

Case No. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2018

DAVID ANTHONY GORDON,
Petitioner,

vs.

MOTION TO PROCEED
IN FORMA PAUPERIS

THE UNITED STATES OF AMERICA,
Respondent

_____/

Petitioner David Anthony Gordon, through his 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 Gordon comes to this Court having been convicted of one count of conspiracy to import cocaine. He was sentence to 120 months in prison.

This Petition arises from a final decision of the United States Eleventh Circuit Court of Appeals entered on July 5, 2019, upholding the conviction and the sentence. There was no petition for rehearing filed in the Eleventh Circuit.

There are sound reasons presented in support of granting the writ:

In reaching the decision to affirm in part and to dismiss in part, the Eleventh Circuit Court of Appeals has so far departed from the accepted and usual course of

judicial proceedings and sanctions such a departure by the district court, as to call for the exercise of this Court's supervisory powers in that:

- (1) The Eleventh Circuit erroneously dismissed portions of the appeal based upon the appeal waiver in Gordon's plea agreement, even though the waiver was invalid and unenforceable because Gordon did not knowingly and voluntarily enter into the plea agreement;
- (2) The Eleventh Circuit erroneously affirmed even though the Government breached the terms of the plea agreement including refusing to apply the "safety valve," and refusing to allow a three-point reduction for acceptance of responsibility, rendering the entire plea agreement including the appeal waiver, null and void, and rendering the mandatory minimum sentence that was imposed, an unreasonable sentence;
- (3) The Eleventh Circuit erroneously affirmed the district court's abuse of discretion in granting the Government's motion to transfer the sentencing of David Gordon from the judge to whom this matter was randomly assigned by the Clerk of Court, to the judge who presided over the co-defendant's trial;
- (4) The Eleventh Circuit erroneously affirmed even though the non-assigned district judge abused her discretion and reversibly erred

when she sentenced Gordon to prison for a minimum mandatory term of ten years for Count One, where the plea agreement provided that Gordon would receive sentencing benefits for entering a plea that would have resulted in application of the “safety valve,” releasing him from the minimum mandatory, and warranting the imposition of a reasonable, lower sentence within the advisory guidelines range.

The Petition asks this Court to exercise its supervisory jurisdiction over the United States Courts and to correct the Eleventh Circuit’s incorrect affirmance of the unreasonable sentence that was imposed in this case.

Mr. Gordon was found to be indigent in the United States District Court, Southern District of Florida. Undersigned was appointed to represent Mr. Gordon for his appeal by Order of November 21, 2019, Docket No. 118, US v. Gordon, No. 17-CR-120192-DPG. A copy of the order is attached at the end of this motion.

Mr. Gordon has been incarcerated since the outset of these proceedings, and has proceeded with court-appointed counsel from December 21, 2017 throughout

his appeal. His financial status has not improved during his incarceration. Accordingly David Anthony Gordon respectfully requests that he be permitted to proceed with this petition in this Court *in forma pauperis* in light of his continuing status of indigence and his proceeding through CJA counsel on appeal.

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
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Dated: August 10, 2019

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 17-20192-CR-SEITZ

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID ANTHONY GORDON,

Defendant.

ORDER APPOINTING COUNSEL


THIS CAUSE came before the Court upon one of Defense Counsel's *Ore tenus* Motion to Withdraw as Counsel of record and Motion for Appointment of Counsel for Appeal.

THE COURT previously ruled from the bench on this matter. This order memorializes the ruling as set forth below. Accordingly, it is

ORDERED that Defense Counsel's *Ore tenus* Motion to Withdraw as Counsel and Motion for Appointment of New Counsel for Appeal is **Granted**. David Stuart Seltzer, LLC is hereby relieved of any further responsibility in representing the Defendant. It is further

ORDERED Sheryl Lowenthal, Esquire, of 9130 S. Dadeland Blvd. Suite 1511, Miami, Florida 33156 is appointed as counsel to represent the defendant for purposes of an appeal in this cause

DONE AND ORDERED in Chambers, at Miami, Florida this 21st day of December, 2017.



PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

Copied: David Seltzer, LLC
Davniel Cervante, AUSA
Stuart Adelstein, Esq.
Sheryl Rosenthal, Esq.