

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Nina Y. Wang**

Criminal Case No. 23-cr-00074-NYW-1

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. DEJANE REANIECE LATTANY,

Defendant.

ORDER

This matter comes before the Court on Applicant DeJane Reaniece Lattany's ("Applicant" or "Ms. Lattany") Motion for Appointment of Counsel, [Doc. 47], filed November 13, 2023 (the "First Motion"); Motion for Appointment of Counsel in a Criminal Case, [Doc. 68], filed March 14, 2024 (the "Second Motion"); and Motion to Appoint Counsel and Address Change Information, [Doc. 69], filed April 29, 2024 (the "Third Motion" and together, "Motions to Appoint Counsel"). For the following reasons, the Motions to Appoint Counsel are respectfully **DENIED**.

BACKGROUND

On March 3, 2023, Ms. Lattany was charged by Information with one count of wire fraud pursuant to 18 U.S.C. § 1343. [Doc. 1]. The following week, private counsel – Jason Flores-Williams ("Mr. Flores-Williams") – entered an appearance on her behalf and filed a Waiver of Indictment. [Doc. 3; Doc. 5]. The next day, Ms. Lattany, through Mr. Flores-Williams, filed a Notice of Disposition. [Doc. 8]. In advance of her Change of Plea hearing, Ms. Lattany executed a Plea Agreement with the United States and a Statement

in Advance of Plea of Guilty. [Doc. 13; Doc. 14]. She appeared before the Court for a Change of Plea hearing on April 26, 2023, during which the Court advised her of her constitutional rights and the consequences of pleading guilty. [Doc. 12].

The Parties agreed, and the Court found, that the applicable guideline calculation was 24, with a criminal history category of I, resulting in an advisory sentencing guideline range of 51-63 months. [Doc. 13]. In her Sentencing Memorandum, Ms. Lattany, through counsel, advocated for a sentence of incarceration of 45 months. [Doc 19 at 3]. The United States advocated for a sentence of incarceration of 51 months. On August 15, 2023, this Court sentenced Ms. Lattany to 48 months' imprisonment, to be followed by three years of supervised release. [Doc. 25 at 2; Doc. 27]. On August 21, 2023, Mr. Flores-Williams moved to withdraw as counsel which the Court granted. [Doc. 26; Doc. 29].

After granting two extensions, see [Doc. 41; Doc. 44], the Court ordered Ms. Lattany to self-surrender to federal custody on November 30, 2023. See [Doc. 45]; see *also* [Doc. 53 (permitting Ms. Lattany to self-surrender in Denver, Colorado)]. On November 13, 2023, Ms. Lattany filed a pro se Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 ("§ 2255 Motion"). See [Doc. 46].¹ In her § 2255 Motion, Ms. Lattany contends that Mr. Flores-Williams made "promises and advisement of the law turned out to be untrue and resulted in me having a higher criminal history score and now being safety valve ineligible." [Doc. 46 at 2]. She further contends that her former attorney coerced her into accepting a plea deal against her wishes and best interest and failed to adequately represent her at critical junctures of the case. [*Id.* At 4-

¹ On February 5, 2024, Ms. Lattany filed an "Amended 28 U.S.C. § 2255 [Motion]" [Doc. 62], which this Court construes as a supplement to the § 2255 Motion.

5]. After the Court denied Ms. Lattany's request for continued release pending resolution of the § 2255 Motion, see [Doc. 55; Doc. 56], Ms. Lattany surrendered to federal custody on November 30, 2023. Ms. Lattany remains in the custody of the federal Bureau of Prisons ("BOP").

Presently before this court are Applicant's First, Second, and Third Motions requesting the appointment of pro bono counsel to represent her in her § 2255 proceeding. See [Doc. 47; Doc. 68; Doc. 69].

LEGAL STANDARD

There is no constitutional right to counsel to litigate a § 2255 motion. See *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Swazo v. Wyo. Dep't of Corr.*, 23 F.3d 332, 333 (10th Cir. 1994). But there are certain situations where the appointment of counsel in a § 2255 action is required by statute or rule. Specifically, Rule 8(c) of the Rules Governing Section 2255 Proceedings for the United States District Courts states that "[i]f an evidentiary hearing is warranted, the judge must appoint an attorney to represent a moving party who qualifies to have counsel appointed under 18 U.S.C. § 3006A [statute governing appointment of counsel for financially eligible individuals]." Rule 6(a) contains a similar requirement, providing that a court must appoint counsel for a § 3006A-qualified moving party "[i]f necessary for effective discovery." Rule 6(a) also provides that authorization to conduct such discovery is discretionary with the court upon a showing of good cause.

Absent one of these mandatory grounds, the governing statute provides that a court "may" appoint counsel when "the interests of justice so require" for a movant seeking relief under § 2255 who is "financially unable to obtain adequate representation."

18 U.S.C. § 3006A(a)(2)(B). A defendant who satisfies *in forma pauperis* requirements necessarily satisfies § 3006A's "financially unable" requirement. *United States v. Maxwell*, 184 F. App'x 708, 710 (10th Cir. 2006).

Although § 2255 motions are filed in the same criminal case as the conviction from which the motion seeks relief,⁴ they are generally considered to be civil in nature. See, e.g., *Heflin v. United States*, 358 U.S. 415, 418 n.7 (1959); *United States v. Johnston*, 258 F.3d 361, 364 (5th Cir. 2001); *Oliver v. United States*, 961 F.2d 1339, 1343 (7th Cir. 1992). But see *Wall v. Kholi*, 562 U.S. 545, 560 n.7 (2011) (noting confusion over proper classification of § 2255 proceedings); *United States v. Bergman*, 746 F.3d 1128, 1131 (10th Cir. 2014) (discussing confusion over the "enigmatic character" of § 2255 proceedings); *United States v. Cruz*, 774 F.3d 1278, 1283 (10th Cir. 2014) (referring to § 2255 proceedings as "hybrid"); *United States v. Cook*, 997 F.2d 1312, 1315 n.1, 1319 (10th Cir. 1993) (referring to § 2255 proceedings as criminal).

Regardless of whether § 2255 motions are considered civil, criminal, or hybrid, the same "interest of justice" standard governs the discretionary appointment of counsel, and courts evaluating whether the "interests of justice" require appointment have applied much the same framework as governs appointment of counsel in a civil case. See, e.g., *United States v. Jordan*, No. 04-cr-00229-LTB, 2010 WL 11570628, at *1 (D. Colo. 2010); *United States v. Smith*, No. 01-20031-JWL, 2003 WL 22300180, at *1 (D. Kan. 2003); *United States v. Dixon*, No. 07-40124-JAR, 2012 WL 1658904, at *1 (D. Kan. 2012). This inquiry is often somewhat abbreviated as § 2255 motions that do not qualify for an evidentiary hearing or for appointment of counsel under Rule 6(a) are often considered straightforward by courts. See, e.g., *Dixon*, 2012 WL 1658904, at *1 (denying

appointment of counsel on the basis that the record “conclusively demonstrated” movant was not entitled to relief); *Smith*, 2003 WL 22300180, at *1 (denying appointment of counsel on the basis that the facts were of “a relatively simple nature” and the applicable law was “straightforward”).

The determination of whether to appoint counsel in a civil case is left to the sound discretion of the trial court. *Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995). In deciding whether to request counsel for a civil litigant, the district court should evaluate “the merits of a [litigant’s] claims, the nature and complexity of the factual issues, and the [litigant’s] ability to investigate the facts and present his claims.” *Hill v. Smithkline Beecham Corp.*, 393 F.3d 1111, 1115 (10th Cir. 2004) (citations omitted). Under Local Attorney Rule 15(f), this court also considers the following factors in reviewing a motion for appointment of counsel in a civil action: (1) the nature and complexity of the case; (2) the potential merit of the pro se party’s claims; (3) the demonstrated inability of the unrepresented party to retain an attorney by other means; and (4) the degree to which the interests of justice will be served by appointment of counsel, including the benefit the court may derive from the assistance of the appointed counsel. D.C.COLO.LAttyR 15(f). “The burden is on the applicant to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel.” *Hill*, 393 F.3d at 1115 (citation omitted). “Only in those extreme cases where the lack of counsel results in fundamental unfairness will the district court’s decision be overturned.” *Id.*

ANALYSIS

As an initial matter, the present circumstances do not mandate the appointment of counsel. The Court has made no determination regarding whether an evidentiary hearing

is warranted in this action. No discovery has been requested or authorized by the Court. Thus, Rule 8(c) and Rule 6(a) of the Rules Governing Section 2255 Proceedings for the United States District Courts do not require appointment of counsel at this juncture, and the Court exercises its discretion in considering the Motions.

Furthermore, the Court is not persuaded that appointment of counsel is necessary in the interests of justice. There is no indication that Applicant requires the assistance of counsel to identify the specific facts or set forth coherent arguments in support of her claims that Mr. Flores-Williams did not adequately represent her. Ms. Lattany is a well-educated person, though lacking in legal training, can identify facts to support her claim that Mr. Flores-Williams was ineffective in representing her. Rather, throughout these proceedings, Ms. Lattany has demonstrated an ability to present articulate, sophisticated, and well-reasoned arguments and respond to issues raised by the Court.

The Court also is unpersuaded that the nature and complexity of the § 2255 Motion supports appointment. The § 2255 Motion is fully briefed at this stage; Ms. Lattany filed and supplemented it without the assistance of counsel [Doc. 46; Doc. 62], the United States responded [Doc. 61], and Ms. Lattany replied [Doc. 65]. Indeed, on February 27, 2024, Ms. Lattany submitted a detailed “Response to Prosecution’s Rebuttal / 2255 / Ineffective Counsel” [Doc. 65], which the Court construes as Applicant’s Reply in support of her § 2255 Motion. The Reply demonstrates that Ms. Lattany can conduct legal research, identify relevant facts, and craft arguments.² See *generally* [*id.*] (Ms. Lattany’s

² The Court further observes that, pursuant to Rule 8(c) of the Rules Governing Section 2255 Proceedings for the United States District Courts, counsel will be appointed should the Court determine that an evidentiary hearing is warranted.

notably sophisticated Reply)). Thus, the § 2255 Motion is fully briefed and ripe for a decision on the merits, which will be issued by the Court in due course.

Finally, the Court respectfully concludes that Ms. Lattany has not demonstrated exceptional circumstances warranting the appointment of counsel at this juncture of her post-conviction proceedings. Ms. Lattany requests counsel immediately because, in BOP custody, she has been relocated several times and “continue[s] to face challenges, along with [her] pregnancy and health concerns, that are impeding [her] ability to comply with the Court’s directives, along with properly exhausting [her] administrative remedies in the BOP system.” [Doc. 69 at 3]. In a letter dated June 11, 2024, Ms. Lattany also alleges hardships she has endured while in BOP custody. *See generally* [Doc. 72].

Insofar as Ms. Lattany asserts that her pregnancy and/or health concerns impede her ability to litigate this case, the Court declines to consider this argument absent additional information explaining how her health has impacted her ability to proceed pro se. And while the Court understands and acknowledges the inherent difficulties in litigating a case while incarcerated, those difficulties are—unfortunately—neither unique nor exceptional, and there is no constitutional right to counsel in post-conviction proceedings under § 2255. *See Swazo*, 23 F.3d at 333. Accordingly, the Court concludes that Ms. Lattany has not demonstrated exceptional circumstances warranting the appointment of counsel at this stage of the proceedings. *See Toevs v. Reid*, 685 F.3d 903, 916 (10th Cir. 2012) (explaining appointment of counsel is appropriate in “extreme case[s] where the lack of counsel results in fundamental unfairness.”).

For all of these reasons, the Motions for Appointment of Counsel are respectfully **DENIED.**

CONCLUSION

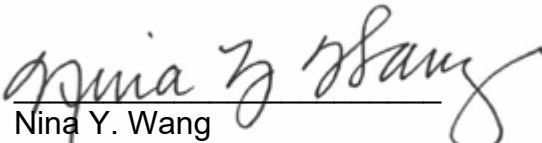
Accordingly, **IT IS ORDERED** that:

- (1) Applicant's Motion for Appointment of Counsel [Doc. 47] is **DENIED without prejudice**;
- (2) Applicant's Motion for Appointment of Counsel in a Criminal Case [Doc. 68] is **DENIED without prejudice**;
- (3) Applicant's Motion to Appoint Counsel and Address Change Information [Doc. 69] is **DENIED without prejudice**; and
- (4) A copy of this Order shall be sent to:³

Dejane Reaniece Lattany
Inmate No. 51090-510
P.O. Box 27137
Federal Medical Center
Fort Worth, Texas 76127

DATED: July 15, 2024

BY THE COURT:



Nina Y. Wang
United States District Judge

³ In light of the address information provided by Ms. Lattany in the Motion to Appoint Counsel and Address Change Information, [Doc. 72], the Clerk of Court is **DIRECTED** to update Ms. Lattany's address on the docket to the address set forth above.