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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Alvie Copeland Kiles,

10 Petitioner,

11 v.

12 Ryan Thornell, et al.,

13 Respondents.
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No. CV-17-04092-PHX-GMS

ORDER

DEATH PENALTY CASE

15 Alvie Copeland Kiles is an Arizona State prisoner under sentence of death. Pending
16 before the Court is Kiles's motion to authorize habeas counsel to represent him in state
17 court for the purpose of pursuing relief under Arizona's postconviction DNA testing
18 statute. (Doc. 131.) Respondents take no position on the relief requested. (*See id.*) The
19 Court grants the motion.

20 On December 14, 2022, Respondents filed a Notice of Disclosure indicating that a
21 woman had come forward claiming to be S.G., the infant murder victim in this case, and
22 provided her DNA to the Yuma Police Department. (Doc. 111 at 2.) On February 14, 2023,
23 Respondents filed a Notice of Disclosure indicating that DNA testing results of the
24 individual were negative and that the biological sample collected from the claimant did
25 "not match S.G., or either parent of S.G." (Doc. 121.)

26 Kiles now asserts that, despite a request for further information from Respondents,
27 the disclosure of the test results is incomplete. Missing from the disclosure are "underlying
28 data" and "laboratory notes" necessary to make sense of what appear to be anomalous test

1 results—for instance “an unexplained male DNA in the sample from the woman claiming
2 to be S.G.” (Doc. 131 at 4, 5.) Kiles seeks to litigate his right to this information under
3 Arizona’s postconviction DNA testing statute, A.R.S. § 13-4240(G). (Doc. 131 at 5).
4 Previously, the Court denied Kiles’s request that the Court order the parties to meet and
5 confer regarding a DNA testing protocol in these federal proceedings as unnecessary in
6 light of state statutory authority by which Kiles could obtain the relief he seeks, opining
7 that “it would be unlikely that Respondents could successfully argue that he has no interest
8 in the results of the DNA.” (Doc. 115 at 3.)

9 The Criminal Justice Act provides for federally appointed counsel to represent their
10 client in “other appropriate motions and procedures.” 18 U.S.C. § 3599(e). Section 3599(e)
11 does not ordinarily include state habeas proceedings, because they are not “properly
12 understood as a ‘subsequent stage’ of judicial proceedings but rather as the commencement
13 of new judicial proceedings.” *Harbison v. Bell*, 556 U.S. 180, 189 (2009). Nevertheless, “a
14 district court may determine on a case-by-case basis that it is appropriate for federal counsel
15 to exhaust a claim in the course of her federal habeas representation.” *Id.* at 190 n.7; *see*
16 *also In re Commonwealth’s Motion to Appoint Counsel Against or Directed to Defender*
17 *Ass’n of Phila.*, 790 F.3d 457, 462 (3d Cir. 2015) (“In some circumstances, a federal court
18 can appoint counsel to represent a federal habeas corpus petitioner in state court for the
19 purpose of exhausting state remedies before pursuing federal habeas relief.”) (citing
20 *Harbison*, 556 U.S. at 190 n.7).

21 Having reviewed the motion, the Court finds good cause to permit Kiles’s federally-
22 appointed counsel to represent him for the sole purpose of pursuing relief under Arizona’s
23 postconviction DNA testing statute. *See* 18 U.S.C. § 3599(e); *Harbison*, 556 U.S. at 190
24 n.7. Federal counsel has experience litigating under Arizona’s forensic-testing statutes,
25 (*see* Doc. 64 at 8), substantial experience working on capital cases, and is familiar with the
26 underlying factual and legal grounds for the anticipated state court litigation. Additionally,
27 Kiles has alleged in these habeas proceedings that his state postconviction counsel were
28 ineffective, thus the appointment of current counsel will avoid unnecessary delay in

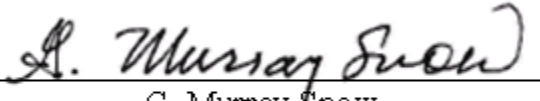
1 obtaining new counsel in state court and familiarizing them with the case.

2 By granting Kiles's motion, the Court does not convey any position with respect to
3 the merits of the proposed litigation.

4 Based on the foregoing,

5 **IT IS ORDERED** that Kiles's Motion for Authorization for Habeas Counsel to
6 Represent Petitioner in State Court (Doc. 131) is **GRANTED**. Federally-appointed counsel
7 is authorized to represent Petitioner in state court for the purpose of pursuing relief under
8 Arizona's postconviction DNA testing statute.

9 Dated this 13th day of September, 2023.

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12 G. Murray Snow
13 Chief United States District Judge
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