

Case No: _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2018

LEMUEL GAY,
Petitioner,
v.

UNITED STATES,
Respondent.

On Petition for a Writ of Certiorari
to the Court of Appeals for the Eleventh Circuit

MOTION TO PROCEED IN FORMA PAUPERIS

Christine A. Freeman, Executive Director
Stephen P. Ganter
Mackenzie S. Lund*
Federal Defenders, Middle District of Alabama
817 S. Court Street
Montgomery, Alabama 36104
Telephone: 334.834.2099
Facsimile: 334.834.0353
Email: Mackenzie_S_Lund@fd.org

**Counsel of Record*

January 18, 2019

Petitioner, Mr. Lemuel Gay, asks leave to file his Petition for Writ of Certiorari without prepayment of costs and to proceed *in forma pauperis* pursuant to Rule 39. Mr. Gay has been represented by the Federal Defenders for the Middle District of Alabama by appointment. The oral order appointing the Federal Defenders was entered on February 24, 2017. A copy of the docket sheet containing the relevant entries is attached to this motion.

Respectfully submitted,

/s/ Mackenzie S. Lund

Mackenzie S. Lund
Assistant Federal Defender
Federal Defenders for the Middle District of Alabama
817 S. Court Street
Montgomery, AL 36104
(334)-834-2099
Counsel of Record for Petitioner

Executed on January 18, 2019

U.S. District Court
Alabama Middle District (Opelika)
CRIMINAL DOCKET FOR CASE #: 3:16-cr-00544-WKW-GMB-1

Case title: USA v. Gay

Date Filed: 11/16/2016

Date Terminated: 09/29/2017

Assigned to: Chief Judge William Keith
Watkins

Referred to: Honorable Judge Gray M.
Borden

Appeals court case number: 17-14605-F
USDC

Defendant (1)

Lemuel Gay

TERMINATED: 09/29/2017

represented by **Federal Defender**
Federal Defenders
Middle District of Alabama
817 South Court Street
Montgomery, AL 36104
334-834-2099
Fax: 834-0353
Email: ECFCMALK@fd.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Assistant U S Attorney

Mackenzie S. Lund

Federal Defenders - MDAL
817 S Court St
Montgomery, AL 36104
334-834-2099
Fax: 334-834-0353
Email: Mackenzie_S_Lund@fd.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Stephen P. Ganter

Federal Defenders
Middle District of Alabama
817 South Court Street
Montgomery, AL 36104
334-834-2099
Fax: 334-834-0353
Email: Stephen_Ganter@fd.org

LEAD ATTORNEY
ATTORNEY TO BE NOTICED
*Designation: Public Defender or
Community Defender Appointment*

Pending Counts

18:922G-Felon in Possession of a Gun;
Forfeiture Allegation
(1)

Disposition

84 Mos Imp; 3 Yrs Sup Rel; \$100 AF

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition**Highest Offense Level (Terminated)**

None

Complaints

None

Disposition**Plaintiff**

USA

represented by **Kevin P Davidson**
United States Attorney's Office
131 Clayton Street
Montgomery, AL 36104
334-223-7280
Fax: 334-223-7135
Email: kevin.p.davidson@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Assistant U S Attorney

Robert Randolph Neeley
U.S. Attorney's Office
PO Box 197
Montgomery, AL 36101-0197
334-223-7280
Fax: 223-7560
Email: Rand.Neeley@usdoj.gov
LEAD ATTORNEY

