

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GREGORY BARTUNEK,

Defendant.

8:17CR28

ORDER

After trial, a jury found defendant Gregory Bartunek (“Bartunek”) guilty of distributing child pornography, in violation of 18 U.S.C. § 2252A(a)(2) (Count I), and possessing child pornography, in violation of 18 U.S.C. § 2252(a)(4)(B) (Count II). This Court sentenced Bartunek to 204 months in prison on Count I and 120 months in prison on Count II. With the assistance of court-appointed counsel Andrew J. Wilson (“Wilson”),¹ Bartunek filed a Notice of Appeal (Filing No. 385) on March 18, 2019.

Now pending before the Court are Bartunek’s Motion for Leave to Appeal *In Forma Pauperis* (Filing No. 387) and Wilson’s Motion to Withdraw as Counsel (Filing No. 384). Bartunek’s motion is granted, and Bartunek is permitted to proceed on appeal in forma pauperis. *See* Fed. R. App. P. 24(a)(3).

As for Wilson’s motion to withdraw, Wilson reports a “material breakdown in [his] attorney-client relationship” with Bartunek and that Bartunek has asked him to withdraw. Wilson further avers that Bartunek intends to argue on appeal that Wilson provided ineffective assistance at trial and sentencing, creating a conflict of interest for Wilson on appeal. As Wilson sees it, his withdrawal is “in the best interest of justice in this case.” Although Wilson’s stated grounds for withdrawal appear at this point to be

¹On March 20, 2018, the Court appointed Wilson to represent Bartunek pursuant to 18 U.S.C. § 3006A.

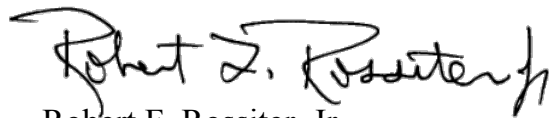
well-founded, the Court finds his motion to withdraw should be directed to the Eighth Circuit Court of Appeals. *See* 8th Cir. R. 27B(a) (“Defendant’s trial counsel, whether retained or appointed, shall represent the defendant on appeal, unless the Court of Appeals grants permission to withdraw.”). Accordingly,

IT IS ORDERED:

1. Defendant Gregory Bartunek’s Motion for Leave to Appeal *In Forma Pauperis* (Filing No. 387) is granted.
2. Appointed counsel Andrew J. Wilson’s Motion to Withdraw as Counsel (Filing No. 384) is denied without prejudice to refiling the motion in the Eighth Circuit Court of Appeals.

Dated this 19th day of March 2019.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Rossiter, Jr.", with a stylized flourish at the end.

Robert F. Rossiter, Jr.
United States District Judge