

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	CA No. 16-35270
	)	
v.	)	
	)	
CYRUS ANDREW SULLIVAN,	)	
	)	
Defendant-Appellant.	)	

MOTION TO WITHDRAW AS COUNSEL OF RECORD

Federal Public Defender Lisa Hay, attorney for Defendant-Appellant Cyrus Andrew Sullivan, hereby moves pursuant to Circuit Rule 4-1(e) to withdraw from further representation of Mr. Sullivan in the above-captioned matter.

On November 9, 2017, this Court entered a Memorandum opinion (docket entry 46) affirming the district court’s denial of Mr. Sullivan’s Motion to Correct Sentence Pursuant to 28 U.S.C. § 2255. On November 16, 2017, undersigned counsel sent a copy of the Memorandum to Mr. Sullivan and explained the criteria

for exercise of Supreme Court discretion to grant certiorari under Rule 10 of the Supreme Court rules. Counsel also provided Mr. Sullivan a copy of the Supreme Court rules. After communications from Mr. Sullivan on November 27, November 29, and December 1, 2017, it is apparent to counsel that Mr. Sullivan is opting to pursue a petition for writ of certiorari to the Supreme Court.

In counsel's opinion, there are no grounds for seeking Supreme Court review that are consistent with the standard for filing a petition under Supreme Court Rule 10. The Memorandum decision rests on facts specific to Mr. Sullivan's case, in that this Court found that petitioner had not demonstrated any prejudice from his counsel's alleged ineffectiveness in failing to object to a deficient Information. In particular, this Court found that the Certificate of Appealability granted in this case did not encompass Mr. Sullivan's argument that he was prejudiced by his attorney's failure to file a motion under Rule 34.

This Motion to Withdraw is filed six days past the 21-day deadline set by Federal Rule of Appellate Procedure 4-1(e) for a motion to withdraw. Counsel had not expected the motion would be necessary and neglected to calendar the November 30 due date. By letter today to Mr. Sullivan at his known place of incarceration, counsel is notifying Mr. Sullivan of this motion to withdraw, of the deadlines for

filing a certiorari petition, and of counsel's willingness to file the petition if this motion to withdraw is not granted.

For these reasons, counsel now moves to withdraw from further representation in this case.

RESPECTFULLY SUBMITTED this 6th day of December, 2017.

/s/ Lisa Hay

Lisa Hay

Federal Public Defender, District of Oregon

101 SW Main Street, Suite 1700

Portland, OR 97204

Attorney for Defendant-Appellant

9th Circuit Case Number(s) 16-35270

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

CERTIFICATE OF SERVICE**When All Case Participants are Registered for the Appellate CM/ECF System**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format)

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I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Cyrus Sullivan
Reg. No. 74918-065
FDC Sheridan
P.O. Box 6000
Sheridan, OR 97378-6000

Signature (use "s/" format)

s/ Jennifer Lillie