

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAYMOND ALCORTA (03),

Defendant.

Case No. 13-40065-03-DDC

MEMORANDUM AND ORDER

This matter comes before the court on Raymond Alcorta's Motion for Determination of Eligibility for Appointed Counsel on Appeal (Doc. 435). Mr. Alcorta requests the court determine whether Mr. Alcorta is eligible for court-appointed counsel in his appeal to the Tenth Circuit of this court's denial of his § 2255 Motion to Vacate (Doc. 412). For the following reasons, this court denies Mr. Alcorta's motion without prejudice to refile.

Mr. Alcorta previously filed a pro se Motion for Appointment of Counsel seeking appointment of counsel in his appeal to the Tenth Circuit. Doc. 428. This court denied the motion because it determined Mr. Newland and Mr. Pratt still represented Mr. Alcorta in the Tenth Circuit because the Tenth Circuit had not granted a motion to withdraw for either attorney. *See* Doc. 431 at 2.

Mr. Alcorta's attorney, Mr. Newland, filed the present motion asking for a determination of eligibility for court-appointed counsel in the Tenth Circuit because Mr. Alcorta no longer can afford to retain counsel. Doc. 435 at 1. In order to determine whether Mr. Alcorta qualifies for court-appointed counsel, the court must first determine whether Mr. Alcorta is "financially unable to pay counsel whom he had retained." 18 U.S.C. § 3006A(c). As noted in this court's

Order Denying Motion for Leave to Appeal In Forma Pauperis (Doc. 437), Mr. Alcorta has not included the required information in Form 4 of the Rules of Appellate Procedure for this court to determine his financial status. This court may make a finding that Mr. Alcorta qualifies for court-appointed counsel under Addendum I § V under the Tenth Circuit Local Rules, but Mr. Alcorta has not filed the required documents to determine his financial eligibility.

IT IS THEREFORE ORDERED BY THE COURT THAT Mr. Alcorta's Motion to Appoint Counsel (Doc. 435) is denied by this court without prejudice to him renewing that motion with the Court of Appeals under 10th Cir. R. 46.4(A) and 10th Cir. R. Add. I.

IT IS FURTHER ORDERED that the Clerk of the Court shall mail a copy of this Order by certified mail to Mr. Alcorta.

IT IS SO ORDERED.

Dated this 15th day of December, 2020, at Kansas City, Kansas.

s/ Daniel D. Crabtree
Daniel D. Crabtree
United States District Judge