

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES IVAN BRANHAM,

PETITIONER

v.

STATE OF MONTANA; PATRICK McTIGHE,

RESPONDENTS,

AND

JIM SALMONSEN,

RESPONDENT.

MOTION TO PROCEED *IN FORMA PAUPERIS*

The Petitioner, Charles Ivan Branham, requests leave to file the attached Petition for a Writ of Certiorari, without prepayment of costs and to proceed *in forma pauperis*. The Petitioner has been granted leave to proceed *in forma pauperis* in the United States Court of Appeals for the Ninth Circuit in this case. No affidavit is attached inasmuch as the U.S. District Court appointed the Undersigned as counsel for Petitioner under the Criminal Justice Act of 1964.

DATED this 23rd day of September, 2021.

RESPECTFULLY SUBMITTED:

By: /s/ Palmer A. Hoovestal

Palmer Hoovestal

Attorney for Petitioner

CHARLES IVAN BRANHAM

RECEIVED

OCT 15 2019

CLERK, U.S. DISTRICT COURT
DISTRICT OF MONTANA
MISSOULA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

CHARLES IVAN BRANHAM,

Cause No. CV 18-59-M-DLC

Petitioner,

vs.

ORDER

STATE OF MONTANA, JIM
SALMONSEN,

Respondents.

This matter comes before the Court on Mr. Branham's Motion to Appoint
Counsel on Appeal and Motion for Leave to Proceed in Forma Pauperis on Appeal.
(Docs. 33 & 34.)

On September 4, 2019, this Court adopted the Findings and
Recommendations entered by Magistrate Judge Lynch, recommending dismissal of
Mr. Branham's petition as time-barred. The Court, however, granted Mr. Branham
a Certificate of Appealability regarding the unresolved question of whether
Montana's Sentence Review Division proceedings are a form of direct review or
are collateral in nature. (Doc. 30 at 3-6.) The ultimate resolution of this issue
directly affects the timeliness of Mr. Branham's federal habeas petition.

Mr. Branham was represented by retained counsel, Mr. Palmer Hoovestal, in the underlying proceedings. Upon review of Branham's motion and affidavit filed in support of his motion to proceed in forma pauperis, it appears that Mr. Branham has sufficiently shown he can no longer afford to pay all costs that may be associated with his appeal. Pursuant to FRAP 24(a)(1), Mr. Branham's motion for leave to proceed in forma pauperis will be granted.

Mr. Branham also moves for appointment of counsel in further litigation of this action. While the Sixth Amendment right to counsel does not apply in habeas corpus actions, Title 18 U.S.C. § 3006A(a)(2)(B) authorizes a district court to appoint counsel to represent a habeas petitioner whenever "the court determines that the interests of justice so require" and such person is financially unable to obtain representation. *See also* 28 U.S.C. § 2254(h) (providing a district court may appoint counsel in subsequent proceedings on review for one who becomes financially unable to afford counsel). The decision to appoint counsel is within the discretion of the district court. *Chaney v. Lewis*, 801 F. 2d 1191, 1196 (9th Cir. 1986); *Knaubert v. Goldsmith*, 791 F. 2d 722, 728 (9th Cir. 1986).

Because Mr. Hoovestal has represented Mr. Branham in his state proceedings, as well as in proceedings before this Court, he is already familiar with the case. Accordingly, the Court will grant Mr. Branham's request that Mr. Hoovestal be appointed to represent him on appeal.

Based on the foregoing, the Court enters the following:

ORDER

1. Mr. Branham's Motion for Leave to Proceed in Forma Pauperis on Appeal (Doc. 34) is GRANTED.
2. Mr. Branham's Motion to Appoint Counsel on Appeal (Doc. 33) is GRANTED. Mr. Hoovestal is appointed to represent Mr. Branham in all further appellate proceedings.

DATED this 15th day of October, 2019.



Dana L. Christensen, Chief Judge
United States District Court