

No.

IN THE SUPREME COURT OF THE UNITED STATES

TERRY KENT HOLCOMB, II,

Petitioner,

v.

RICK WHITTEN,

Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

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

**Barry L. Derryberry
(Counsel of Record)
Assistant Federal Public Defender
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**Office of Federal Public Defender
Northern District of Oklahoma
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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
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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

TERRY KENT HOLCOMB, II,

Petitioner - Appellant,

v.

No. 19-5033

RICK WHITTEN,

Respondent - Appellee.

ORDER

Before **BACHARACH**, Circuit Judge.

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



by: Chris Wolpert
Chief Deputy Clerk