) of the Local Rules of the United States District Court for the Eastern District of California also provides for the appointment of counsel for indigent capital habeas petitioners. Under this rule, selection of an attorney is made by a Selection Board appointed by the Chief Judge. Petitioner requests that the Court authorize the Selection Board of the Eastern District of California to recommend federal counsel for appointment in this case.

III. Request for Temporary Stay of Execution.

Section 2251(a)(3) of Title 28 provides that if a condemned prisoner applies for appointment of counsel pursuant to 18 U.S.C. § 3599(a)(2), the court may stay execution of the sentence of death, but such stay shall terminate not later than 90 days after counsel is appointed, or if the application for appointment of counsel is withdrawn or denied. *See* Rule 81-191(h)(2) of the Local Rules of the United States District Court for the Eastern District of California.

Good cause appearing therefore,

1. Petitioner's application for leave to proceed in forma pauperis is granted.
2. Petitioner's request for appointment of counsel is granted. The matter is referred to the Selection Board for the Eastern District of California to locate qualified and available counsel to represent Petitioner in these federal habeas proceedings.
3. Petitioner's request for a stay of execution is temporarily granted and all court and other proceedings related to the execution of his sentence of death, including preparation for execution and the setting of an execution date, are stayed until ninety (90) days after counsel is appointed.

IT IS SO ORDERED.

Dated: _____

/s/XXXXXXXX XXXXX

United States District Judge