

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WISCONSIN

McKire-Bennett v. United States

No. 25-cv-414-jdp · No. 25-cv-414-jdp · Decided May 18, 2026

SUMMARY

The United States District Court for the Western District of Wisconsin addresses Lloyd M. McKire-Bennett’s motion for appointment of counsel in his 28 U.S.C. § 2255 proceeding challenging his federal convictions and sentence, primarily on ineffective-assistance grounds. The court denies appointment of counsel without prejudice and grants McKire-Bennett until June 1, 2026, to reply to the government’s response.

CASE DETAILS

COURT	United States District Court for the Western District of Wisconsin
WRITING FOR THE COURT	James D. Peterson
JURISDICTION	United States District Court for the Western District of Wisconsin
DECIDED	May 18, 2026
DOCKET	25-cv-414-jdp
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner filed a motion under 28 U.S.C. § 2255 and moved for appointment of counsel. The court ruled on the appointment-of-counsel motion while permitting petitioner to file a reply to the government's response.
STANDARD OF REVIEW	The court applied the statutory and discretionary standard governing appointment of counsel for a financially eligible § 2255 petitioner: whether the interests of justice require appointment, considering the petitioner's ability to proceed without counsel, the difficulty of the case, and the likelihood of success with counsel.
PRECEDENTIAL VALUE	Unpublished district court opinion and order; nonprecedential
PARTIES	Lloyd M. McKire-Bennett v. United States of America

TOPICS

- federal habeas corpus
- post-conviction relief
- right to counsel
- ineffective assistance
- criminal procedure

PRACTICE AREAS

Federal post-conviction relief

Appointment of counsel

Criminal procedure

QUESTIONS PRESENTED

1. Whether counsel should be appointed for McKire-Bennett in his § 2255 proceeding.
2. Whether filing a motion for appointment of counsel excused McKire-Bennett from filing a timely reply to the government's response.

HOLDINGS

1. Appointment of counsel was not warranted at this stage because the current briefing did not show that the issues were too complex for McKire-Bennett to handle without counsel. The motion was therefore denied without prejudice.
2. A pending motion for appointment of counsel did not relieve McKire-Bennett of his obligation to file a reply by the applicable deadline.

KEY QUOTATIONS

“In evaluating what the interests of justice require, courts generally consider whether the petitioner can obtain justice without an attorney in light of his ability and the difficulty of the case and whether he would have had a reasonable chance of winning with a lawyer at his side.”

FACTUAL BACKGROUND

McKire-Bennett is incarcerated at the Federal Correctional Institution in Leavenworth, Kansas. He pleaded guilty to conspiracy to distribute 400 grams or more of fentanyl and to being a felon in possession of firearms and ammunition, receiving concurrent 164-month sentences on the two counts. In his § 2255 petition, he primarily alleges ineffective assistance of counsel and requested appointment of counsel.

PROCEDURAL HISTORY

McKire-Bennett pleaded guilty in a related criminal case and received concurrent 164-month sentences. He then filed this § 2255 proceeding, primarily alleging ineffective assistance of counsel. The government responded, petitioner did not file a reply, and the court denied his pending motion for appointment of counsel without prejudice while extending the deadline for a reply.

DISPOSITION

other

CASES CITED

- Howard v. Gramley, 225 F.3d 784, 794 (7th Cir. 2000)

OPINION

McKire-Bennett

PER CURIAM.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LLOYD M. MCKIRE-BENNETT,

Petitioner, OPINION and ORDER v. 25-cv-414-jdp

UNITED STATES OF AMERICA,

Respondent. Petitioner Lloyd M. McKire-Bennett, proceeding without counsel, is a prisoner at the Federal Correctional Institution in Leavenworth, Kansas. McKire-Bennett pleaded guilty to one count of conspiracy to distribute 400 grams or more of a mixture or substance containing fentanyl, in violation of 21 U.S.C. § 846 and 21 U.S.C. § 841(a)(1), (b)(1)(A), and one count of felon in possession of firearms and ammunition, in violation of 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(a)(8). No. 23-cr-26-jdp, Dkt. 204, at 1. For each count, McKire-Bennett was sentenced for a term of 164 months, to run concurrently. *Id.* at 2. Now McKire-Bennett seeks relief under 28 U.S.C. § 2255, primarily on the ground that his defense counsel was ineffective. No. 25-cv-414, Dkt. 2. The government responded to McKire-Bennett's petition. No. 25-cv-414, Dkt. 8. But McKire-Bennett hasn't filed a reply. I infer that McKire-Bennett didn't think he needed to file a reply because he previously moved for appointment of counsel to assist him with his petition, a motion which remains pending. No. 25-cv-414, Dkt. 4. If true, McKire-Bennett's belief was mistaken; filing a motion for appointment of counsel didn't absolve him of his duty to file a reply by the deadline. McKire-Bennett may have until June 1, 2026, to file his reply. If he doesn't file a reply by that date, I will consider the government's response without his input. As for McKire-Bennett's motion for appointment of counsel, I may appoint counsel for a § 2255 petitioner if "the interests of justice so require" and if he is "financially eligible." 18 U.S.C. § 3006A(a)(2)(B). In evaluating what the interests of justice require, courts generally consider whether the petitioner can obtain justice without an attorney in light of his ability and the difficulty of the case and whether he would have had a reasonable chance of winning with a lawyer at his side. See, e.g., *Howard v. Gramley*, 225 F.3d 784, 794 (7th Cir. 2000). Because McKire-Bennett qualified for court-appointed counsel in his underlying criminal case, I assume that he is financially eligible. But the current briefing doesn't suggest that the issues are too complex for McKire-Bennett to handle without counsel. I will deny McKire-Bennett's motion without prejudice. If later developments in the case show that he is unable to represent himself, I will reconsider my decision.

ORDER

IT IS ORDERED that:

1. Petitioner Lloyd M. McKire-Bennett's motion for appointment of counsel, Dkt. 4, is DENIED without prejudice.
2. McKire-Bennett may have until June 1, 2026, to file his reply to the government's

response, Dkt. 8. If he doesn't file a reply by that date, I will consider the government's response without his input. Entered May 18, 2026. BY THE COURT: /s/

JAMES D. PETERSON

District Judge

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