

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

**United States of America,**

**Plaintiff/Respondent,**

**v.**

**Case No. 07-20168-04-JWL**

**Shevel M. Foy,**

**Defendant/Petitioner.**

**MEMORANDUM & ORDER**

Amendment 782 to the United States Sentencing Guidelines took effect on November 1, 2014 and lowers the base offense levels in the Drug Quantity Table. To assist in the processing of the large number of motions anticipated in light of Amendment 782, the Honorable J. Thomas Marten, Chief Judge of the District of Kansas, appointed the Office of the Federal Public Defender to represent any defendant previously determined to have been entitled to appointment of counsel to determine whether that defendant may qualify for relief under Amendment 782. The record reflects that Mr. Foy falls into that category of defendants such that the Officer of the Federal Public Defender was appointed under Judge Marten's standing order to represent Mr. Foy in assessing whether he may be entitled to relief under Amendment 782.

This matter is now before the court on the motion of Kirk Redmond, the First Assistant Federal Public Defender, to withdraw from Mr. Foy's case in light of a specific conflict arising from Mr. Redmond's prior representation of one of Mr. Foy's co-defendants, Monterial Wesley. In the motion, Mr. Redmond explains the nature of the conflict in detail and further asks the court to appoint substitute counsel to represent Mr. Foy's interests. The motion is granted in

part and denied in part. It is granted to the extent Mr. Redmond moves to withdraw from representing Mr. Foy in light of the conflict identified by Mr. Redmond. It is denied to the extent Mr. Redmond asks the court to appoint substitute counsel for Mr. Foy at this juncture. There is 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); *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). Moreover, Mr. Foy, at this time, does not have a motion for relief pending before the court. Nonetheless, if Mr. Foy files a motion for relief with respect to his sentence and that motion reflects that Mr. Foy may be entitled to relief, the court will consider a request for the appointment of counsel at that point.

**IT IS THEREFORE ORDERED BY THE COURT THAT** Mr. Redmond's motion to withdraw and for the appointment of substitute counsel (doc. 1721) is granted in part and denied in part.

**IT IS SO ORDERED.**

Dated this 12<sup>th</sup> day of November, 2015, at Kansas City, Kansas.

s/ John W. Lungstrum

John W. Lungstrum

United States District Judge