

Case No. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2018

JULIO ROLON,
Petitioner,

vs.

MOTION TO PROCEED
IN FORMA PAUPERIS

THE UNITED STATES OF AMERICA,
Respondent

_____ /

Petitioner Julio Rolon, through his pro bono counsel, formerly CJA appellate counsel, and pursuant to Rule 39 of the Supreme Court Rules moves this Court for leave to proceed with the present petition *in forma pauperis*, and states:

Petitioner comes to this Court having been sentenced to consecutive enhanced mandatory life sentences following a conviction on a reverse sting in the Southern District of Florida involving firearms and drugs, all of which were nonexistent.

This Petition arises from a final decision of the United States Eleventh Circuit Court of Appeals entered on September 25, 2018, denying a rehearing of an order refusing to grant a COA and denying Rolon relief from a 2255 motion filed in the district court based upon *Johnson II* and its progeny.

After this Court's decision in *Johnson v. United States*, 135 S.Ct. 2551(2015), Rolon filed a *pro se* motion to vacate pursuant to 28 U.S.C. §2255.

His motion was denied by the United States District Court, Southern District of Florida. The district court refused to grant a certificate of appealability. Rolon then took an appeal to the Eleventh Circuit *pro se*. Undersigned became involved as *pro bono* counsel for Mr. Rolon in the Eleventh Circuit. If this case does not warrant relief, then it is difficult to imagine a case that would.

The Petition asks this Court to exercise its supervisory jurisdiction over the United States Courts and correct the illegal mandatory life sentences imposed in this case. The questions presented are the following:

Whether in its supervisory jurisdiction over the Courts of the United States, and based upon this Court's clear precedent and the facts of record, this Court should grant this petition, where Petitioner in his early 40's was ***sentenced to mandatory life in prison for a reverse sting Hobbs Act robbery case that had no actual drugs***, and there are multiple conflicts with this Court's rulings because:

First, whether this is the perfect case to entertain the continuing validity *vel non*, of *Almendarez Torres v. United States*, 523 U.S. 244 (1998), in light of the reasoning of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *Alleyne v. United States*, 133 S.Ct. 2151 (2013), *Johnson II v. United States*, *supra*, and *Sessions v. Dimaya*, *supra*?

Second, whether Rolon presented meritorious issues under *Johnson II*, and meritorious allegations of ineffective assistance of counsel in his original 2255 motion; further the district court *summarily denied* all of the meritorious claims raised, failing to address even one of them, all of which violates Rolon's Constitutional guarantees of fairness and due process as mandated by *Buck v. Davis*?

Third, whether the Eleventh Circuit affirmed the summary denial of the 2255 motion on all issues raised, including a request for relief under Fed.R.Civ.P.60(b), in direct conflict in direct conflict with *Sessions v. Dimaya*, 138 S.Ct. 1204 (2018), wherein this Court held that the residual clause of 18 U.S.C. 16(b) was unconstitutionally vague; turn, *Johnson II* (*Johnson v. United States*, 135 S.Ct. 1551 (2015), renders the residual clause of 924(c) void for vagueness, all in direct conflict with *Buck v. Davis*?

Fifth whether conspiracy to commit a Hobbs Act robbery, attempt to commit Hobbs Act robbery, and conspiracy to possess a firearm, qualify as crimes of violence, in light of *Johnson II*, *Sessions v. Dimaya*, and *Mathis v. United States*, 136 S.Ct. 2243, 2251 (2016)?

Julio Rolon's financial status has not improved since he was arrested for the alleged underlying offenses in 2009. He had CJA counsel at trial, and CJA counsel for his appeals. Mr. Rolon barely has sufficient funds for the Commissary at USP Coleman II, or for Corr-Links email communications. Undersigned counsel represented him pursuant to the Criminal Justice Act in his direct appeal, and in a second direct appeal following resentencing on remand. Both appeals were litigated through Petitions for Writ of Certiorari to this Court, that both were denied.

Although Mr. Rolon commenced his 2255 proceedings *pro se*, the undersigned has been assisting him on a *pro bono* basis, and files this Petition in her capacity as *pro bono* counsel. Mr. Rolon has been continuously incarcerated since 2009. He is unable to pay a filing fee or any costs, and certainly cannot afford to pay attorney's fees.

Counsel is strongly convinced that Rolon he has been unjustly sentenced to consecutive life terms for offenses arising from a reverse sting, in a case that has no real drugs, no real stash house, no real guard at the imaginary stash house etc. Recent developments in the opinions of this Court warrant relief for Mr. Rolon at

this time. The sentence imposed in this case is unfair, unjust, inhumane, and would not be imposed in any other civilized country in the world.

Accordingly Julio Rolon respectfully requests that he be permitted to proceed with this petition in this Court *in forma pauperis* in light of his continuing indigence and his proceeding through *pro bono* counsel, who formerly was CJA appellate counsel.

Wherefore, Petitioner respectfully prays that this Honorable Court will grant him leave to proceed on petition for writ of certiorari *in forma pauperis*, waive the filing fee, waive the requirement for 40 printed copies of the petition, and accept eleven copies of the petition in typewritten form, that will be submitted together with this motion.

Respectfully submitted,

/s/ Sheryl J. Lowenthal

Sheryl J. Lowenthal
CJA Counsel for Mr. Rolon
9130 S Dadeland Boulevard Suite 1511
Miami, Florida 33156-7851
Ph: 305-670-3360
Florida Bar No. 163475

December 21, 2018