

ORIGINAL

COMMON PLEAS COURT

2016 JAN 15 AM 11:07

FILED  
DAVID B. WADSWORTH  
MEDINA COUNTY  
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS  
MEDINA COUNTY, OHIO

STATE OF OHIO

Plaintiff,

v.

MATHEW J. HARTMAN

Defendant.

CASE NO. 09CR0229  
APPEAL NO. 15CA0090-M

JUDGE PATRICIA A. COSGROVE  
(Sitting by Assignment)

ORDER

17-0640

On January 8, 2016, the Court conducted a hearing to determine whether the Defendant is currently indigent, thus qualifying him, for the appointment of counsel. Previously, without this Court's authorization, Defendant's counsel, Attorney Marilyn A. Cramer filed an affidavit signed by Judge Richard Markus in 2012 finding the Defendant was indigent. Judge Markus has not been on this case for more than two years. Pursuant to case law, this Court held a hearing to determine whether the Defendant's current income level qualifies him for appointed counsel.

The Defendant, Mathew J. Hartman, testified that he is 37 years old, and since being released from prison on October 28, 2013, has been "unable" to find employment. He appeared to be in good health at the hearing. Hartman testified that he supports his wife and three children by working for Paul Hartman, his father, on his farm and receives a small stipend, and receives food stamps. He testified that he owns no real property, has no assets, and his parents pay all his bills for him and his family (Defendant's Exhibits 1-9). His total claimed income according to his testimony and exhibits would be under \$20,000. He has filed no income tax returns for the past two years and was not able to produce any W-2 wage statements.



The constitutionally protected right to the assistance of counsel is absolute. *State v. Tymcio* (1975), 42 Ohio St.2d 39, 43, 325 N.E.2d 556, citing *Argersinger v. Hamlin* (1972), 407 U.S. 25, 37, 92 S.Ct. 2006. The Court had a duty to inquire fully into the circumstances relating to the accused's claimed inability to obtain counsel and the determination of need must turn, not upon whether the accused ought to be able to employ counsel but whether in fact he is able to do so. *Tymcio, supra*.

Based on the testimony of the Defendant, Mathew Hartman and the exhibits, the Court find the Defendant's income meets the statutory guidelines of indigency of OAC 120-1-03 and qualifies him for the appointment of counsel. Although, the Defendant does not get to choose his counsel to represent him, if the Court chose to appoint different counsel than Attorney Cramer, it would result in additional delay of this case that has been in litigation since 2009.

The only reservation the Court has about appointing Attorney Cramer to the appeal is the fact that the Defendant's father, Paul Hartman, works as an investigator in her office and was responsible for securing many of the affidavits used as evidence in support of Defendant's various motions in this case. Attorney Cramer assured the Court on the record that despite this relationship with the Defendant's father, she believes she can impartially look at the evidence in this case.

The Court, after consideration of the evidence finds the Defendant, Mathew Hartman to be indigent, and appoints Attorney Marilyn Cramer to represent him in the current appeal. The Court had discussions with Attorney Cramer and she is aware of the financial caps on appointed counsel and is still willing to accept the appointment.

**THE MEDINA COUNTY CLERK OF COURTS IS INSTRUCTED TO E-MAIL A COPY OF THE FILED ORDER TO THE ATTORNEYS AND THE COURT IN THIS**

**CASE. A COPY OF THE FILED ORDER SHOULD BE FAXED TO THE COURT OF**

**APPEALS.**

IT IS SO ORDERED.



JUDGE PATRICIA A. COSGROVE

(Sitting by Assignment)

14-JA-1593

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Michael Walsh, Administrator, 9<sup>th</sup> District Court of Appeals, FAX: (330) 643-2091

Judge Patricia A. Cosgrove