

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR INDIAN RIVER COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

BRIAN SHANE BURKEEN,

Defendant.

CASE NO.: 312018CF000406A

CC: State Judge
SPD [Signature]

Legal Mail

Provided to Florida State Prison on

9/13/23 for mailing by [Signature]

DEFENDANT'S
MOTION TO DISCHARGE COURT-APPOINTED COUNSEL AND APPOINT NEW
COUNSEL WITH INCORPORATED MOTION TO APPEAR BY ZOOM OR, IN THE
ALTERNATIVE, MOTION TO TRANSPORT

Defendant, BRIAN SHANE BURKEEN, *pro se* (Defendant or BURKEEN), files this, his motion to discharge counsel and appoint new counsel with incorporated motion to appear by Zoom¹ or, in the alternative, motion to transport and, in support thereof, would state as follows:

1. On or about May 11, 2023, Defendant was appointed counsel in an order setting evidentiary hearing on Defendant's motion for postconviction relief..
2. Defendant is currently incarcerated at Florida State Prison, Main Unit, Raiford, Florida (FSP) in general population².

¹ Florida Rules of General Practice and Judicial Administration (2023) / Rule 2.530 Communication Technology.

* * *

(1) *Non-evidentiary Proceedings*. A court official must grant a motion to use communication technology for a non-evidentiary proceeding scheduled for 30 minutes or less unless good cause exists to deny the motion.

(2) *Testimony [Evidentiary Hearing/Trial]*.

(A) Procedure. A written motion by a party to present testimony through communication technology must set forth good cause why the testimony should be allowed in the specific form requested and must specify whether each party consents to the form requested. In determining whether good cause exists, the court official may consider, without limitation, the technological capabilities of the courtroom, how the presentation of testimony through communication technology advances the proceeding or case to resolution, the consent of the parties, the time-sensitivity of the matter, the nature of the relief sought and the amount in controversy in the case, the resources of the parties, the anticipated duration of the testimony, the need and ability to review and identify documents during testimony, the probative value of the testimony, the geographic location of the witness, the cost and inconvenience in requiring the physical presence of the witness, the need to observe the demeanor of the witness, the potential for unfair surprise, and any other matter relative to the request.

² "General Population" is for medium- and low-custody prisoners; Defendant is currently a minimum custody prisoner.

MOTION TO DISCHARGE APPOINTED COUNSEL
AND APPOINT NEW COUNSEL

3. Over the course of two (2) legal telephone calls, Defendant developed irreconcilable differences with his court-appointed counsel, James Long.

4. Counsel does not have Defendant's best interests in mind; rather than acting as an advocate for Defendant, which is his duty, counsel was advocating for the state; he made no meaningful effort to address concerns or strategy.

5. Counsel refused to entertain Defendant's requests as to how to proceed with the evidentiary hearing.

6. Counsel threatened his own client with a delay in the proceedings for "over a year" merely because Defendant suggest subpoenaing certain witnesses.

7. Counsel misquoted applicable case law to Defendant, claiming that case law from a district court of appeal somehow takes precedence over Florida Supreme Court case law.

8. Counsel acted unprofessionally; he was angry, loud, short-tempered and belligerent, shouting over the Defendant at times.

9. When asked why he was so angry, he responded negatively, stating that the case "was not worth the effort".

10. It was obvious counsel did not want to put any further effort into the case; further, over the past four (4) months, counsel made no effort to interview potential witnesses for the evidentiary hearing as he had indicated initially to the Defendant that he would in the first legal call.

11. Counsel refused to explain himself to Defendant, simply saying "because that's the way it is." He was unable to substantiate his answers with any form of legal support, logic, reasoning or factual support.

12. Counsel was lazy and wanted to put absolutely no effort into Defendant's case, as if doing any more work on the case was somehow the end of the world.

MOTION TO APPEAR BY ZOOM
OR, IN THE ALTERNATIVE, TRANSPORT

13. BURKEEN requests that this court allow him to appear for the *Nelson* hearing through the use of Zoom communication technology in lieu of transporting him from prison to the Indian River County jail and/or courthouse for this hearing.

