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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KIRK RISHOR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. C18-708 MJP

ORDER RE: GOVERNMENT'S
RESPONSE TO PETITION AND
MOTION TO APPOINT COUNSEL

Petitioner has filed a Motion Under U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (Dkt. No. 1). The Government has filed a procedural objection to the petition, alleging that it represents a second or successive 2255 petition and as such requires Petitioner to obtain leave from the Ninth Circuit Court of Appeals before it can be heard in this Court. (Dkt. No. 10.) The Court stayed Petitioner's pending Motion for Appointment of Counsel (Dkt. No. 8) in order to address this procedural objection, and Petitioner has filed his Reply to Government's Response. (Dkt. No. 12.)

1 The Court agrees with Petitioner. The “first 2255 petition”¹ to which the Government
2 refers in its briefing concerned a federal criminal conviction against Mr. Rishor in Case No.
3 CR10-378. (*See* Case No. C14-1996.) The current 2255 petition (which the Government is
4 characterizing as “second or successive”) is in fact a separate petition on a separate issue;
5 namely, ineffective assistance of counsel in regard to an appeal filed in Case No. C11-1492
6 (which concerns a state court conviction which Petitioner is challenging).

7 It is the Court’s understanding the “second or successive petition” provision of 28 U.S.C.
8 § 2255 applies to petitions filed regarding the same conviction. As such, the prohibition against
9 filing a second or successive petition without leave of the Ninth Circuit Court of Appeals has not
10 been triggered by Mr. Rishor’s filing of a 2255 petition on a separate criminal matter.

11 Therefore, the Government will be required to respond substantively to the current 2255
12 petition. Before setting a briefing schedule, however, the Court turns to Petitioner’s request for
13 appointment of counsel, which is narrowly tailored to request assistance in obtaining “transcripts,
14 filings and motions related to Washington State Superior Case Number 04-1-00218-7, and
15 Washington State Division One Court of Appeals Number’s 59609-8-I and 64050-0-I.” (Dkt.
16 No. 8 at 1.)

17 The Court GRANTS Petitioner’s limited request for appointment of counsel and refers
18 this matter to the Pro Bono Panel for identification of an attorney who can assist Petitioner in the
19 manner he requires. Once counsel has been found and appointed, the Court will issue a briefing
20 schedule for both sides on the pending petition. The remainder of this matter will be STAYED
21 until that time.

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24 ¹ The Government is correct that there was a previous 2255 petition dismissed without prejudice (*see* Dkt. No. 11 at C12-2180MJP) which the Court is not including in this “tally” of 2255 petitions.

1 The clerk is ordered to provide copies of this order to Petitioner and to all counsel.

2 Dated October 4, 2018.

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4 The Honorable Marsha J. Pechman
5 United States Senior District Court Judge

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