

Case No. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2019

RALPH HERMAN FOX, Jr.,
Petitioner,

vs.

MOTION TO PROCEED
IN FORMA PAUPERIS

THE UNITED STATES OF AMERICA,
Respondent

_____/

Petitioner Ralph Herman Fox, Jr., 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 Fox comes to this Court having been convicted of one count of a child-pornography offense. Even though he entered into a plea agreement and pled guilty, Fox was sentenced to prison for the statutory maximum of 360 months.

This Petition arises from a final decision of the United States Eleventh Circuit Court of Appeals entered on June 13, 2019, upholding and affirming that sentence. A petition for rehearing was timely filed and was denied by order of July 31, 2019.

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

The record shows that Fox was charged in the Northern District of Florida with two counts of child pornography offenses. He entered into a plea agreement pursuant to which he would plead guilty to one of the two offenses charged. In the written plea agreement the Government agreed to recommend a sentence of no more than 240 months.

In compliance with the plea agreement, at sentencing the Government did recommend a sentence of 240 months, but the district court chose to disregard the agreed and recommended sentence. Fox was sentenced to the statutory maximum term of 360 months in prison. This is of course, one full decade (ten years) greater than the 240-month term sentence to which the parties agreed in the plea agreement.

In affirming the imposition of the statutory maximum sentence of 360 months for Ralph Fox, where (1) Petitioner Fox entered a guilty plea and (2) the parties agreed to recommend a sentence of 240 months, has the Eleventh Circuit Court of Appeals so far departed from the accepted and usual course of judicial proceedings, and has sanctioned such a departure by the district court, as to call for the exercise of this Court's supervisory powers?

There can be no doubt that it violates every notion of fairness, Fifth and Sixth Amendment Due Process, common sense, and crucial public policy considerations, for the Eleventh Circuit to affirm the district court's imposition of the statutory maximum sentence (360 months) on a defendant who entered into a plea agreement with the government. The record shows that in exchange for the guilty plea, the experienced and highly-qualified Assistant United States Attorney agreed to, and in fact did recommend a sentence of no more than 240 months.

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

Mr. Fox was found to be indigent from the outset of these proceedings. He was represented by the Federal Public Defender in the district court, and undersigned CJA counsel was appointed to represent him for purposes of his direct appeal. Mr. Fox has been incarcerated continuously since his arrest in this matter in 2017. His financial status has not improved during his incarceration. Accordingly Ralph Fox 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 paper copies of the petition in typewritten form that will be submitted together with this motion.

Respectfully submitted,

/s/ Sheryl J. Lowenthal

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