

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

November 12, 2015

Lyle W. Cayce
Clerk

No. 15-70035

RAPHAEL DEON HOLIDAY,

Petitioner - Appellant

v.

WILLIAM STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent - Appellee

Appeals from the United States District Court
for the Southern District of Texas

Before JONES, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:

Petitioner Raphael Deon Holiday is scheduled to be executed by the State of Texas on November 18, 2015. Since 2011, CJA-appointed counsel, Seth Kretzer and James Volberding, have represented Holiday on federal habeas review. Through separate pro bono counsel, Holiday appeals the district court's orders, entered on September 24, 2015, October 22, 2015, and October 26, 2015, denying his motion for appointment of new counsel under 18 U.S.C. § 3599 and moves for a stay of execution. Kretzer and Volberding, who remain Holiday's counsel of record below, move to dismiss the appeal as frivolous. In addition,

Holiday, also through his pro bono counsel, moves to strike both the appearance forms filed by Kretzer and Volberding and their motion to dismiss the appeal as frivolous. Kretzer and Volberding oppose Holiday's motion to strike, and the State of Texas opposes the motion for a stay of execution.

Having carefully reviewed the district court's orders and the parties' briefs on appeal, we conclude that the district court did not abuse its discretion in denying Holiday's motion for the appointment of new counsel. *See Martel v. Clair*, 132 S. Ct. 1276, 1287 (2012); *Rosales v. Quarterman*, 565 F.3d 308, 312 (5th Cir. 2009) (holding that the district court did not abuse its discretion "where the already-appointed counsel has never withdrawn from the case and is well familiar with the facts on which the petitioner claims his clemency petition should be based"). Accordingly, the district court's orders denying the motion for appointment of new counsel are AFFIRMED. Holiday's motion for a stay of execution is DENIED. CJA-appointed counsel's motion to dismiss the appeal as frivolous is DENIED.¹ Holiday's motion to strike CJA-appointed counsel's appearances and motion to dismiss the appeal as frivolous is DENIED.

IT IS SO ORDERED.

¹ Although we do not dismiss this appeal as frivolous, in light of the district court's explanations for not displacing court-appointed counsel, we warn the attorney here that subsequent attempts in this case to displace counsel will be viewed with skepticism.