

No. _____

IN THE

Supreme Court of the United States

PATRICK LEONARD MARTINEZ,

Petitioner,

v.

BOBBY LUMPKIN,

Respondent.

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*.

Petitioner has previously been granted leave to proceed *in forma pauperis* by the United States District Court for the Western District of Texas, as well as by the 171st District Court of El Paso County, Texas. Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel, and a copy of the order appointing is appended.

EL PASO COUNTY PUBLIC DEFENDER
Attorneys for Petitioner

/s/Nicholas Vitolo
Nicholas C. Vitolo
Assistant Public Defender
500 E. San Antonio, Room 501
El Paso, Texas 79901
(915) 546-8185
nvitolo@epcounty.com
Counsel of Record

IN THE 171ST DISTRICT COURT
EL PASO COUNTY, TEXAS

FILED
MARGARET A. FAVAL
DISTRICT CLERK

2014 AUG -7 PM 1:19

THE STATE OF TEXAS

*
*

vs.

Cause No. 20130D04142

TRACK NO: *1110*

SO:

EL PASO COUNTY, TEXAS

PATRICK LEONARD MARTINEZ

DOB: 04/22/1979

CHARGE: SEX ABUSE OF CHILD CONTINUOUS: VICTIM UNDER 14

ARRESTED: 05/03/2013

ORDER APPOINTING ATTORNEY ON APPEAL

DEAR JANET BURNETT, ASSISTANT PUBLIC DEFENDER:

YOU HAVE BEEN APPOINTED TO REPRESENT THE DEFENDANT IN THE ABOVE STYLED AND NUMBERED CAUSE THIS APPOINTMENT CONTINUES UNTIL CHARGES ARE DISMISSED, THE DEFENDANT IS ACQUITTED, APPEALS ARE EXHAUSTED TO THE 8TH COURT OF APPEALS, OR IN THE CASE OF A DEATH PENALTY CASE, COMPLETION OF THE DIRECT APPEAL TO THE COURT OF CRIMINAL APPEALS. THE ATTORNEY MAY BE RELIEVED OF THE APPOINTMENT OR REPLACED BY OTHER COUNSEL ONLY AFTER A FINDING OF CAUSE IS ENTERED ON THE RECORD. (ART. 26.04(j) (2). **YOU ARE NOT RELIEVED OF THIS APPOINTMENT AND CANNOT BE RELIEVED OF THIS DUTY EVEN BY SUBSTITUTION WITHOUT A MOTION AND ORDER SIGNED BY THE COURT (SEE LOCAL RULE 5.03).**

ATTACHED IS THE "ATTORNEY VERIFICATION" FORM WHICH YOUR APPOINTMENT CONTINUES THROUGH THE APPEAL TO THE 8TH SUPREME JUDICIAL COURT, UNLESS THE TRIAL COURT PERMITS YOUR WITHDRAWAL.

IF THE DEFENDANT IS IN CUSTODY IN THE EL PASO COUNTY DETENTION FACILITY, YOU ARE DIRECTED TO CONDUCT YOUR INITIAL INTERVIEW WITH THE DEFENDANT **WITHIN FORTY-EIGHT (48) HOURS**. WHEN THE FINAL JUDGEMENT IS ENTERED IN THIS CAUSE, PLEASE FILE THE VOUCHER WITH THE TRIAL COURT WITHIN 5 DAYS. YOU MAY USE ADDITIONAL SHEETS IF NECESSARY. INVESTIGATION AND CERTAIN OTHER EXPENSES MUST HAVE PRIOR COURT APPROVAL. SEE 1986, ATTORNEY REIMBURSEMENT GUIDELINES.

SIGNED: 8/7/2014.

