

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

**United States of America,**

**Plaintiff,**

**v.**

**Case No. 08-20117-03-JWL  
09-20015-01-JWL**

**Kevin H. Tatum, Jr.,**

**Defendant.**

**MEMORANDUM & ORDER**

Kevin H. Tatum, Jr., pleaded guilty to conspiracy to possess cocaine with intent to distribute, possession of a firearm in furtherance of a drug trafficking crime, and possession of a firearm by a prohibited person. He did not appeal his convictions or the 211-month sentence he received on September 23, 2009. This court later dismissed as untimely Mr. Tatum's § 2255 motion.

This matter is presently before the court on Mr. Tatum's motion to appoint counsel for purposes of assessing whether he has a claim for relief in light of the Supreme Court's decision in *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018). His motion is denied. 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). "[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). While Mr. Tatum references the *Dimaya* opinion, he does not articulate why he believes that opinion might alter his sentence. Nonetheless, if Mr. Tatum files a motion for relief with respect to his conviction

or sentence based on *Dimaya* and that motion reflects that Mr. Tatum 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. Tatum's motion to appoint counsel (doc. 33 in Case No. 09-20015-01; doc. 216 in Case No. 08-20117-03) is **denied.**

**IT IS SO ORDERED.**

Dated this 2<sup>nd</sup> day of May, 2018, at Kansas City, Kansas.

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