ATTORNEY TO BE NOTICED
Designation: Assistant U S Attorney

Date Filed	#	Docket Text
11/15/2016	1	INDICTMENT as to Lemuel Gay (1) count 1. (FORFEITURE ALLEGATION) (war,) (Entered: 11/16/2016)
01/17/2017	4	Detainer Lodged with DOC as to Lemuel Gay. (ajr,) (Entered: 01/17/2017)
01/18/2017	5	MOTION for Writ of Habeas Corpus ad prosequendum by USA as to Lemuel Gay. (Attachments: # 1 Text of Proposed Order)(Davidson, Kevin) (Entered: 01/18/2017)
01/19/2017	6	ORDER granting 5 Motion for Writ of Habeas Corpus ad prosequendum as to Lemuel Gay (1). Signed by Honorable Judge Gray M. Borden on 1/19/17. (ajr,) (Entered: 01/19/2017)
01/19/2017	7	Writ of Habeas Corpus ad Prosequendum Issued as to Lemuel Gay for Arraignment set on 2/28/2017 10:30 AM in 5B before Honorable Judge Susan Russ Walker. (ajr,) (Entered: 01/19/2017)
02/24/2017	8	CJA 23 Financial Affidavit by Lemuel Gay (cb,) (Entered: 02/27/2017)
02/24/2017		ORAL MOTION to Appoint Counsel by Lemuel Gay. (cb,) (Entered: 02/27/2017)
02/24/2017		ORAL ORDER granting Oral Motion to Appoint Counsel: Appointed Federal Defender for Lemuel Gay as to Lemuel Gay (1). Signed by Honorable Judge Terry F. Moorer on 2/24/2017. (cb,) (Entered: 02/27/2017)
02/24/2017	9	Minute Entry for Initial Appearance/Arraignment held before Honorable Judge Terry F. Moorer as to Lemuel Gay on 2/24/2017. NOT GUILTY AS TO COUNT 1 (PDF available for court use only) (Recording Time 3:49-3:57.) (cb,) (Entered: 02/27/2017)
02/24/2017		ORAL ORDER directing the defendant to remain in the custody of the US Marshal pending further proceeding from the court as to Lemuel Gay. Signed by Honorable Judge Terry F. Moorer on 2/24/2017. (cb,) (Entered: 02/27/2017)
02/28/2017	11	NOTICE OF ATTORNEY APPEARANCE: Stephen P. Ganter appearing for Lemuel Gay (Ganter, Stephen) (Entered: 02/28/2017)
03/02/2017	12	ORDER ON ARRAIGNMENT TO INCLUDE ORDER TO CONTINUE - Ends of Justice as to Lemuel Gay. Time excluded from 3/2/17 until 8/7/17. Pretrial Conference set for 4/12/2017 10:00 AM in 4E before Honorable Judge Gray M. Borden. Jury Trial set for 8/7/2017 10:00 AM in Opelika, Alabama before Chief Judge William Keith Watkins. Pretrial Motions due by 4/10/2017. Discovery due from the government by 2/24/2017 and from the defendant by 3/3/2017. Signed by Honorable Judge Terry F. Moorer on 3/2/17. (ajr,) (Entered: 03/02/2017)
04/12/2017	13	Minute Entry for proceedings held before Honorable Judge Gray M. Borden:Pretrial Conference as to Lemuel Gay held on 4/12/2017 (PDF available

		for court use only) (Recording Time FTR: 10:11 AM - 10:11 AM.) (war,) (Entered: 04/12/2017)
04/13/2017	14	PRETRIAL CONFERENCE ORDER as to Lemuel Gay Jury Selection and Trial [ETT: 1.5 days] are set for 8/7/2017 at 10:00 AM in Opelika, Alabama before Chief Judge William Keith Watkins. A final pretrial conference is set for 6/2/2017 at 10:00 AM in Courtroom 4E before Honorable Judge Gray M. Borden. Notice of Intent to Change Plea due by noon on 7/26/2017, as further set out. Signed by Honorable Judge Gray M. Borden on 4/13/2017. (kcf,) (Entered: 04/13/2017)
05/11/2017	15	NOTICE OF INTENT TO CHANGE PLEA by Lemuel Gay (Ganter, Stephen) (Entered: 05/11/2017)
05/12/2017	16	ORDER as to Lemuel Gay setting a Change of Plea Hearing for 5/18/2017 10:15 AM in 2D before Honorable Judge Gray M. Borden. It is further ORDERED that the government shall email a Portable Document Format version of any plea agreement to the court at propord_borden@almd.uscourts.gov no later than 8:00 a.m. on the day set for the change of plea. The Clerk is directed to provide a court reporter for this proceeding, if one is available. The Clerk is also directed to provide an interpreter for the proceeding, if one is necessary. If the defendant is in custody, the United States Marshal or the person having custody of the defendant shall produce the defendant for this proceeding. Counsel for the defendant is DIRECTED to confer with the defendant prior to the proceeding as set out in this order. Signed by Honorable Judge Gray M. Borden on 5/12/17. (ajr,) (Entered: 05/12/2017)
05/18/2017	17	Consent to Enter Guilty Plea before U. S. Magistrate Judge as to Lemuel Gay (war,) (Entered: 05/18/2017)
05/18/2017	18	Minute Entry for proceedings held before Honorable Judge Gray M. Borden:Change of Plea Hearing as to Lemuel Gay held on 5/18/2017, Plea entered by Lemuel Gay (1)- Guilty Count 1. (PDF available for court use only) (Court Reporter Risa Entrekin.) (war,) (Entered: 05/18/2017)
05/18/2017		ORAL ORDER Accepting Guilty Plea as to Lemuel Gay and Adjudicating the defendant guilty as to Count 1 of the Indictment. Entered by Honorable Judge Gray M. Borden on 5/18/17. (war,) (Entered: 05/18/2017)
05/18/2017		ORAL ORDER REMANDING Defendant to the custody of U. S. Marshal pending further proceedings as to Lemuel Gay. Entered by Honorable Judge Gray M. Borden on 5/18/17. (war,) (Entered: 05/18/2017)
05/18/2017	19	ORDER as to Lemuel Gay setting Sentencing for 9/13/2017 11:00 AM in 2B before Chief Judge William Keith Watkins. Any motion for downward departure shall be filed on or before the conference date with the probation officer. Counsel for the defendant and the Government are to notify the Court at least two weeks prior to the sentencing date if the hearing is anticipated to take more than one hour. Government motions shall be filed 5 working days before sentencing. Sentencing memoranda are not required; however, any party desiring to submit a sentencing memorandum shall file it not less than 5 working

