

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

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GOVERNMENT OF THE VIRGIN ISLANDS	:	
Plaintiff	:	
vs.	:	CRIMINAL NO. F67/1981
JUAN FRANCIS,	:	
Defendant	:	

GOVERNMENT OF THE VIRGIN ISLANDS,	:	
Plaintiff	:	
vs.	:	CRIMINAL NO. F78/1981
MELVIN DAWSON,	:	
Defendant	:	

GEORGE W. CANNON, JR.
Assistant Attorney General
Department of Law - Criminal Division
St. Thomas, Virgin Islands
(Attorney for Government in Criminal No. F78/1981)

JACQUELINE W. HUBBARD
Public Defender
Office of the Public Defender
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(Attorney for defendants)

LAWRENCE RAIMER
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Department of Law - Criminal Division
St. Thomas, Virgin Islands
(Attorney for Government in Criminal No. F67/1981)

MEMORANDUM OPINION
(February 12, 1982)

FEUERZEIG, J.

The jurisdiction of this court to consider motions of counsel to withdraw after the filing of notices of appeal is the issue before the court. The court concludes that it still has jurisdiction to consider the motions and will grant them.

On December 9, 1981 a jury found the defendant Melvin Dawson guilty on all three counts to which he was charged. He filed a notice of appeal and enforcement of the judgment of conviction was stayed pending the disposition of Dawson's appeal.

On November 19, 1981 a jury found the defendant Francis guilty. This court entered a judgment and commitment on December 14, 1981. On December 18, Francis filed a notice of appeal.

Counsel for both defendants now has filed motions to withdraw for purposes of the appeals and requests that the court appoint private counsel for each defendant. As a basis for the motion, counsel states that she is resigning her position as Territorial Public Defender; that the Office of the Territorial Public Defender will then be maintained by only one attorney, and that the appeals are meritorious.

Whether the trial court has jurisdiction to decide a post appeal motion depends upon whether the motion is directed to the substance of the matter on appeal or whether the motion is directed to a ministerial court function. Any orders of a trial court that touch upon the substance of the matter on appeal are considered null and void if entered after the timely filing of a notice of appeal. Wright, Miller, Cooper, & Gressman, 16 Federal Practice and Procedure §3949, p. 359 (1977); U.S. v. Hitchman, 587 F.2d 1357 (5th Cir. 1979). The trial court, however, does retain jurisdiction to perform ministerial functions in aid of the appeal, such as issuing stays or injunctions pending the appeal. Wright & Miller, supra, p. 359.

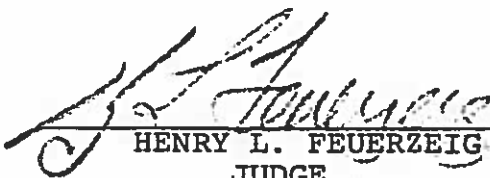
The court is of the opinion that the motions to withdraw as counsel involve a ministerial court function. The motions do not touch upon the subject matter of the appeal, and this court thus concludes it possesses jurisdiction to consider the motions and will grant them. Accordingly, it is

ORDERED that counsel's motions to withdraw as counsel for defendants Dawson and Francis are hereby granted and it is further

ORDERED that Judith Bourne is appointed as counsel for defendant Dawson and Francis Jackson is appointed as counsel for defendant Francis, and it is further

ORDERED that copies of this order be served on the defendants and that copies be directed to Jacqueline W. Hubbard, Judith Bourne and Francis Jackson.

DATED: February 16, 1982


HENRY L. FEUERZEIG
JUDGE