

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

IN THE MATTER OF:
POST-CONVICTION FILING PROCEDURES
AND APPOINTMENT OF COUNSEL

No. 20-MC-00004-24

ADMINISTRATIVE ORDER

This administrative order clarifies the procedures for handling post-conviction motions in federal criminal cases, including the appointment of counsel. The Court previously authorized the appointment of counsel, including the Office of the Public Defender and qualified members of the Criminal Justice Act Panel, to represent defendants in certain post-conviction proceedings. *See* Doc. 36 in 18-mc-00004 (Standing Order). Specifically, the Standing Order authorized the appointment of counsel where defendant seeks: (1) habeas relief under 28 U.S.C. § 2255 based on a retroactively applicable U.S. Supreme Court decision; (2) a sentencing reduction based on a retroactively applicable amendment to the U.S. Sentencing Guidelines.

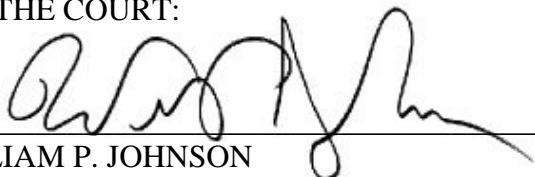
In 2019, the Court construed the Standing Order to permit the appointment of counsel where a defendant may qualify for retroactive sentencing relief under the First Step Act, PL 115-391. *See* Doc. 8 in 19-mc-0004 (First Step Order). The authorization was directed at Section 404 of the First Step Act, which is the only provision permitting retroactive relief. Section 404 allows the Court to impose a reduced sentence for crack-cocaine offenders convicted before August 2010. *See* Pub. L. No. 115-391, 132 Stat. 5194. The vehicle for seeking such reduction is a motion to reduce sentence under 18 U.S.C. § 3582. The U.S. Sentencing Commission provided a list of crack-cocaine offenders, and the Court appointed counsel in accordance with the Standing Order and First Step Order. The Court also occasionally exercised its discretion to appoint counsel for

crack offenders who may have been entitled to retroactive relief, but who did not appear on the Sentencing Commission list.

It appears there is some confusion as to whether the Standing Order and First Step Order authorize the appointment of counsel in all post-conviction motions to reduce sentence under 18 U.S.C. § 3582, including compassionate release motions. They do not. There is no constitutional right to counsel in post-conviction proceedings. *See Coronado v. Ward*, 517 F.3d 1212, 1218 (10th Cir. 2008). The Court authorizes limited post-conviction appointments where Congress, the Supreme Court, or the Sentencing Commission explicitly move to correct some error of law on a retroactive basis (*e.g.*, an invalid statutory clause, or sentencing disparities impacting crack offenders). There is no authority that would authorize a blanket appointment of counsel to pursue all types of post-conviction relief, such as discretionary compassionate release. There is also no need to employ special screening procedures to ordinary post-conviction motions, such as attaching a “First Step Act” case flag to § 3582 motions not involving crack-offenders, and attorneys are cautioned not to micromanage the Clerk’s filing of post-conviction motions. If a judge wishes to appoint counsel or apply special procedures to an individual post-conviction motion, they may do so to the extent permitted by law. However, to reiterate and clarify, there are no standing administrative orders that authorize the blanket appointment of counsel to assist with ordinary post-conviction matters.

IT IS SO ORDERED this 16th day of June 2020.

FOR THE COURT:

A handwritten signature in black ink, appearing to read 'William P. Johnson', written over a horizontal line.

WILLIAM P. JOHNSON
CHIEF UNITED STATES DISTRICT JUDGE

Notices

[1:20-mc-00004 Administrative Orders](#)

U.S. District Court**United States District Court - District of New Mexico****Notice of Electronic Filing**

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