The United States Supreme Court

Appeal No. 19-13429

Ms. Michael Alford, Pro Se

V.

United States

Appellants Appendix

Appeal from The United States Appeals Court
For The Eleventh Circuit

Ms. Michael Alford
FCI Marianna
PO Box 7007
Marianna, FL. 32447

cover

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Volume I

	Docket Exhibit
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Opinion - 11th Cir.	Ex-4

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

December 23, 2019

Michael Ray Alford
FCI Yazoo City Medium - Inmate Legal Mail
PO BOX 5000
YAZOO CITY, MS 39194

Appeal Number: 19-13429-HH
Case Style: USA v. Michael Alford
District Court Docket No: 5:16-cr-00028-RH-1

Based upon the responses of the parties, it appears that this court has jurisdiction to consider this appeal. A final determination regarding jurisdiction will be made by the panel to whom this appeal is submitted on the merits.

Appellee's brief is due 30 days from the date of this letter.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Christopher Bergquist, HH
Phone #: 404-335-6169

JUR-3 Ntc of prob juris

EXHIBIT 1

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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June 30, 2020

Clerk - Northern District of Florida
U.S. District Court
30 W GOVERNMENT ST
PANAMA CITY, FL 32601

Appeal Number: 19-13429-HH
Case Style: USA v. Michael Alford
District Court Docket No: 5:16-cr-00028-RH-1

A copy of this letter, and the judgment form if noted above, but not a copy of the court's decision, is also being forwarded to counsel and pro se parties. A copy of the court's decision was previously forwarded to counsel and pro se parties on the date it was issued.

The enclosed copy of the judgment is hereby issued as mandate of the court. The court's opinion was previously provided on the date of issuance.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Lois Tunstall
Phone #: (404) 335-6191

Enclosure(s)

MDT-1 Letter Issuing Mandate

EXHIBIT 2-(a)

UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 19-13429

District Court Docket No.
5:16-cr-00028-RH-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MICHAEL RAY ALFORD,

Defendant - Appellant.

Appeal from the United States District Court for the
Northern District of Florida

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: June 01, 2020
For the Court: DAVID J. SMITH, Clerk of Court
By: Djuanna H. Clark

EXHIBIT 2-(b)

ISSUED AS MANDATE 06/30/2020

IN THE UNITED STATES SUPREME COURT

MS. MICHAEL ALFORD

V.

UNITED STATES

THE UNITED STATES DISTRICT COURT OPINION

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA PANAMA CITY DIVISION

UNITED STATES OF AMERICA

v. CASE NO. 5:16cr28-RH

MICHAEL RAY ALFORD,

Defendant.

_____/

ORDER DENYING THE MOTION TO APPOINT AN ATTORNEY AND FOR OTHER ASSISTANCE

A jury convicted the defendant Michael Ray Alford, he was sentenced, and he appealed. The United States Court of Appeals for the Eleventh Circuit affirmed. Mr. Alford now has moved to appoint an attorney and experts and for other assistance in connection with an anticipated motion for relief under 28 U.S.C. § 2255.

Mr. Alford was convicted in a full and fair trial. He has not identified any colorable basis for a § 2255 motion. He has not identified any specific need for assistance in connection with any such motion. He was entitled to and was represented by appointed attorneys at trial and on direct appeal. He is not entitled

to another attorney now, and he is not entitled to the additional assistance he has requested.

IT IS ORDERED:

The motion to appoint an attorney and for other assistance, ECF No. 164, is denied.

SO ORDERED on August 8, 2019.

s/Robert L. Hinkle
United States District Judge

IN THE UNITED STATES SUPREME COURT

MS MICHAEL ALFORD

V.

UNITED STATES

THE ELEVENTH CIRCUIT COURT OPINION

EXHIBIT 4

COVER

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-13429
Non-Argument Calendar

D.C. Docket No. 5:16-cr-00028-RH-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL RAY ALFORD,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida

(June 1, 2020)

Before GRANT, LUCK and BLACK, Circuit Judges.