		days before sentencing as set out in order. Signed by Chief Judge William Keith Watkins on 5/18/17. (ajr,) (Entered: 05/18/2017)
05/30/2017	20	TEXT ORDER CANCELING the pretrial conference scheduled for 6/2/17 as to Lemuel Gay. Entered by Honorable Judge Gray M. Borden on 5/30/17. (NO PDF ATTACHED). (war,) (Entered: 05/30/2017)
06/02/2017	21	MOTION to Remand <i>Mr. Gay to the Custody of Alabama Department of Corrections</i> by Lemuel Gay. (Attachments: # 1 Exhibit)(Ganter, Stephen) (Entered: 06/02/2017)
06/06/2017	22	ORDER granting 21 Motion to Remand defendant to the custody of the Alabama Dept. of Corrections. It is further ORDERED that the United States Marshal is DIRECTED to return Defendant to the custody of the Alabama Department of Corrections pending his sentencing hearing in this court. The Government is DIRECTED to file a motion for writ of habeas corpus in order to arrange for Defendants presence at his sentencing hearing. Signed by Honorable Judge Gray M. Borden on 6/6/17. (ajr,) (Entered: 06/06/2017)
06/07/2017	23	MOTION for Writ of Habeas Corpus ad prosequendum by USA as to Lemuel Gay. (Attachments: # 1 Text of Proposed Order)(Davidson, Kevin) (Entered: 06/07/2017)
06/08/2017	24	ORDER granting 23 Motion for Writ of Habeas Corpus ad prosequendum as to Lemuel Gay (1). Signed by Honorable Judge Gray M. Borden on 6/8/17. (ajr,) (Entered: 06/08/2017)
06/08/2017	25	Writ of Habeas Corpus ad Prosequendum Issued as to Lemuel Gay for Sentencing set on 9/13/17. (ajr,) (Entered: 06/08/2017)
06/12/2017	26	ORDER as to Lemuel Gay - Sentencing set for 9/13/2017 is RESET to 9/14/2017 10:15 AM in 2B before Chief Judge William Keith Watkins. The United States Marshal is DIRECTED to secure the appearance of Defendant for the hearing. The Clerk of the Court is DIRECTED to provide a court reporter. Signed by Chief Judge William Keith Watkins on 6/12/17. (ajr,) (Entered: 06/12/2017)
07/12/2017	27	MOTION for Preliminary Forfeiture of Property by USA as to Lemuel Gay. (Attachments: # 1 Text of Proposed Order)(Davidson, Kevin) (Entered: 07/12/2017)
07/14/2017	28	ORDER OF Preliminary FORFEITURE granting 27 Motion for Preliminary FORFEITURE OF PROPERTY as to Lemuel Gay (1). Signed by Chief Judge William Keith Watkins on 7/14/17. (ajr,) (Entered: 07/14/2017)
09/08/2017	29	MOTION to Continue <i>Sentencing (Unopposed)</i> by Lemuel Gay. (Ganter, Stephen) (Entered: 09/08/2017)
09/12/2017	30	ORDER as to Lemuel Gay GRANTING 29 Unopposed MOTION to Continue Sentencing filed by Lemuel Gay, and it is ORDERED that the sentencing hearing currently scheduled on 9/14/2017, is RESET for 9/28/2017 at 10:30 AM in CR 2B before Chief Judge William Keith Watkins. The United States Marshal is DIRECTED to secure the appearance of Defendant for the

