

NO. _____
IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2023

MARLON JERMAINE JOHNSON, PETITIONER,

v.

UNITED STATES OF AMERICA, RESPONDENT.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Petitioner, Marlon Jermaine Johnson, pursuant to Sup. Ct. R. 39.1 respectfully moves for leave to file the accompanying petition for Writ of Certiorari in the Supreme Court of the United States without payment of costs and to proceed *in forma pauperis*.

Mr. Johnson was previously found financially unable to obtain counsel and the undersigned was appointed as C.J.A. counsel to represent him pursuant to 18 U.S.C. § 3006A. Therefore, in reliance upon Rule 39.1 and § 3006A(d) (7), petitioner has not attached the affidavit which would otherwise be required by 28 U.S.C. § 1746. A copy of the undersigned's order of appointment in the United States District Court is attached as Exhibit 1.

Respectfully submitted,


s/Patrick F. Nash

PATRICK F. NASH
Nash Marshall PLLC
129 West Short Street
Lexington, Kentucky 40507
(859) 254-3232
COURT APPOINTED COUNSEL OF RECORD FOR
PETITIONER MARLON JERMAINE JOHNSON

EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
(at London)

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Criminal Action No. 6:18-CR-065-CHB
)	
v.)	
)	ORDER GRANTING MOTION TO
MARLON JERMAINE JOHNSON,)	APPOINT COUNSEL
)	
Defendant.)	

*** *** *** ***

The matter is before the Court on Defendant Marlon Jermaine Johnson's *pro se* Motion to Appoint Counsel [R. 166] and its Supplement [R. 169]. Mr. Johnson states that he "no longer feels that it is best to represent himself" due to several "significant situation[]s." [R. 169 p. 1] While the United States does not object to the re-appointment of Pam Ledgewood (Defendant's current standby counsel), it opposes appointment of new legal counsel for Mr. Johnson. [R. 170] The Court acknowledges the United States' reasonable arguments in opposition. However, in the interest of justice and judicial economy, the Court grants Defendant's motion and appoints the Hon. Patrick Nash as Mr. Johnson's legal counsel.¹

Mr. Johnson has a Sixth Amendment right to counsel at all critical stages of the criminal process. *United States v. Wade*, 388 U.S. 218, 224 (1967). This right does not guarantee that a criminal defendant will be represented by a particular attorney. *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 624 (1989). When a change of counsel is sought, the Court must

¹ The Court reminds Defendant of its previous admonitions, including that by appointing Mr. Johnson his fourth competent counsel, he hereby forfeits his right to proceed *pro se* in this matter. [R. 168]

balance the defendant's right against the public's interest in the prompt and efficient administration of justice. *United States v. Jennings*, 83 F.3d 145, 148 (6th Cir. 1996). When a district court's decision on a motion to appoint new counsel is appealed, the appellate court considers four factors: (1) the timeliness of the motion; (2) the adequacy of the court's inquiry into the defendant's complaint; (3) whether the conflict between the attorney and client was so great that it resulted in a total lack of communication preventing an adequate defense; and (4) a balancing of the accused's right to counsel of his choice and the public's interest in the prompt and efficient administration of justice. *Id.*

The first factor—timeliness—weighs in favor of denying the motion. Even so, no trial date has been set in this case, and the Court will require new counsel to familiarize himself with the record in this matter expeditiously. As to the second and third factors, the Court is thoroughly aware of Mr. Johnson's complaints regarding his current situation. The record reflects the Court's detailed examinations of Mr. Johnson's previous dissatisfaction with counsel, his requests to proceed *pro se*, and his current concerns about continuing his self-representation. These factors weigh in favor of granting the motion. For the fourth factor, the Court has weighed the competing interests of Defendant's right to counsel and the public's interest in the prompt and efficient administration of justice, and this factor weighs slightly in favor of granting the motion.

After careful consideration of each factor, and in the interest of justice and judicial economy, the Court finds that Mr. Johnson shall be appointed legal counsel in this matter. Mr. Patrick Nash, whom the Court believes will effectively and meaningfully represent Mr. Johnson, shall be appointed as defense counsel.

Accordingly, and the Court being otherwise sufficiently advised,

IT IS HEREBY ORDERED as follows:

1. Defendant's Motions to Appoint Counsel [**R. 166; R. 169**] are **GRANTED**.
2. The Hon. Patrick Nash is **APPOINTED** to represent Defendant under the Criminal Justice Act.
3. The Hon. Pam Ledgewood is relieved of further representation in this matter and is instructed to immediately transition her case file to Mr. Nash.
4. A video status conference is **SET for Tuesday, June 30, 2020 at 10:00 a.m.**, before the Honorable Claria Horn Boom, United States District Judge. The hearing will be conducted by videoconference (based in London), and Chambers will disseminate instructions prior to the hearing.

This the 18th day of June, 2020.



Claria Horn Boom
CLARIA HORN BOOM,
UNITED STATES DISTRICT COURT JUDGE
EASTERN AND WESTERN DISTRICTS OF
KENTUCKY