PER CURIAM:

Michael Ray Alford, a federal prisoner proceeding *pro se*, appeals following the district court's denial of his post-judgment motion for appointment of counsel and expert assistance to prepare his then-anticipated 28 U.S.C. § 2255 motion to vacate. In his *pro se* brief on appeal, Alford asserts the district court erred in denying his motion for assistance because his case presents complex legal and factual issues. Since filing the instant notice of appeal, Alford has filed a purported § 2255 motion and memorandum, which are currently pending before the district court.

As an initial matter, we have construed Alford's post-judgment motion for assistance as civil because it was filed in anticipation of civil habeas proceedings.[1] We review the denial of a civil plaintiff's motion for an expert witness and counsel for abuse of discretion. *Bass v. Perrin*, 170 F.3d 1312, 1320 (11th Cir. 1999). A plaintiff in a civil case has no constitutional right to counsel, and while the court may, pursuant to 28 U.S.C. § 1915(e)(1), appoint counsel for an indigent plaintiff, the court has broad discretion in making this decision and should do so only in

[1] We ordered the Government's motion to dismiss for lack of jurisdiction to be carried with the case. After careful consideration, we construe Alford's post-judgment motion, which was filed in anticipation of habeas proceedings, as civil. *See Mayer v. Wall St. Equity Grp. Inc.*, 672 F.3d 1222, 1224 (11th Cir. 2012); *Ferrara v. United States*, 547 F.2d 861, 862 (5th Cir. 1977). The order denying the motion was a final and appealable order under 28 U.S.C. § 1291 because it fully resolved the only issues before the court at the time, and Alford's notice of appeal was timely. *See* 28 U.S.C. § 1291; *CSX Transp. Inc. v. City of Garden City*, 235 F.3d 1325, 1327 (11th Cir. 2000). Therefore, we have denied the Government's motion in a separate order.

exceptional circumstances. *Id.*; *see also Killian v. Holt,* 166 F.3d 1156, 1157 (11th Cir. 1999). Exceptional circumstances include the presence of "facts and legal issues [which] are so novel or complex as to require the assistance of a trained practitioner." *Kilgo v. Ricks*, 983 F.2d 189, 193 (11th Cir. 1993) (quotations omitted). The key is whether the *pro se* litigant needs help in presenting the merits of his position to the court. *Id.*

Likewise, there is no constitutional right to counsel in federal habeas proceedings. *See Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). A district court may appoint counsel to represent a financially eligible person in, *inter alia*, a § 2255 proceeding if "the court determines the interests of justice so require." 18 U.S.C. § 3006A(a)(2)(B). Counsel appointed under this section may obtain expert services upon request of the court or without a prior request if it would be necessary for adequate representation. *Id.* § 3006A(e)(1)-(2). This section does not address appointment of experts for *pro se* litigants. *See id.*

The district court did not abuse its discretion by denying Alford's motion for assistance because there is no constitutional right to counsel during a collateral attack on a conviction, and, notwithstanding his assertion that the law and facts conflicted, he did not demonstrate exceptional circumstances. *See Finley*, 481 U.S. at 555; *Bass*, 170 F.3d at 1320; *see also* 28 U.S.C. § 1915(e)(1). Alford argued in his motion for assistance and his initial brief that he was actually innocent where

the Government did not prove he received child pornography through the internet because the images in his computer's thumbcache were generated on his computer, but the images were never actually viewed. However, irrespective of how the thumbnails were generated, there were images of child pornography in the folder which could recover deleted files, and Alford received emails containing child pornography, which came through the internet. Moreover, this Court held on direct appeal that the evidence was sufficient for a reasonable jury to conclude he knowingly received or attempted to receive child pornography. *See United States v. Alford*, 744 F. App'x 650, 656 (11th Cir. 2018).

As demonstrated by his motion for assistance, Alford was able to adequately state his legal argument—citing to legal authority and pages from the record—such that he did not need help in presenting the essential merits of his position to the court. *See Kilgo*, 983 F.2d at 193. Therefore, it was not an abuse of discretion, based on the circumstances at the time, to deny Alford's motion for assistance under § 1915(e)(1). *See Bass*, 170 F.3d at 1320. For similar reasons, to the extent that § 3006A(a)(2)(B) provides an alternative basis for appointing counsel, the interests of justice did not require the appointment of counsel or experts. Accordingly, we affirm.

AFFIRMED.