JK

JUDGE BOB VILLE MARIE
171ST DISTRICT COURT

JANET BURNETT, ASSISTANT PUBLIC DEFENDER

915-546-8186

Bondsman:

Jail: Downtown

COUNCIL OF JUDGES ADMINISTRATION
EL PASO COUNTY COURTHOUSE
500 E. SAN ANTONIO #101
EL PASO, TX 79901
(915) 546-2143
FAX (915) 546-2019

ATTORNEY VERIFICATION

ARTICLE 26.04(j)(1), CODE OF CRIMINAL PROCEDURE STATES:

(j) AN ATTORNEY APPOINTED UNDER THIS ARTICLE SHALL:
(1) MAKE EVERY REASONABLE EFFORT TO CONTACT THE DEFENDANT NOT LATER THAN THE END OF THE FIRST WORKING DAY AFTER THE DATE ON WHICH THE ATTORNEY IS APPOINTED AND TO INTERVIEW THE DEFENDANT AS SOON AS PRACTICABLE AFTER THE ATTORNEY IS APPOINTED;

***IMPORTANT – INFORMATION BELOW MUST BE FILLED OUT COMPLETELY**

ON THIS THE , DAY OF , 200 , AT A.M./P.M.,
I, JANET BURNETT, ASSISTANT PUBLIC DEFENDER, CONSULTED WITH DEFENDANT PATRICK
LEONARD MARTINEZ, DOB: 04/22/1979 SO: CAUSE NO: 20130D04142 CHARGED WITH SEX
ABUSE OF CHILD CONTINUOUS: VICTIM UNDER 14, WHOM I WAS APPOINTED TO REPRESENT
ON 8/7/2014.

DEFENDANT

JANET BURNETT, ASSISTANT
PUBLIC DEFENDER
ATTORNEY

DATE ATTORNEY RECEIVED LETTER

YOU MAY FAX OR RETURN THIS FORM TO THE ABOVE ADDRESS, ACKNOWLEDGING THAT YOU HAVE MADE CONTACT WITH THE DEFENDANT IN PERSON OR BY MAIL BY THE END OF THE FIRST WORKING DAY FOLLOWING RECEIPT OF THE APPOINTMENT NOTIFICATION.

FOR COUNCIL OF JUDGES ADMINISTRATION USE ONLY

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(FORM APPROVED BY THE COUNCIL OF JUDGES 7/29/04)

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

**PATRICK L. MARTINEZ,
TDCJ No. 1962692,
Petitioner,**

v.

**BOBBY LUMPKIN,
Director, Texas Department of
Criminal Justice, Correctional
Institutions Division,
Respondent.**

EP-20-CV-250-FM

**ORDER GRANTING PETITIONER'S APPLICATION
TO PROCEED IN FORMA PAUPERIS ON APPEAL**

Patrick L. Martinez, a state prisoner, seeks leave to proceed in forma pauperis with an appeal of the Court's final judgment denying his petition for a writ of habeas corpus under 28 U.S.C. § 2254. Pet'r's Appl., ECF No. 21.

To proceed on appeal without prepaying costs or fees, a prisoner must be economically eligible and take his appeal in good faith. Fed. R. App. P. 24(a); Howard v. King, 707 F.2d 215, 219B20 (5th Cir. 1983). A prisoner establishes his economic eligibility by submitting a certified copy of his prison trust fund account statement for the six-month period immediately preceding the filing of his legal action. *Cf.* 28 U.S.C. § 1915(a)(2) (requiring a prisoner seeking to appeal a judgment in a civil action without prepaying fees to file a certified copy of the trust fund account statement). A prisoner demonstrates his good faith when he seeks appellate review of any non-frivolous issue, but he need not show probable success on the merits. Howard, 707 F. 2d at 220. The reviewing court may only examine whether the appeal involves “legal points arguable on their merits (and therefore not frivolous).” Id. (quoting Anders v. California, 386 U.S. 738, 744 (1967)).

Martinez provides an affidavit which shows the average six-month balance in his inmate trust account was \$973.19. Pet'r's Appl. 3. It also shows the average monthly deposit in the account was \$393.83. *Id.* This information supports a conclusion that he is economically eligible to proceed in forma pauperis with an appeal. Moreover, the Court finds that Martinez—who was sentenced to fifty-two years' imprisonment after a jury found him guilty of continuous sexual abuse of a child younger than fourteen—may raise a non-frivolous or colorable issue on appeal.

Accordingly, the Court **GRANTS** Martinez's application to proceed in forma pauperis (ECF No. 21) and **DIRECTS** the Clerk of the District Court to immediately notify the parties and the Fifth Circuit Court of Appeals of this order.

SIGNED this 15th day of June 2021.



FRANK MONTALVO
UNITED STATES DISTRICT JUDGE