

**No.**

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**IN THE SUPREME COURT OF THE UNITED STATES**

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**TERRY KENT HOLCOMB, II,**

**Petitioner,**

**v.**

**RICK WHITTEN,**

**Respondent.**

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**MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS**

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**Julia L. O'Connell  
Federal Public Defender**

**Barry L. Derryberry  
(Counsel of Record)  
Assistant Federal Public Defender  
barry.derryberry@fd.org**

**Office of Federal Public Defender  
Northern District of Oklahoma  
One West Third Street, Ste. 1225  
Tulsa, OK 74103  
(918) 581-7656  
fax (918) 581-7630  
Counsel for Petitioner**

**May 3, 2021**

**MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS**

Petitioner, Terry Holcomb, II, an indigent party in this case, moves for leave to proceed in forma pauperis for the purpose of filing a Petition for Writ of Certiorari.

Petitioner's financial indigency was recognized by the United States Court of Appeals for the Tenth Circuit, which on November 7, 2019, appointed the Office of Federal Public Defender identified below to represent Petitioner pursuant to the Criminal Justice Act (18 U.S.C. §3006A). See also Fed.R.Crim.P. Rule 44(a) (providing right to appointment of counsel on appeal for defendants unable to obtain counsel). A copy of the appointment order is attached to this Motion. The Petitioner has since been continuously represented by his appointed counsel.

Petitioner requests that this Court grant leave to proceed in forma pauperis pursuant to Supreme Court Rule 39.1, and permit Petitioner to submit his Petition for Writ of Certiorari without prepayment of filing fees and costs.

Respectfully submitted,

s/Barry L. Derryberry  
Barry L. Derryberry  
Okla. Bar Assn. No. 13099  
Assistant Federal Public Defender  
Office of Federal Public Defender  
Northern District of Oklahoma  
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Counsel for Petitioner

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

November 18, 2019

Elisabeth A. Shumaker  
Clerk of Court

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TERRY KENT HOLCOMB, II,

Petitioner - Appellant,

v.

No. 19-5033

RICK WHITTEN,

Respondent - Appellee.

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**ORDER**

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Before **BACHARACH**, Circuit Judge.

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This matter is before the court upon receipt of the district court's order granting Appellant's motion to determine eligibility for appointment of counsel. The district court has made the requisite finding of eligibility for appointment of counsel pursuant to 18 U.S.C. § 3006A, and because the interests of justice so require, the Office of the Federal Public Defender for the Northern District of Oklahoma ("FPD") is appointed as counsel for Terry Holcomb, II. Mr. Holcomb's *Motion to Reconsider Appellant's Motion for Appointment of Counsel* is GRANTED.

In addition, a certificate of appealability is granted as to whether the district court erred in denying an evidentiary hearing on Mr. Holcomb's habeas claim involving improper exclusion of defense witnesses. Within 40 days of the date of this order, the

FPD shall file an opening brief addressing the issue certified for appeal. Appellee shall file a response brief within 30 days of service of Appellant's opening brief. Appellant may file a reply brief within 21 days of service of Appellee's response brief.

Entered for the Court,

ELISABETH A. SHUMAKER, Clerk

A handwritten signature in black ink, appearing to read 'Chris Wolpert', with a long horizontal stroke extending to the right.

by: Chris Wolpert  
Chief Deputy Clerk