

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

DAVID TKHILAISHVILI,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the First Circuit

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Pursuant to Rule 39 of the Rules of this Court, the petitioner, David Tkhilaishvili, moves to file the attached Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit without prepayment of costs and to proceed *in forma pauperis*.

The petitioner was represented at trial in the United States District Court for the District of Massachusetts (No. 16-cr-10134) by counsel appointed pursuant to the Criminal Justice Act (18 U.S.C. § 3006A). On appeal to the First Circuit (No. 18-1098), the petitioner retained undersigned counsel with third-party assistance. On subsequent remand to the District Court (No. 16-cr-10134), undersigned counsel was appointed to represent Petitioner pursuant to the Criminal Justice Act. *See* Ex. A (copy of Docket face page

reflecting designation of undersigned counsel as “CJA Appointed” and page containing Docket Entry 219 dated July 12, 2019, granting motion to appoint counsel on remand from First Circuit).

Because counsel was appointed in the court below pursuant to the Criminal Justice Act, no affidavit or declaration of the petitioner is attached. *See* S. Ct. R. 39.1.

Respectfully submitted,



William W. Fick, Esq.
Counsel of Record
FICK & MARX LLP
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September 3, 2019

Exhibit A

**United States District Court
District of Massachusetts (Boston)
CRIMINAL DOCKET FOR CASE #: 1:16-cr-10134-DPW All Defendants**

Case title: USA v. Tkhliaishvili et al

Date Filed: 05/11/2016

Date Terminated: 12/19/2017

Assigned to: Judge Douglas P. Woodlock

Appeals court case number: 18-1098 USCA - First
Circuit

Defendant (1)

David Tkhliaishvili

TERMINATED: 12/19/2017

represented by **Oscar Cruz , Jr.**

Federal Public Defender Office

District of Massachusetts

51 Sleeper Street

5th Floor

Boston, MA 02210

617-223-8061

Fax: 617-223-8080

Email: Oscar_Cruz@fd.org

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

*Designation: Public Defender or Community
Defender Appointment*

William W. Fick

Fick & Marx LLP

24 Federal Street, 4th Flr.

Boston, MA 02110

857-321-8360

Email: wfick@fickmarx.com

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Designation: CJA Appointment

Pending Counts

18:1951 CONSPIRACY TO EXTORT
(1)

Disposition

The defendant shall serve thirty-six (36) months imprisonment on each count, to be served concurrently, followed by three (3) years of supervised release with standard and special conditions. Special assessment of \$400.00 and restitution in the amount of \$3500. AMENDED JUDGMENT - Court imposes a sentence of time served and three (3) years of supervised release with standard and special conditions. Restitution decreased to \$2000. Special assessment of \$300.

18:1951 ATTEMPTED EXTORTION; 18:2
AIDING AND ABETTING
(2)

The defendant shall serve thirty-six (36) months imprisonment on each count, to be served concurrently, followed by three (3) years of supervised release with standard and special conditions. Special assessment of \$400.00 and restitution in the amount of \$3500. AMENDED JUDGMENT - Court imposes a sentence of time served and three (3) years of supervised release

		above-captioned matter. Counsel are referred to the Court's Transcript Redaction Policy, available on the court website at http://www.mad.uscourts.gov/attorneys/general-info.htm (Scalfani, Deborah) (Entered: 04/30/2018)
05/09/2018	205	SEALED Transcript of Day Five of Jury Trial as to David Tkhilaishvili, Jambulat Tkhilaishvili held on May 8, 2017, before Judge Douglas P. Woodlock. COA Case No. 18-1027 and 18-1098. Court Reporter Name and Contact Information: Brenda Hancock at brhancock@msn.com (Scalfani, Deborah) (Entered: 05/09/2018)
08/13/2018	206	MOTION for Reconsideration as to David Tkhilaishvili. (Caruso, Stephanie) (Additional attachment(s) added on 8/13/2018: # 1 Exhibit A-C (Medical Records) (Caruso, Stephanie). (Entered: 08/13/2018)
06/05/2019	209	OPINION of USCA as to David Tkhilaishvili, Jambulat Tkhilaishvili re 185 Notice of Appeal 186 Notice of Appeal (Paine, Matthew) (Entered: 06/05/2019)
06/05/2019	210	JUDGMENT of USCA as to David Tkhilaishvili re 185 Notice of Appeal. David Tkhilaishvili's conviction on count 3 is REVERSED, and his convictions on counts 1, 2, and 4 are AFFIRMED without prejudice to his prosecution of an ineffectiveness of counsel claim through a petition for post-conviction relief under 28 U.S.C. ' 2255. The matter is REMANDED to the district court with instructions to consider whether and to what extent (if at all) a modification of David Tkhilaishvili's sentences on counts 1, 2, and 4 may be in order. The district court should, at the same time, revise the special assessments and the restitution order in David Tkhilaishvili's case to reflect the reversal of his conviction on count 3. (Paine, Matthew) (Entered: 06/05/2019)
06/05/2019	211	JUDGMENT of USCA as to Jambulat Tkhilaishvili re 186 Notice of Appeal. AFFIRMED... (Paine, Matthew) (Entered: 06/05/2019)
06/19/2019	212	MOTION to Appoint Counsel as to David Tkhilaishvili. (Fick, William) (Entered: 06/19/2019)
06/20/2019	213	Judge Douglas P. Woodlock: ELECTRONIC ORDER ALLOWING 212 Motion to Appoint Counsel for Resentencing. William W. Fick appointed as to David Tkhilaishvili (1). (Kinsella, Devan) (Entered: 06/20/2019)
06/20/2019	214	MANDATE of USCA as to David Tkhilaishvili re Appeal number 185 . Appeal number 185 Terminated (Paine, Matthew) (Entered: 06/21/2019)
06/24/2019	215	NOTICE OF HEARING - Upon Mandate from the First Circuit Court of Appeals, a Status Conference as to David Tkhilaishvili is SCHEDULED for 7/8/2019 at 2:30 p.m. in Courtroom 1 before Judge Douglas P. Woodlock. All counsel, including counsel who appeared in this case before the U.S. Court of Appeals, shall attend the status conference.(Beatty, Barbara) (Entered: 06/24/2019)
06/26/2019	216	MANDATE of USCA as to Jambulat Tkhilaishvili re Appeal number 186 . Appeal number 186 Terminated (Paine, Matthew) (Entered: 06/27/2019)
07/08/2019	217	Clerk's Notes for Status Conference held before Judge Douglas P. Woodlock: After a brief discussion of the disposition of count three before the Court of Appeals, the case shall proceed to resentencing. Re-Sentencing as to David Tkhilaishvili is SCHEDULED for 7/17/2019 at 2:30 p.m. in Courtroom 1 before Judge Douglas P. Woodlock.(Attorneys present: AUSA DeVincentis, AUSA Kaplan, Fick)Court Reporter Name and Contact or digital recording information: Kelly Mortellite at mortellite@gmail.com. (Beatty, Barbara) (Entered: 07/08/2019)
07/12/2019	218	Assented to MOTION for Extension of Time to File <i>Sentencing Memorandum</i> as to David Tkhilaishvili. (Fick, William) (Entered: 07/12/2019)
07/12/2019	219	Judge Douglas P. Woodlock: ORDER granting 218 Assented to Motion for Extension of Time to File Sentencing Memorandum to David Tkhilaishvili (1) until 7/15/2019 at 10:00 a.m. (Beatty, Barbara) (Entered: 07/12/2019)
07/15/2019	220	SENTENCING MEMORANDUM by David Tkhilaishvili (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F)(Fick, William) (Entered: 07/15/2019)
07/16/2019	221	Amended MOTION for Forfeiture of Property (<i>Money Judgment</i>) as to David Tkhilaishvili by USA. (Attachments: # 1 Text of Proposed Order)(Lazarus, David) (Entered: 07/16/2019)
07/16/2019	222	Response as to David Tkhilaishvili: 220 Sentencing Memorandum filed by David Tkhilaishvili. (Kaplan, Laura) (Entered: 07/16/2019)