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

United States of America,

Plaintiff,

vs.

Branden Pete,

Defendant/Movant.

No. CV 13-8149-PCT-RCB (DKD)
CR 03-0355-PCT-RCB

ORDER

Movant Branden Pete, who is confined in the U.S. Penitentiary in Florence, Colorado, has filed a *pro se* Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. Movant also filed a motion for the appointment of counsel. (Doc. 4.) The Court will deny the motion for appointment of counsel as moot and grant counsel leave to file an amended § 2255 motion within 30 days from the filing date of this Order.

I. Procedural History

Movant was convicted by a jury of second degree murder, a lesser included offense of first degree murder, in violation of 18 U.S.C. § 1153 and 1111, as charged in count one of the superseding indictment; felony murder in the course of a kidnapping in violation of 18 U.S.C. §§ 1153 and 1201(a)(2), as charged in count two of the superseding indictment; felony murder in the course of aggravated sexual abuse in violation of 18 U.S.C. §§ 1153, 111, and 2241(a)(1), as charged in count four of the superseding indictment; and conspiracy to commit murder in violation of 18 U.S.C.

TERMPREF

1 § 1117, as charged in count seven of the superseding indictment. (Doc. 302.) At the
2 time of the offenses, Movant was 16 years old. On April 17, 2006, the Court sentenced
3 Movant to concurrent life terms on each count followed by five years on supervised
4 release. On June 10, 2008, the Ninth Circuit's mandate affirming Movant's conviction
5 and sentences issued. (Doc. 329.)

6 **II. Appointment of Counsel**

7 In April of this year, the Court received a letter from Keith J. Hilzendeger, of the
8 Federal Public Defender's Office, seeking appointment of Daniel R. Drake to file a
9 motion under 28 U.S.C. § 2255 on Movant's behalf. (Doc. 332.) This Court referred that
10 matter to Magistrate Judge Lawrence Anderson.

11 On April 18, 2013, Magistrate Judge Anderson rejected the informal request to
12 appoint counsel with express leave to file a formal motion for appointment of counsel.
13 (Doc. 333.) On May 21, 2013, Drake filed an ex parte motion for appointment.¹ (Doc.
14 334.) On May 22, 2013, Magistrate Judge Anderson granted the motion, *nunc pro tunc*
15 to May 17, 2013. (Doc. 335.)

16 On June 7, 2013, Movant filed his *pro se* § 2255 motion, resulting in the opening
17 of CV13-8149-PCT-RCB (DKD), apparently unaware that Drake had been appointed to
18 appear on his behalf. (Doc. 1; Doc. 337 in CR03-0355-PCT-RCB.) Movant also filed a
19 *pro se* motion for appointment of counsel. (Doc. 4.) Because counsel has already been
20 appointed to represent Movant in filing a § 2255 motion, the Court will deny Movant's
21 motion for appointment of counsel, filed in the civil case, and will grant leave for
22 Movant's counsel to file an amended § 2255 motion in the civil case within 30 days of
23 the filing date of this Order.

24 **IT IS ORDERED:**

25 (1) Movant's *pro se* motion for appointment of counsel, filed in the civil case,
26

27 ¹ Drake mistakenly stated that he anticipated that he would file a motion for
28 authorization to file a second or successive § 2255 motion based on *Miller*. Because
Movant has not previously filed a § 2255, it appears that Drake meant to say that he
anticipated filing a § 2255 on Movant's behalf.

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is **denied** as moot. (Doc. 4.)


(2) Movant’s counsel, Daniel R. Drake, must forthwith file a notice of appearance in the civil case, CV13-8149-PCT-RCB (DKD).

(3) Movant, through counsel, is **granted** leave to file an amended § 2255 motion in the civil case no later than **30 days** from the filing date of this Order.

(4) The parties and the Clerk of Court **must file** all documents related to the § 2255 Motion, or any amended § 2255 motion, in the **civil case**.

(5) The Clerk of Court must forward a copy of this Order to Daniel R. Drake, Esq.

DATED this 2nd day of August, 2013.



Robert C. Broomfield
Senior United States District Judge