		<i>hearing. The Clerk of the Court is DIRECTED to provide a court reporter. Signed by Chief Judge William Keith Watkins on 9/12/2017. (kcf,) (Entered: 09/12/2017)</i>
09/13/2017	31	ORDER as to Lemuel Gay - Sentencing set for 9/28/2017 is RESCHEDULED for 9/27/2017 09:30 AM in CR 2B before Chief Judge William Keith Watkins. The United States Marshal is DIRECTED to secure the appearance of Defendant for the hearing. The Clerk of the Court is DIRECTED to provide a court reporter. Signed by Chief Judge William Keith Watkins on 9/13/17. (ajr,) (Entered: 09/13/2017)
09/21/2017	32	MOTION for Reduction in Criminal Offense Level for Acceptance of Responsibility by USA as to Lemuel Gay. (Davidson, Kevin) (Entered: 09/21/2017)
09/22/2017	33	NOTICE of Filing Sentencing Exhibits as to Lemuel Gay (Ganter, Stephen) (Entered: 09/22/2017)
09/22/2017	34	SENTENCING MEMORANDUM by Lemuel Gay. (ajr,) (Entered: 09/25/2017)
09/26/2017	35	NOTICE OF ATTORNEY APPEARANCE Robert Randolph Neeley appearing for USA. (Neeley, Robert) (Entered: 09/26/2017)
09/27/2017	36	Minute Entry for proceedings held before Chief Judge William Keith Watkins: Sentencing held on 9/27/2017 as to Lemuel Gay. (PDF available for court use only) (Court Reporter Risa Entrekin.) (ajr,) (Entered: 09/27/2017)
09/27/2017		ORAL ORDER granting 32 Motion for Reduction in Criminal Offense Level for Acceptance of Responsibility as to Lemuel Gay (1). Signed by Chief Judge William Keith Watkins on 9/27/17. (ajr,) (Entered: 09/27/2017)
09/27/2017	37	MOTION for Final Forfeiture of Property by USA as to Lemuel Gay. (Attachments: # 1 Text of Proposed Order)(Davidson, Kevin) (Entered: 09/27/2017)
09/29/2017	38	JUDGMENT as to Lemuel Gay (1), Count(s) 1, 84 Mos Imp; 3 Yrs Sup Rel; \$100 AF. Signed by Chief Judge William Keith Watkins on 9/29/17. (ajr,) (Entered: 09/29/2017)
10/03/2017	40	PRESENTENCE INVESTIGATION REPORT (Sealed) as to Lemuel Gay. (ajr,) (Entered: 10/04/2017)
10/10/2017	41	ORDER as to Lemuel Gay Final Order of Forfeiture granting the Government's Motion for a Final Order of Forfeiture, as further set out. Signed by Chief Judge William Keith Watkins on 10/10/2017. (kcf,) (Entered: 10/10/2017)
10/13/2017	42	NOTICE OF ATTORNEY APPEARANCE: Mackenzie S. Lund appearing for Lemuel Gay (Lund, Mackenzie) (Entered: 10/13/2017)
10/13/2017	43	NOTICE OF APPEAL by Lemuel Gay re 38 Judgment (Lund, Mackenzie) (Entered: 10/13/2017)
10/16/2017	44	Appeal Instructions sent to Attorney Mackenzie S. Lund counsel for Defendant, LEMUEL GAY, re 43 Notice of Appeal - Final Judgment. A copy of the

