

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JERMAINE TYRELL PATTON (01),

Defendant.

Case No. 16-40113-01-DDC

MEMORANDUM AND ORDER

The Clerk of Court has advised that Mr. Patton mailed certain materials and the Clerk's office in Topeka, Kansas, received them on July 31, 2020. The contents of Mr. Patton's mailing suggest that he wanted the Clerk to file the submissions as part of his § 2255 motion.

The court has reviewed Mr. Patton's submission and concludes that it addresses the second ground presented by Mr. Patton's pending Motion to Vacate under 28 U.S.C. § 2255 (Doc. 68). Specifically, Mr. Patton's second ground contends that his appellate counsel rendered ineffective assistance during his direct appeal and thus violated his Sixth Amendment rights. *See* Doc. 68 at 6. The court thus directs the Clerk to file Mr. Patton's pro se submissions and docket the filing as "Defendant Patton's Pro Se Submission on Second Ground of Pending § 2255 Motion (Doc. 68)."

Finally, the court addresses the balance of Mr. Patton's Pro Se Motion to Appoint Counsel (Doc. 69). Earlier, and consistent with the court's Standing Order No. 15-3 ("Re: Motions for Post-Conviction Relief Pursuant to *Johnson v. United States*"), the court appointed CJA Counsel to represent Mr. Patton on the first ground of his 2255 motion. *See* Doc. 72. The court left undecided, however, Mr. Patton's request to appoint counsel to represent him on his

second ground—the ineffective assistance claim. Concluding that the interests of justice do not warrant appointment on this second ground, the court declines to appoint counsel. *See* 18 U.S.C. § 3006A(A)(2)(B). After considering the factors the Circuit directs the court to consider when making this decision, *Williams v. Meese*, 926 F.2d 994, 996 (10th Cir. 1991), the court exercises its discretion and denies the remainder of Mr. Patton’s motion to appoint counsel on the second ground asserted in his § 2255 motion. In particular, the court notes that the issues raised by Mr. Patton’s second ground evolve naturally from the first ground (where counsel is representing Mr. Patton) and Mr. Patton’s pro se motion capably presents his arguments. Mr. Patton will proceed pro se on ground two. Thus, the court denies Mr. Patton’s Pro Se Motion to Appoint Counsel (Doc. 69) in part and already has granted it in part.

With this ruling, the Clerk may terminate Doc. 69. Also, the court directs the Deputy Clerk to mail a copy of this Order to Mr. Patton.

IT IS SO ORDERED.

Dated this 26th day of August, 2020, at Kansas City, Kansas.

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