

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT**

STATE OF IDAHO

Plaintiff,

v.

CHAD GUY DAYBELL,

Defendant.

Case No. CR22-21-1623

ORDER

On Motion to Appoint Co-Counsel

On January 5, 2023, the Defendant Chad Guy Daybell (hereinafter “Daybell”) filed an ex-parte motion under seal, MOTION TO APPOINT COUNSEL. The Court scheduled and heard the matter in a closed, sealed hearing on January 19, 2023. In the January 19, 2023 hearing, the Court made an inquiry of the Defendant and found him to be indigent. The matter was thereafter taken under advisement.

On January 27, 2023, the Court called an ex parte hearing after consideration of Daybell’s MOTION TO APPOINT COUNSEL. In ruling on the MOTION, the Court explained Idaho Criminal Rule 44.3 and its applicability to the instant case, finding that under I.C.R. 44.3(a), courts are expressly authorized to appoint counsel when defendants are “*needy*,” there is no retained counsel, and in cases where the death penalty may be imposed. The Court found that two of the three conditions precedent were met to appoint additional counsel. However, because Daybell privately retained an attorney who continues representation—John Prior—the Court determined that it could not mandate another attorney to join in the defense; yet the Court would permit one to join the team, at public expense, if Daybell were to locate a qualified attorney willing to voluntarily join in the defense of Daybell as co-counsel to Mr. Prior.

The Court thereafter held subsequent hearings to revisit the issue. Without further information that co-counsel had entered the case, the Court called a hearing on February 9, 2023 to inquire as to the status of representation. The Court again called a hearing on February 23, 2023. At each hearing, the Court has been advised that Mr. Daybell desires to have his retained attorney remain on the case. At each hearing, the Court observed Daybell affirmatively represent—through spoken word or nodding gestures—that his intention is to have John Prior continue his representation in this capital case.


Notably, at each hearing, Mr. Prior has represented to the Court that counsel has explained to his client that if counsel were to withdraw, the Court would be required to appoint two capital-qualified public defenders, as Daybell has been deemed indigent and is facing the death penalty. However, despite this advisement of rights under I.C.R. 44.3, from both Court and through counsel, Daybell has continually and unequivocally asserted his decision to have Mr. Prior represent him at trial, with or without additional counsel.

While Mr. Prior has stated that he would benefit from the assistance of additional counsel, the Court is without authority to conscript counsel where a privately retained attorney remains as counsel of record. Given the representations of Daybell, his counsel, and upon full consideration of the record, the Court finds no legal basis to take any action in regards to the issue of the existing attorney-client relationship at this time. Instead, the Court is satisfied that Daybell is exercising his fundamental constitutional right to the counsel of his choice, and has been fully advised of his options relating to representation in this matter. Should Daybell find an attorney, qualified under I.C.R. 44.3, who is willing to assist in the defense of the case, the Court has already authorized the payment of counsel at the existing rate for public defenders.

For the foregoing reasons, the MOTION TO APPOINT COUNSEL is DENIED.

IT IS SO ORDERED.

Dated this 25 day of August, 2023.


Steven W. Boyce
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of August, 2023, the foregoing Order was entered and a true and correct copy was served upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be delivered to their courthouse boxes; by causing the same to be hand-delivered, by facsimile, or by e-mail.

Parties Served:

John Prior
john@jpriorlaw.com
Attorney for Defendant

Clerk of the District Court
Fremont County, Idaho

by


Deputy Clerk