		Transcript Information Form must be mailed to each court reporter from whom you are requesting a transcript. (Attachments: # 1 TRANSCRIPT INFORMATION FORM)(ydw,) (Entered: 10/16/2017)
10/16/2017	45	Transmission of Notice of Appeal, 1 INDICTMENT, 38 JUDGMENT, and Docket Sheet to US Court of Appeals re 43 Notice of Appeal - Final Judgment (Attachments: # 1 DOCKET SHEET)(ydw,) (Entered: 10/16/2017)
10/16/2017	46	USCA Case Number as to Lemuel Gay 17-14605-F for 43 Notice of Appeal - Final Judgment filed by Lemuel Gay. (ydw,) (Entered: 10/17/2017)
10/27/2017	47	TRANSCRIPT INFORMATION FORM by Lemuel Gay for proceedings held on 9/27/17 before Judge Watkins, (Lund, Mackenzie) (Entered: 10/27/2017)
11/13/2017	48	Transcript Acknowledgment received from Court Reporter Risa Entrekin on 11th Circuit Appeal No. 17-14605-F. (ydw,) (Entered: 11/15/2017)
11/20/2017	49	NOTICE OF FILING OF OFFICIAL TRANSCRIPT OF SENTENCING PROCEEDINGS (PDF ACCESS RESTRICTED FOR 90 DAYS) as to Lemuel Gay for dates of September 27, 2017 before Judge W. Keith Watkins, re 43 Notice of Appeal - Final Judgment Court Reporter/Transcriber Risa L. Entrekin, Telephone number 334-240-2405. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. NOTICE OF INTENT TO REQUEST REDACTION DUE WITHIN 7 BUSINESS DAYS. Redaction Request due 12/11/2017. Redacted Transcript Deadline set for 12/21/2017. Release of Transcript Restriction set for 2/20/2018. (dmn,) Modified on 3/16/2018 (dph,). Transcript released. (Entered: 11/21/2017)
11/21/2017	50	Transcript NOTIFICATION received from Court Reporter Risa L. Entrekin on 11th Circuit Appeal No. 17-14605-F. (ydw,) (Entered: 11/27/2017)
11/28/2017		Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Middle District of Alabama certifies that the record is complete for purposes of this appeal re: 43 Notice of Appeal - Final Judgment, Appeal No. 17-14605-F. The entire record on appeal is available electronically.(ydw,) (Entered: 11/28/2017)
08/21/2018	51	Per Curiam Opinion received from USCA Eleventh Circuit of Opinion Entered on 11th Circuit Appeal No. 17-14605-FF; Opinion issued by court as to Appellant Lemuel Gay. Decision: Affirmed. Opinion type: Non-Published. Opinion method: Per Curiam. The opinion is also available through the Court's Opinions page at this link http://www.ca11.uscourts.gov/opinions . (ydw,) (Entered: 08/21/2018)
09/19/2018	52	JUDGMENT MANDATE of USCA (certified copy) as to Lemuel Gay re 43 Notice of Appeal - Final Judgment, 11th Circuit Appeal No. 17-14605-FF; Mr. Gay contends that the district court did not adequately consider his troubled upbringing and young age. To the contrary, the district court explicitly considered these factors and took them into account by fashioning a partially concurrent sentence (to his state attempted murder charges) to ensure that Mr. Gay would not be in prison beyond 2030. See D.E. 49 at 2526 (explaining decision to run sentence partially concurrent as permitted by § 5G1.3). See also

id. at 27(I've also taken into consideration your upbringing and background.). The district courts decision to weigh the seriousness of Mr. Gays criminal conduct and public safety more heavily than these mitigating factors was well within its discretion. See United States v. Dougherty, 754 F.3d 1353, 1361 (11th Cir. 2014)(The district court must evaluate all of the § 3553(a) factors, but it may attach great weight to one factor over others.); United States v. Amedeo, 487 F.3d 823, 832 (11th Cir. 2007) (The weight to be accorded any given § 3553 (a) factor is a matter committed to the sound discretion of the district court, and we will not substitute our judgment in weighing the relevant factors.) (alterations adopted). For the foregoing reasons, we affirm Mr. Gays sentence. AFFIRMED. See [51](#) USCA Per Curiam Opinion entered on 08/21/2018. (ydw,) (Entered: 09/19/2018)

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