

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

**May 9, 2016**

**Elisabeth A. Shumaker**  
**Clerk of Court**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TIMOTHY J. STUBBS,

Defendant - Appellant.

No. 15-1418  
(D.C. No. 1:13-CR-00439-CMA-1)  
(D. Colo.)

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**ORDER**

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Before **MATHESON, McHUGH, and MORITZ**, Circuit Judges.

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This matter is before the court on counsel for Appellant’s *Unopposed Motion to Withdraw due to Appellant’s Fugitive Status and Termination of Counsel’s Representation in District Court* and Appellee’s *Motion to Dismiss*.

The motion to withdraw is granted. The district court has made the requisite finding of eligibility for appointment of counsel. Lynn Pierce is appointed pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A, effective *nunc pro tunc* to the date the notice of appeal was filed in this matter, and that appointment ends with the entry of this order

The notice of appeal is premature because it was filed before the district court had the opportunity to sentence Defendant and to enter final judgment. *See Parr v. United States*, 351 U.S. 513, 518 (1956) (“Final judgment in a criminal case means sentence. The sentence is the judgment.”) (internal quotation marks and citation omitted).

Additionally, Defendant is a fugitive and did not appear for his sentencing hearing. “It has been settled for well over a century that an appellate court may dismiss the appeal of a defendant who is a fugitive from justice during the pendency of his appeal.” *Ortega-Rodriguez v. United States*, 507 U.S. 234, 239 (1993). Accordingly, the motion to dismiss is granted.

**DISMISSED.**

Entered for the Court  
ELISABETH A. SHUMAKER, Clerk



by: Lindy Lucero Schaible  
Counsel to the Clerk