

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SYLVESTER GRIFFIN,

Petitioner,

vs.

DEBBIE ASUNICON,

Respondent.

No. 2:16-cv-01835-JKS

ORDER

[Re: Motion at Docket No. 30]

This Court denied Sylvester Griffin, a California state prisoner now represented by counsel, habeas relief and a certificate of appealability on April 12, 2019. Docket Nos. 23, 24. When Griffin first filed his habeas petition, this Court, through a previously-assigned Magistrate Judge, appointed counsel for Griffin. Docket No. 6. After the Court denied Griffin's petition, appointed counsel filed on Griffin's behalf a notice of appeal and moved for a certificate of appealability in the Ninth Circuit Court of Appeals. Docket No. 25; Ninth Circuit Case No. 19-15755. The Ninth Circuit denied the request for a certificate of appealability, finding that Griffin failed to make a "substantial showing of the denial of a constitutional right." Docket No. 29. At Docket No. 30, appointed counsel now moves in this Court to withdraw as attorney of record in Griffin's case. Appointed counsel indicates that he does not believe that Griffin's case meets the criteria for filing a petition for review in the United States Supreme Court and wishes to withdraw to allow Griffin to pursue his appeal options *pro se*, if he so chooses. *Id.* at 2.

Although this Court initially appointed counsel for Mr. Griffin, the Ninth Circuit local rules provide that, "[i]f counsel was appointed by the district court pursuant to 18 U.S.C. § 3006A and a notice of appeal has been filed, counsel's appointment shall continue on appeal

unless and until counsel is relieved in accordance with” Circuit Rule 4-1. NINTH CIR. R. 4-1(a). Circuit Rule 4-1(e) further provides that, “[u]nless counsel is relieved of his or her appointment by *this* Court, counsel’s appointment continues through the resolution of certiorari proceedings and includes providing representation when an opposing party files a petition for certiorari.” NINTH CIR. R. 4-1(e) (emphasis added). It therefore appears that appointed counsel should make his request to the Ninth Circuit Court of Appeals and follow the procedures for post appeal proceedings enumerated in Ninth Circuit Rule 4-1(e).

IT IS THEREFORE ORDERED THAT the Motion to Withdraw a Appointed Counsel of Record at Docket No. 30 is **DENIED**. Counsel should pursue his request in the Ninth Circuit Court of Appeals.

Dated: March 18, 2020.

/s/James K. Singleton, Jr.
JAMES K. SINGLETON, JR.
Senior United States District Judge