

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOHN GRAHAM, a.k.a.
JOHN BOY PATTON, and
VINE RICHARD MARSHALL, a.k.a.
RICHARD VINE MARSHALL, a.k.a.
DICK MARSHALL,
Defendants.

Case No. CR 08-50079

DEFENDANT MARSHALL'S
APPLICATION TO EXTEND
MOTIONS DEADLINE

NOW COMES Defendant Richard Marshall, by and through his attorney Dana L. Hanna, and pursuant to his Sixth Amendment right to effective counsel, hereby moves the Court to order that the deadline for the filing of motions be extended.

In support of this motion Dana L. Hanna, attorney for Defendant Marshall, hereby affirms:

1. In its amended order that scheduled the defendants' trial for May 12, 2009 [Doc. 27], the Court ordered the defendants to file their motions by March 23, 2009, and further ordered that if motions were filed after that date, counsel would have to show good cause why the motions were filed late.

2. On May 5, 2009, the Court ordered that the defendants' trial be continued, without a trial date, until after the Eighth Circuit Court of Appeals ruled on the government's interlocutory appeal. After the Court of Appeals ruled on the interlocutory appeal, affirming the trial court, the

trial court ordered that this case would be tried on October 6, 2009. On September 4, 2009 the government made a motion to continue the trial to allow the government further time to decide whether to seek a re-hearing on its interlocutory appeal. Over Defendant Marshall's objection, the Court granted the government's motion to continue and again continued the trial without scheduling a new trial date.

3. In order to provide Defendant Richard Marshall with effective assistance of counsel, it is necessary for defense counsel to continue to investigate the case, research legal issues and make further motions as new information and evidence becomes known and new legal issues present themselves to counsel. Since March 23, 2009, new information and evidence has been discovered that has made it necessary for the defendant to seek judicial relief by means of motions. For example, in May, counsel learned that the case file containing evidence that had been developed by Detective Abel Alonzo of the Denver Police Department during a joint federal-local investigation into the Aquash murder had been destroyed, and that the government had failed to disclose that information to the defense. This new information about the destruction of evidence required the defendant to file motions for a hearing and for disclosure of evidence that are presently pending before the Court, and which have not been answered by the government.

4. The day after this Court granted the government's motion for continuance, the former United States Attorney, now South Dakota Attorney General, announced that a joint cooperative federal-state prosecution effort had resulted in indictments from a grand jury in State Circuit Court that charged co-defendant John Graham and another defendant, Thelma Rios, with the murder of Anna Mae Pictou Aquash. It is a practical certainty that new discoverable evidence

was generated by this joint federal-state presentation to the grand jury, which will in turn necessitate further motions by the defendant, including motions to compel discovery.

5. Good cause exists to extend the motions deadline to allow Mr. Marshall to file further motions while the defense continues to prepare for trial. Since March 23, 2009, there have been fundamental changes of circumstances: the defendant's trial has been continued twice since that deadline was ordered. The original motion deadline was determined by its temporal relation to the then-scheduled trial date of May 12, 2009. Now that Mr. Marshall's trial date has again been continued, there is no logical rationale for not extending the motion deadline as well. It would be an arbitrary limitation on the accused's right to a fair trial and his right to counsel to hold the defendant to a deadline that was chosen when the trial date was May 12, 2009. It would be fundamentally unfair to allow the government to be granted an indefinite postponement of Mr. Marshall's trial, with the defendant confined in jail, so that the government can decide whether it will petition for a re-hearing on its interlocutory appeal, and at the same time restrict Mr. Marshall's right to request court orders by means of motions while he continues to prepare for his trial.

6. There will be no prejudice to the government caused by allowing the defendant to file further motions. On the other hand, if the Court denies the defendant's motion to extend the deadline for filing motions, his right to fair trial and counsel will be unduly prejudiced.

WHEREFORE Defendant Marshall moves the Court to extend the previously scheduled motions deadline to allow the filing of further motions by the defendant.

Dated this 16th day of September, 2009.

(Signature block on next page)

VINE RICHARD MARSHALL, Defendant

BY: /s/ Dana L. Hanna
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CERTIFICATE OF SERVICE

I hereby certify that I a true and correct copy of the foregoing Application to Extend Motions Deadline was electronically served upon the other parties in this case via the electronic mail addresses listed below:

Marty Jackley, United States Attorney
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Robert Mandel, Assistant United States Attorney
Robert.Mandel@usdoj.gov

John Murphy, Attorney for Defendant Graham
jmurphysd@hotmail.com

Dated this 16th day of September, 2009.

/s/ Dana L. Hanna
Dana L. Hanna