14. In order to do so, the court would need to contact the Florida Department of Corrections (DOC) to facilitate Defendant's appearance by Zoom by e-mailing any notice of hearing and/or order(s) filed herein to the following DOC e-mail address regarding court

filings:

courtfilings@mail.dc.state.fl.us

14. In support of his motion to appear by Zoom, Defendant would provide the following good cause:

(a.) **State's consent.** Defendant has no knowledge whether the state would consent to his appearance via Zoom for the *Nelson* hearing, other than to state that the state typically has no stake in a *Nelson* hearing as the issue of discharging defense counsel is solely between the Defendant and his appointed counsel. It does not involve the state in any way. The state is a mere spectator.

(b.) **The technological capabilities of the courtroom.** Defendant is informed thereon and reasonably believes that the courtroom is equipped to accommodate a party's appearance by Zoom.

(c.) **How the presentation of testimony through communication technology advances the proceeding or case to resolution.** Defendant is informed thereon and reasonably believes that this is not an evidentiary hearing. Appearing by Zoom is the most efficient approach to resolving this type of issue versus a more cumbersome and expensive transport to the county jail. Defendant will not be calling any witnesses, but rather will merely be presenting argument to the court.

(d.) **The time-sensitivity of the matter.** An evidentiary hearing has been tentatively set for October 11, 2023. Any delay in the proceedings prejudices only Defendant because he is currently incarcerated. In the interests of effective postconviction counsel, Defendant is willing to waive any prejudice in exchange for appointment of new counsel, who understandably may need time to properly prepare for the evidentiary hearing. This will likely result in a sixty (60) day delay.

(e.) **The nature of the relief sought.** Defendant is requesting the appointment of new counsel. There is no need to be physically present for such a request.

(f.) **The resources of the parties.** Defendant continues to be indigent and appreciates the court's effort to accommodate him with capable and professional postconviction counsel.

(g.) **The anticipated duration of the testimony.** Defendant expects that the *Nelson* hearing will not take more than fifteen (15) minutes.

(h.) **The need and ability to review and identify documents during testimony.** Defendant does not anticipate any documents being presented at the *Nelson* hearing.

(i.) **The probative value of the testimony.** As indicated previously, Defendant is informed thereon and reasonably believes that this is not an evidentiary hearing.

(j.) **The geographic location of the witness.** Defendant is currently housed at a facility that is 4 hours away from the Indian River courthouse. Bunk-to-bunk transport time

would take approximately four (4) hours each way.

(k.) **The cost and inconvenience in requiring the physical presence of the witness.** As indicated previously, the transport process is far more cumbersome and expensive transporting the Defendant to the county jail for this hearing as opposed to a 15-minute or less appearance by Zoom.

(l.) **The need to observe the demeanor of the witness.** Defendant is informed thereon and reasonably believes that the court can appropriately gauge the Defendant's demeanor for this proceeding via Zoom.

(m.) **The potential for unfair surprise.** None.

(n.) **Any other matter relative to the request.** None.

15. **Alternative relief.** In the alternative, BURKEEN requests that he be transported for the *Nelson* hearing.


16. **Evidentiary Hearing.** BURKEEN continues his request to be transported *only* for the evidentiary hearing per rule.

17. **Status conferences.** Defendant continues to express a preference for participating in his case by appearing for any future status conferences via Zoom.

WHEREFORE, Defendant, BRIAN SHANE BURKEEN, for good cause shown herein, requests that this court grant Defendant's motion to discharge counsel and appoint new counsel for the evidentiary hearing and motion to appear by Zoom communication technology for the *Nelson* hearing and any future status conferences or, in the alternative, motion to transport, together with such other and further relief as this court deems just and proper.

DATED on this 13 day of September, 2023.

Respectfully submitted,

/s/ 
BRIAN SHANE BURKEEN
DC#: C70776
Florida State Prison, Main Unit
P.O. Box 800
Raiford, Florida 32083
Defendant, *pro se*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was placed into the hands of prison institution officials for mailing by regular U.S. Mail to the following named addressee(s):

Indian River County Clerk of Court
2000 16th Avenue
Vero Beach, Florida 32960

Office of the State Attorney
411 South Second Street
Ft. Pierce, Florida 34950

James Long, Esquire
1960 14TH AVE
VERO BEACH, FL 32960



BRIAN SHANE BURKEEN
Defendant, pro se