

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

03-10026-X

SHEILA PROVENCHER,

Defendant.

Defendant Sheila Provencher has filed a request for appointment of counsel to defend her in this petty offense case. The government has charged Provencher with trespassing in violation of 18 U.S.C. § 1863, a Class B misdemeanor. Pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A(a)(2), defendants charged with Class B misdemeanors are not entitled automatically to appointment of counsel, but may obtain an appointed attorney if the court determines that the interests of justice so require. In this case, the totality of circumstances convince me that appointing an attorney is not necessary.

The most important factor is that the government is not seeking to incarcerate Provencher if she is convicted. By eschewing imprisonment, the government constructively has amended its charge to an infraction for which no jail time is authorized, which virtually (although not actually) removes this case from consideration under the Criminal Justice Act. For all practical purposes under the CJA, the government is treating this case like a parking ticket.

Second, to appoint an attorney would mean changing the informal format nearly all previous ELF demonstrators have requested of this court. If I were to appoint an attorney to represent Provencher, I would sever her case from the co-defendants and would hold her

attorney to the rules of criminal procedure and rules of evidence, which I normally relax in ELF trespassing cases. Ordinarily, I allow defendants in ELF cases to appear jointly and to make a personal statement of reasons for their actions, even though the rules do not provide for such accommodations. If Provencher were to be represented by an attorney, I would not grant her the leeway I grant pro se ELF defendants. (I am not forbidding Provencher from retain an attorney to represent her, and her financial statement indicates that she may have the resources to hire an attorney for a case as straightforward as this one. I would apply the same rules to a retained attorney that I would to an appointed attorney).

I will reconsider Provencher's application for appointment of counsel if she persuades me first that she will not pay a fine if convicted and intends instead to go to jail, and second that she is willing to forego a personal statement explaining the reasons underlying her alleged trespass. Because trial is looming, Provencher should contact the court promptly if this is how she wishes to proceed. If I do not hear from Provencher on this issue before December 12, 2003, I will presume that she is not seeking reconsideration of this decision.

Entered this 1st day of December, 2003.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge