

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LARRY GENE BURKS PETITIONER
(Your Name)

VS.
WENDY KELLEY, Dir. Ark. Dept. of Correction
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):

US DISTRICT COURT - EASTERN DIST OF ARKANSAS
US COURT OF APPEALS FOR THE 8TH CIRCUIT

☐ 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. FOR USDC and 8CA.

[Signature]
(Signature)
Attorney for BURKS

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 16-3718

Larry Gene Burks

Appellee

v.

Wendy Kelley, Director, Arkansas Department of Correction (originally named as Ray Hobbs)

Appellant

Appeal from U.S. District Court for the Eastern District of Arkansas - Pine Bluff
(5:14-cv-00154-BSM)

ORDER

Attorney, Jeffrey M. Rosenzweig is hereby appointed to represent appellee in this appeal under the Criminal Justice Act. Information regarding the CJA appointment and vouchering process in eVoucher will be emailed to counsel shortly.

September 26, 2016

Order Entered under Rule 27A(a):
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

LARRY GENE BURKS
ADC #141354

PETITIONER

VS.

CASE NO. 5:14cv00154 BSM-JTK

WENDY KELLEY,¹ Director,
Arkansas Department of Correction

RESPONDENT

ORDER

The Court has determined that counsel should be appointed to represent Petitioner in this case. Mr. Jeffrey M. Rosenzweig has agreed to represent Petitioner in these proceedings, and he is therefore, appointed in conformity with Rule 83.7 of the Local Rules for the Eastern and Western Districts of Arkansas, to represent the Petitioner in all further proceedings. The Court will forward to Mr. Rosenzweig a CJA voucher. Counsel is directed to confer with Petitioner within thirty (30) days, or by June 22, 2015.²

The record here indicates Petitioner requested to appeal his criminal conviction, but the special judge allowed Petitioner's counsel to withdraw without appointing appeal counsel. In Arkansas, a person who has been convicted of a criminal offense has a right to

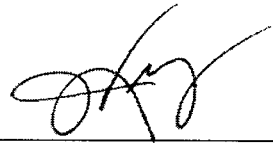
¹Wendy Kelley replaced Ray Hobbs as Director of the Arkansas Department of Correction. Under Federal Rule of Civil Procedure 25(d), Wendy Kelley is automatically substituted as Respondent in this matter.

²Counsel shall access the file from CM/ECF. If counsel is unable to obtain a copy of the file from CM/ECF, counsel should contact Mrs. LaShawn Coleman at 501-604-5174, and a copy of the file, or any portion thereof, will be provided free of charge.

a direct appeal of his conviction. *Evans v. State*, 356 Ark. 366, 151 S.W.3d 314 (2004). Arkansas Rules of Appellate Procedure–Criminal protects a defendant’s right to counsel to perfect a direct appeal. Rule 16(b) provides that, “if court appointed counsel is permitted to withdraw in the interest of justice or for other sufficient cause in a direct appeal of a conviction, . . . new counsel ***shall*** be appointed promptly by the court exercising jurisdiction over the matter of counsels’ withdrawal. (Emphasis added.)

Both parties are directed to file a brief within forty-five (45) days, or by August 6, 2015, outlining why equitable tolling should not be applied in this case when it appears that Petitioner’s Sixth and Fourteenth Amendment right to assistance of counsel was impermissibly curtailed through no fault of his own.

SO ORDERED this 22nd day of May, 2015.

A handwritten signature in black ink, appearing to be "J. K. [unclear]", written over a horizontal line.

UNITED STATES MAGISTRATE JUDGE