

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-4921  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LUIS MANUEL ORTIZ-MIRANDA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:91-CR-133-6  
- - - - -  
(January 6, 1994)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Ortiz argues that the district court erred in denying his motion for the appointment of an expert witness pursuant to 18 U.S.C. § 3006A(e)(1).

Upon making a finding that the services of an expert are necessary, the district court may authorize counsel, on behalf of a person who is financially unable to retain the services, to obtain them at government expense. 18 U.S.C. § 3006A(e)(1). The Government concedes that Ortiz meets the financial eligibility

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

requirements of the provision. The determination whether the services are "necessary to an adequate defense" must be made on "a case by case basis." United States v. Williams, 998 F.2d 258, 263 (5th Cir. 1993) (citation omitted).

The court is obligated to grant the defendant the assistance of an independent expert under § 3006A when necessary to respond to the government's case against him, where the government's case rests heavily on a theory most competently addressed by expert testimony. However, the court is not necessarily obligated to grant the defendant the assistance of an independent expert in preparing a defense of insanity.

Id. at 263-64 (internal quotations and citation omitted).

Similar reasoning applies to Ortiz's defense. The denial of the request for expert services is reviewed for an abuse of discretion. Id. at 264.

The Government did not present any expert testimony to prove Ortiz violated the conditions of his probation. It relied on the fact testimony of the probation officer that Ortiz engaged in alcohol abuse and failed to attend the treatment program. The probation officer acknowledged at the hearing his belief that Ortiz was incapable of voluntarily complying with the conditions of his probation in the absence of treatment.

Ortiz did not require the expert testimony to rebut the evidence presented by the Government. However, Ortiz argues that the expert would have proved his defense that he was incapable of complying with the conditions of his probation. The district court rejected Ortiz's incapacity defense, noting that Ortiz had demonstrated the capacity to retain employment. The district

court also did not accept Ortiz's assertion that his alcoholism precluded him from attending the Alcoholic Anonymous Program.

A request for expert services must be "`meritorious'" and "`it is appropriate for the district court to satisfy itself that a defendant may have a plausible defense before granting the defendant's section 3006A motion for psychiatric assistance to aid in that defense.'" Williams, 998 F.2d at 264 n.14. (citations omitted). The district court did not abuse its discretion in determining that the testimony of the expert witness would have not presented a plausible defense to the allegations that Ortiz had violated the terms of his probation.

Ortiz's assertion that he was denied the effective assistance of counsel is also without merit. Ortiz is simply restating the argument made above.

Ortiz's argument that he was denied due process is also without merit because he has failed to make "the required threshold showing that his [defense] was likely to be a significant factor" requiring an evaluation by a mental health expert to assist in the preparation of his defense. Williams, 998 F.2d at 264 (5th Cir. 1993) (citation omitted).

AFFIRMED.