

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

July 28, 2011

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EMMANUEL HUITRON-GUIZAR,

Defendant - Appellant.

No. 11-8051

(D.C. No 1:11-CR00072-WFD-1)

ORDER

This matter is before the court on the appellant's "Motion to Proceed In Forma Pauperis and for the Waiving of Fees Pursuant to 10th Circuit R. 3.3 (B)."

The motion is denied without prejudice.

To the extent appellant is seeking a determination of his financial eligibility for appointment of counsel and to proceed without payment of fees under the Criminal Justice Act (the CJA), that determination must be requested from the district court, even though a notice of appeal has been filed. Under this court's procedures, the determination of financial eligibility is made by the district court. Therefore, appellant must file a motion in the district court for a determination of financial eligibility. If the district court finds the appellant financially eligible for appointment of counsel under the CJA and issues an order to that effect, the appellant may then file a motion in this court requesting appointment of counsel.

To summarize, the determination of financial eligibility must be made by the district court. If the appellant is found eligible for appointment of counsel, a motion requesting appointment of counsel may then be filed in this court.

Pending a determination by the district court regarding the appellant's financial status, and pending further order of this court, this appeal will proceed as a retained counsel case with attorney Ronald G. Pretty as appellant's retained counsel.

Entered for the Court
ELISABETH SHUMAKER, Clerk of Court

by:

A handwritten signature in black ink, appearing to read 'C. Van Coney', with a long horizontal line extending to the right.

Christine Van Coney
Counsel to the Clerk