

22-5760

No. _____

FILED

AUG 8 2022

OFFICE OF THE CLERK
SUPREME COURT U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

PHILIP JOSEPH SPEAR — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

U.S. District Court for the District of Mississippi Southern

Division, 1:17CR17; 1:17CV267, (8th Cir. 2018)

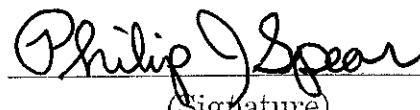
Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

The appointment was made under the following provision of law: _____
_____, or _____

A copy of the order of appointment is appended.


(Signature)

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA

v.

CAUSE NO. 1:17CR17-LG-RHW-1
CIVIL ACTION NO. 1:17CV267-LG

PHILIP JOSEPH SPEAR

ORDER

BEFORE THE COURT is Petitioner's motion for leave to proceed in forma pauperis [47] on appeal. Upon review of the motion submitted, it is hereby, ORDERED AND ADJUDGED that Petitioner's motion for leave to proceed in forma pauperis [47] on appeal is hereby GRANTED, and he is granted leave to proceed in this appeal without prepayment of the filing fee or costs, or giving security therefore.

SO ORDERED AND ADJUDGED this the 16th day of August, 2018.

s/ Louis Guirola, Jr.
LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

PHILIP JOSEPH SPEAR

v.

CRIMINAL NO. 1:17CR17-LG-RHW
CIVIL NO. 1:17CV267-LG

UNITED STATES OF AMERICA

**ORDER GRANTING EVIDENTIARY HEARING
AND APPOINTING FEDERAL PUBLIC DEFENDER**

BEFORE THE COURT is the Motion Under § 2255 to Vacate, Set Aside, or Correct Sentence by Person in Federal Custody [26] filed by Philip Joseph Spear. In his Motion and in a supporting affidavit, Spear alleges that his attorney rendered ineffective assistance of counsel by failing to file a notice of appeal upon his request. Since Spear's former attorney disputes this assertion, this Court must schedule an evidentiary hearing. *See United States v. Valdez*, 392 F. App'x 274, 275 (5th Cir. 2010) (citing *United States v. Tapp*, 491 F.3d 263, 266 (5th Cir. 2007)). The Court appoints the Federal Public Defender to represent Spear during the hearing.

IT IS, THEREFORE, ORDERED AND ADJUDGED that an evidentiary hearing should be scheduled to address the issue of whether Spear asked his attorney to file a notice of appeal.

IT IS, FURTHER, ORDERED AND ADJUDGED that the Federal Public Defender is hereby appointed to represent Spear at the evidentiary hearing, which will be scheduled at a later date.

SO ORDERED AND ADJUDGED this the 19th day of December, 2017.

s/ *Louis Guirola, Jr.*

LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE