

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
EMMET BOWENS,)
)
Defendant.)
_____)

Case No. 6:21-cr-00141-RBD-EJK

**UNDERSIGNED COUNSEL’S MOTION TO WITHDRAW
AND REQUEST FOR APPOINTMENT OF SUBSTITUTE
COUNSEL PURSUANT TO THE CRIMINAL JUSTICE ACT**

The undersigned counsel for the Defendant, Emmet Bowens (“Mr. Bowens”), hereby moves to withdraw and requests appointment of substitute counsel pursuant to the Criminal Justice Act (“CJA”). In support thereof, the undersigned states as follows:

STATEMENT OF FACTS

Relevant Procedural History

1. On November 10, 2021, a federal grand jury in the Middle District of Florida returned an indictment charging Mr. Bowens with two counts of wire fraud, in violation of 18 U.S.C. § 1343 (Counts One and Two), and four counts of

money laundering, in violation of 18 U.S.C. § 1957 (Counts Three through Six).

Doc. 1.

2. On December 2, 2021, in Atlanta, Georgia, Mr. Bowens was detained and eventually arrested in connection with a warrant issued in this case. Docs. 7, 9.

3. On the same date of his arrest, December 2, 2021, Mr. Bowens had a Rule 5(c)(3) initial appearance before a U.S. Magistrate Judge in the Northern District of Georgia. Doc. 7. At this hearing, the Magistrate Judge set conditions of release for Mr. Bowens. *Id.* at 4, 7.

4. On December 16, 2021, Mr. Bowens appeared in the Middle District of Florida, where this Court held an in-district initial appearance. Doc. 10. At this hearing, the Court appointed the Federal Public Defender to represent Mr. Bowens. Doc. 13.

5. On February 22, 2022, the Court granted the Federal Public Defender's motion to withdraw and appointed the undersigned to represent Mr. Bowens pursuant to the CJA. Docs. 30, 34, 35.

6. The undersigned has diligently represented Mr. Bowens, including reviewing the government's voluminous discovery production, drafting a lengthy legal memorandum for Mr. Bowens' review, and drafting three substantive pretrial motions, which were filed on May 5, 2022. Docs. 44, 45, 46. The pretrial

motions were: (1) a motion to suppress statements taken from the defendant by law enforcement (Doc. 44); (2) a motion to suppress identifications of the defendant (Doc. 45); and (3) a motion to dismiss one of the counts in the indictment due to improper venue (Doc. 46). The research and drafting of these motions took considerable time and effort.

7. Eventually, the undersigned developed a concern that Mr. Bowens was not competent to proceed in this case. On May 6, 2022, the undersigned filed a motion for a competency evaluation by a court-appointed expert. Doc. 47.

8. At a hearing on July 13, 2022, the Court found Mr. Bowens not competent to proceed based on a prior psychological evaluation performed by Jeffrey A. Danziger, M.D., a court-appointed psychiatrist. Docs. 75, 78.

9. The Court's Order finding Mr. Bowen's incompetent to proceed requires that he report to a designated facility on a date set forth by the Bureau of Prisons ("BOP") for competency restoration treatment. Doc. 78. The BOP has designated the Federal Medical Center in Butner, North Carolina ("FMC Butner") as the facility for Mr. Bowens' competency restoration treatment, and has provided Mr. Bowens' with a voluntary report date of March 21, 2023.

10. Since the Court's finding of incompetency, the undersigned has maintained regular contact with Mr. Bowens and has filed monthly status reports as required by the Court. *See* Docs. 80, 83, 84, 87, 88, 89, 90, 92.

11. As recently as February 21, 2023, the undersigned filed a motion on Mr. Bowens' behalf requesting a modification of the conditions of release to permit Mr. Bowens to travel outside of the Middle District of Florida so that he could attend a family funeral. *See* Docs. 93, 94.

12. Despite the undersigned's diligence, on March 8, 2023, Mr. Bowens discharged the undersigned and instructed the undersigned to file the instant motion to withdraw. Moreover, Mr. Bowens has requested the appointment of substitute counsel under the CJA.

13. On March 8, 2023, the undersigned counsel conferred with Assistant United States Attorney Chauncey Bratt, who informed the undersigned that the government takes no position on the instant motion.

MEMORANDUM OF LAW

The Florida Rules of Professional Conduct require an attorney to withdraw from the representation of a client if "the lawyer is discharged." *See* Rule 4-1.16(a)(3) of the Rules Regulating the Florida Bar. Moreover, the Rules provide that an attorney may withdraw from representing a client if, *inter alia*, "the client insists upon taking action that the lawyer considers . . . imprudent, or with which the lawyer has fundamental disagreement;" or "other good cause for withdrawal exists." *See* Rule 4-1.16(b)(2) and (5) of the Rules Regulating the Florida Bar.

At the request of Mr. Bowens and upon careful consideration of the confidential facts underlying this motion, the undersigned counsel believes that he is ethically required to file this motion seeking to withdraw from further representation of Mr. Bowens.

The Middle District of Florida Local Rules provide, in relevant part:

If a lawyer appears, the lawyer cannot without leave of court abandon, or withdraw from, the action.

(1) To withdraw, a lawyer:

(A) must notify each affected client fourteen days before moving to withdraw **unless the client consents to withdrawal**, and

(B) must file a motion to withdraw that includes:

(i) a certification that the lawyer has provided fourteen days' notice to the client or **that the client consents to withdrawal** . .

See Rule 2.02(c), M.D. Fla. Local Rules (emphasis added).

Here, the fourteen-day notification period is not required as the undersigned certifies that Mr. Bowens consents to the undersigned's withdrawal. Indeed, Mr. Bowens has instructed the undersigned to file the instant motion.

This motion to withdraw was promptly filed after the undersigned was informed by Mr. Bowens that the undersigned had been discharged. In addition, although Mr. Bowens has been found to be incompetent by the Court, the undersigned believes that he is ethically bound to file the instant motion, based on Mr. Bowens' discharging the undersigned. The undersigned further believes that

this withdrawal can be accomplished without material adverse effect on the interests of Mr. Bowens. Further still, because the proceedings are on hold due to Mr. Bowens' incompetent status, the appointment of new counsel should not unduly delay the resolution of this case.

To the extent that the Court requires a hearing on the instant motion, the undersigned will be out-of-town on a prepaid trip, departing on March 9, 2023 and continuing through March 15, 2023. Therefore, the undersigned respectfully requests that any hearings on the instant motion be set on or after March 16, 2023.

CERTIFICATION OF CONFERRING WITH OPPOSING COUNSEL

Pursuant to the Court's Criminal Scheduling Order (Doc. 16), the undersigned certifies: (1) that the undersigned counsel conferred with opposing counsel; (2) that counsel have been unable to resolve the instant motion by agreement, however, opposing counsel takes no position on the instant motion; and (3) that the motion concerns matters not covered by the scheduling order.

CONCLUSION

WHEREFORE, the undersigned counsel, Andrew C. Searle, Esq., respectfully requests that this Court grant the undersigned leave to withdraw as counsel for defendant Emmet Bowens and that substitute counsel be appointed.

Respectfully submitted on this 8th day of March, 2023.

s/Andrew C. Searle

ANDREW C. SEARLE, ESQ.

Florida Bar No. 0116461

SEARLE LAW P.A.

200 East Robinson Street, Suite 1150

Orlando, Florida 32801

Telephone: 407-952-0642

Email: andrew@searle-law.com

Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on March 8, 2023, I filed a copy of the foregoing with the Clerk of the Court via the CM/ECF system. I further certify that all parties to this case are equipped to receive service of documents via that system.

s/Andrew C. Searle

ANDREW C. SEARLE, ESQ.

Florida Bar No. 0116461

SEARLE LAW P.A.

200 East Robinson Street, Suite 1150

Orlando, Florida 32801

Telephone: 407-952-0642

Email: andrew@searle-law.com

Attorney for Defendant