

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JACINTO HERNANDEZ,

Defendant.

Case No. 04-20115-02

MEMORANDUM AND ORDER

Jacinto Hernandez has filed a Consolidated Motion to Stay proceedings, Appoint Counsel, and Produce Documents (doc. 899).

Mr. Hernandez requests that this court resend the transcript of motion hearings (doc. 896) because some of the pages were printed on used paper and were unreadable. The court will order the clerk's office to resend that transcript.

Mr. Hernandez also seeks additional documents that were referenced in the transcripts he received. Specifically, he asks for copies of the Order to Show Cause (doc. 785), the Response to the Order to Show Cause (doc. 788), and the transcript of the hearing held on May 31, 2007 concerning that Order. Those requests will be granted. Mr. Hernandez also seeks a transcript of "an occasion at the bench where Mr. Thomas acknowledged certain emotional problems he was going through" and of "a conference here in court, regarding Mr. Thomas's issues with depression." Those statements refer

to the same event, a conversation that occurred during the July 25, 2006 conference in which Mr. Thomas revealed that he suffered from depression. The entire hearing is not relevant to Mr. Hernandez's request, but a transcript of the portion of the hearing relating to Mr. Thomas's disclosure will be prepared and mailed to Mr. Hernandez.

Finally, Mr. Hernandez again requests that the court appoint him an attorney and stay the proceedings in this case until his attorney has reviewed the file. There is, however, no constitutional right to counsel beyond the direct appeal of a conviction. *Swazo v. Wyo. Dep't of Corrs.*, 23 F.3d 332, 333 (10th Cir. 1994). "[T]he right to appointed counsel extends to the first appeal of right, and no further." *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). His request is denied.

IT IS THEREFORE ORDERED BY THE COURT that Mr. Hernandez's Consolidated Motion to Stay proceedings, Appoint Counsel, and Produce Documents (doc. 899) is **granted in part and denied in part**. The court reporter is directed to prepare and file transcripts of the portion of the July 25, 2006 hearing relating to Mr. Thomas's disclosure of depression and of the May 31, 2007 hearing concerning the Order to Show Cause. The clerk's office is directed to send to Mr. Hernandez via certified mail the following documents:

Another copy of the Transcript of Motions Hearings (doc. 896);

Order to Show Cause (doc. 785);

Response to the Order to Show Cause (doc. 788);

The transcript of the portion of the July 25, 2006 hearing relating to Mr. Thomas's disclosure of depression; and

The transcript of the hearing held on May 31, 2007.

Mr. Hernandez will have until April 15, 2010 to file a supplemental memorandum in support of his original § 2255 petition. The Government may file a response, should it choose to do so, by April 29, 2010. And Mr. Hernandez may file a reply by May 13, 2010. Mr. Hernandez's request for an attorney is denied.

IT IS SO ORDERED this 1st day of March, 2010.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge