

19-7940
NO. 1

IN THE
SUPREME COURT OF THE UNITED STATES

LUIS FERNANDEZ MORALES,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

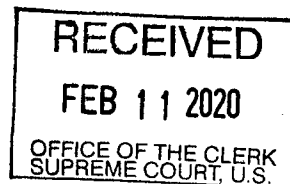
ON PETITION FOR WRIT OF CERTIORARI
TO THE ELEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Luis Fernandez Morales

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QUESTION PRESENTED

Whether defendant in a federal criminal case is entitled to appeal the district court's judgment denying motion to modify sentence under 18 U.S.C. § 3582(c)(1)(A) in forma pauperis ?

And, if so, can the courts deny IFP status and require criminal defendant to pay cost of appeal in full by applying the merits determination established by 28 U.S.C. § 1915 ?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner Respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit appears at Appendix "C" to this petition and is unpublished.

The opinion of the United States District Court for the Middle District of Florida appears at Appendix "A" to this petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was November 22, 2019. A timely petition for rehearing was filed and denied by the Court of Appeals on January 13, 2020, and a copy of Order denying rehearing appears at Appendix "D".

The Jurisdiction of this Honorable Court is invoked pursuant to Title 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The "Due Process of Law" clause of the Fifth Amendment to the United States Constitution.

The "Equal Protection of the Law" clause of the United States Constitution, Amendment Fourteen.

Title 18 United States Code Section 3006A

Title 28 United States Code Section 1915

STATEMENT OF THE CASE

On December 6, 2000, the petitioner was sentenced to LIFE imprisonment without parole for violation of federal drug laws under 21 U.S.C. §§ 841(a), 841(b)(1)(A) & 846 (conspiracy to possess w/intent to distribute five kilograms or more of powder cocaine).^{1/}

After almost two decades of incarceration the petitioner filed a pro se motion to reduce sentence under 18 U.S.C. § 3582 (c)(1) based on the First Step Act of 2018 ("FSA") which eliminated the mandatory LIFE terms such as petitioner's. See FSA of 2018 Section 401. The U.S. District Court, Middle District of Florida summarily denied petitioner's pro se motion on July 16, 2019. Appendix "A".

Petitioner filed a timely notice of appeal and submitted petition and affidavit with the district court to proceed on appeal in forma pauperis. The district court denied petitioner leave to proceed in forma pauperis on August 14, 2019, ruling that appeal is "not taken in good faith" under 28 U.S.C. § 1915(a)(3). Appendix "B".

After being denied IFP by the district court petitioner asked the Eleventh Circuit Court of Appeals for leave to

^{1/} Petitioner was given MANDATORY life imprisonment under federal repeat offender law 21 U.S.C. § 851 because of (2) two minor New York State "felony drug convictions".

proceed in forma pauperis. The Court of Appeals denied the petitioner's application to proceed in appeal IFP on November 22, 2019. Appendix "C"

Petitioner filed a timely petition for rehearing with the Court of Appeals which was denied on January 13, 2020. Appendix "D". Having no other options the petitioner now petitions this Honorable Supreme Court to grant a writ of certiorari and remedy the Fundamental Injustice that has occurred by not allowing an indigent prisoner to appeal the district court's judgment denying his criminal procedure motion.

REASONS FOR GRANTING PETITION

A conflict between decisions of the Court of Appeals is a strong ground as "candidate for certiorari." Bunting v. Mellen, 541 U.S. 1019, 1021 (2004); S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb, Supreme Court Practice, (10th Ed. 2013); Rule 10(a), Rules of the Supreme Court. This case presents a stark conflict between at least two Circuit Court of Appeals with respect to a defendant's right to appeal a criminal court judgment/decision in forma pauperis under federal statutes and rules of court.

The Eleventh Circuit Court of Appeals decision denying the petitioner in this case in forma pauperis to appeal a criminal district court's order/judgment conflicts with decisions of other Court of Appeals on the same important matter. Moreover, the Eleventh Circuit Court of Appeal's decision to deny the indigent petitioner IFP status in this criminal case seems to conflict with this Court's decisions holding that defendants' in criminal case should not be barred from the courthouse because of poverty. Finally, the issue presented by this case is of great import in the area of post-criminal conviction and appeal process vis-a-vis civil litigation and civil appellate review process under 28 U.S.C. § 1915.

When denying petitioner's initial application to appeal IFP the district court cited 28 U.S.C. § 1915(a)(3) and determined that petitioner's appeal "is not taken in good faith". Appendix "B". In other words, the district court

conducted a merits determination established under § 1915 to deny petitioner the ability to appeal a criminal court decision/judgment IFP.

The petitioner would argue that the district court's application of merits determination under § 1915 is inconsistent with American criminal justice jurisprudence that traditionally allows indigent criminal litigants the right to appeal adverse criminal court decisions/judgments that affect periods of incarceration. Moreover, the merits determination set forth under § 1915 applies to civil appeals not criminal appeals.

In contrast to the Eleventh Circuit Court of Appeals' decision denying petitioner IFP status on appeal in a criminal case, the Second Circuit Court of Appeals ruled that the merits determination under § 1915 does not apply in criminal cases but only in civil appeal proceedings. See United States v. Kosic, 2019 U.S. App. LEXIS 36219 (2nd Cir. 2019). The Second Circuit's holding in Kosic is in direct conflict with the Eleventh Circuit's decision in this case to deny petition IFP on appeal in criminal case and do so through the lens of § 1915's merits determination criteria.

When denying the petitioner leave to appeal IFP the Eleventh Circuit Court of Appeals (J. TJOFLAT) ruled that petitioner's "appeal is frivolous" and cited Napier v. Preslicka, 314 F.3d 528, 531 (11th Cir. 2002). Appendix "C". Justice TJOFLAT's use of the phrase "frivolous"

and citation to a civil court case (Napier v. Preslicka) clearly indicates that a merits determination standard ment for civil cases and civil appeals in forma pauperis has somehow crept into criminal court litigation practice.

The district court's order denying petitioner's IFP status specifically cites 28 U.S.C. § 1915(a)(3) and quotes the statutory language "not taken in good faith." Appendix "B". Petitioner urges this Court to grant certiorari in this case and stop lower courts from denying indigent litigants the ability to appeal criminal court judgments by application of § 1915(a)(3) which applies to civil cases not criminal. See Appendix "E" (copy of statute at issue).

Section 1915(a)(1) does mention "criminal" cases but subsection 1915(a)(2)&(3) reference only "civil" actions and appeals in "civil" cases. Appendix "E", 28 U.S.C. § 1915(a)(2)&(3). The Eleventh Circuit is applying federal law that governs appeals in "civil" cases to deprive "criminal" defendants access to appellate review--something that this Court has long held to a different standard than civil cases and civil appeals. Lane v. Brown, 372 U.S. 477, 480-81 (1963)(state could not deny indigent criminal defendant transcripts to appeal); Hardy v. U.S., 375 U.S. 277 (1964); M.L.B. v. S.L.J., 519 U.S. 102 (1996); Halbert v. Michigan, 545 U.S. 605 (2005).

Petitioner should be able to appeal the district court's judgment denying application of the First Step Act of 2018.

CONCLUSION

WHEREFORE, this Court is respectfully urged to grant writ of certiorari and allow full briefing of issues presented.

Respectfully prayed for this 3rd day of February, 2020.

Luis Fernandez Morales

Luis Fernandez Morales
Petitioner, Pro Se

PROOF OF SERVICE

I, Luis Fernandez Morales, do hereby state under penalty of perjury that I have mailed, served and filed this "Petition for Writ of Certiorari", "Application to Proceed IFP" and all attachments by depositing such in the prison mail system with 1st class prepaid postage affixed and addressed as follows:

U.S. Attorney, MD Florida
400 N. Tampa St. Ste. 3200 ✓
Tampa, FL 33602

U.S. Supreme Court ✓
1 First St. N.E.
Washington, DC 20543

Solicitor General of United States
Dept of Justice ✓
950 Pennsylvania Ave. NW Rm#5614
Washington, DC 20530

DONE this 3rd day of February, 2020

Luis Fernandez Morales

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