

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

DHEADRY L. POWELL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. 05-20067

MEMORANDUM & ORDER

This matter comes before the court upon petitioner Dheadry L. Powell's Motion to Appoint Counsel for Appeal (Doc. 171).

18 U.S.C. § 3006A provides that "[r]epresentation shall be provided for any financially eligible person . . . [and] the judicial council of the circuit shall supplement the plan with provisions for representation on appeal." The Criminal Justice Act Plan for the United States Court of Appeals for the Tenth Circuit provides that: "Absent a change in financial conditions, any determination that a person is eligible for Criminal Justice Act counsel made in the district court shall continue on appeal." Recognizing that "each proceeding is unique . . . all counsel continuing in appeals from the trial court will be required, through procedures established by the court, to file either a motion for continued appointment or a motion to withdraw." Fed. R. App. P. Rule 46.3(B) provides that: "All counsel appearing in this court pursuant to an appointment made originally under the Criminal Justice Act must file a motion, within 14 days of case opening, seeking either a continued appointment for the appeal or permission to withdraw."

Petitioner proceeds pro se and is financially eligible for appointed counsel. On June 26, 2006, the court appointed Cheryl Pilate to represent petitioner. She has not withdrawn from the case and the

docket does not reflect that her representation of petitioner has otherwise ended. Petitioner's motion does not suggest that he is seeking alternative representation. Because petitioner already has appointed counsel, his motion must be denied as moot.

IT IS THEREFORE ORDERED that petitioner's Motion to Appoint Counsel for Appeal (Doc. 171) is denied as moot.

Dated May 10, 2018, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge