

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Michael David Beiter, Jr. — PETITIONER

vs.

United States of America -- RESPONDENT

APPENDIX

SUBMITTED BY AND FOR:

X Michael David Beiter

Michael David Beiter, Jr., PRO SE

REG. NO. 91383-004

FCI BENNETTSVILLE

P.O. BOX 52020

BENNETTSVILLE, SC 29512

App-1

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13008

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL D. BEITER, JR.,

Defendant- Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:09-cr-60202-JJC-1

Before LAGOA, BRASHER and TJOFLAT, Circuit Judges.

PER CURIAM:

Michael D. Beiter, Jr., a federal prisoner proceeding *pro se*, appeals the District Court's denial as moot of his *pro se* motion to compel the Supervisory Assistant Federal Public Defender ("AFPD") to surrender his entire case file from his criminal case. On appeal, he repeats the merits of his underlying motion, including that he needs his case file from the AFD to prepare a post-conviction motion, and asks this Court to vacate the District Court's order and demand that it set a deadline within which the AFD must produce his file.

The government responds by moving for summary affirmance of the District Court's order denying Beiter's motion and argues that Beiter's appeal is frivolous because the AFD had already agreed to produce the case file, so the District Court did not need to order him to do so, and Beiter failed to establish why it was so urgent that the AFD produced his file immediately when the time period for him to file a 28 U.S.C. § 2255 post-conviction motion for relief expired over ten years ago.

Summary disposition is appropriate, in part, where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous."

22-13008

Opinion of the Court

3

Groendyke Transp., Inc. v. Davis, 406 F.2d 1158, 1162 (5th Cir. 1969).

Under Article III of the Constitution, a federal court's jurisdiction is limited to active "cases" and "controversies." *United States v. Al-Arian*, 514 F.3d 1184, 1189 (11th Cir. 2008). A case on appeal becomes moot and ceases to be an active case or controversy when an event that occurred at a stage of litigation deprives the court of the ability to give the appellant meaningful relief. *Id.*; see also *Christian Coal of Fla., Inc. v. United States*, 662 F.3d 1182, 1189 (11th Cir. 2011).

Here, the government is entitled to summary affirmance of the District Court's order denying Beiter's motion to compel the AFPD to turn over his entire case file because Beiter's appeal is frivolous. *Groendyke Transp.*, 406 F.2d at 1162. The record demonstrates that the AFPD responded to Beiter's motion to compel and confirmed that he was reviewing the voluminous case file to ensure that it did not violate the District Court's protective order. Beiter has not demonstrated why he suddenly, 11 years after his conviction, needs his entire case file from the AFPD within 10 business days. After the AFPD responded and agreed to provide Beiter with his case file after he finished reviewing it, there was no live controversy for the District Court to resolve and no relief for it to grant Beiter, so Beiter's motion to compel was moot. See *Al-Arian*, 514 F.3d at 1189. Thus, Beiter's appeal is frivolous, and the government is entitled to summary affirmance.

Therefore, we **GRANT** the government's motion for summary affirmance of the District Court's denial of Beiter's *pro se* motion to compel, and **DENY** as moot its motion to stay the briefing schedule.

App-2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-60202-CR-COHN

UNITED STATES OF AMERICA,

v.

MICHAEL D. BEITER, JR.,

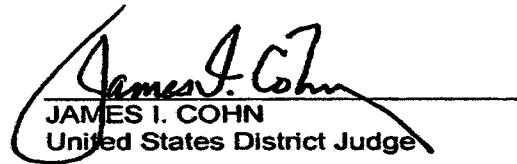
Defendant.

ORDER

THIS CAUSE is before the Court on Defendant Michael David Beiter, Jr.'s *pro se* Motion to Compel Attorney/Supervisory Assistant, Federal Public Defender, Robert Berube, to Surrender the Entire Case/Work File in Case No. 0:09-cr-60202-JJC [DE 212] ("Motion"). Having reviewed the Motion, it is

ORDERED AND ADJUDGED that the Federal Public Defender's Office shall respond to Defendant's Motion within 30 days from the date of this Order.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 19th day of April, 2022.



JAMES I. COHN
United States District Judge

Copies provided to:
Counsel of record via CM/ECF
Pro se parties via U.S. mail to address on file

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-60202-CR-COHN

UNITED STATES OF AMERICA,

Plaintiff.

v.

MICHAEL D. BEITER, JR.,

Defendant.

/

ORDER DENYING AS MOOT MOTION TO COMPEL CASE/WORK FILE

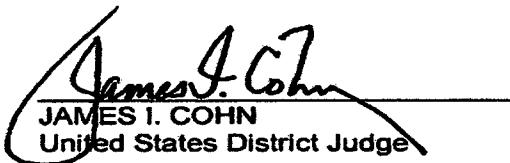
THIS CAUSE is before the Court on Defendant Michael D. Beiter, Jr.'s *pro se* Motion to Compel the Case/Work File ("Motion") [DE 212.] The Court has reviewed the Motion, the Federal Public Defender's Response [DE 230], and is otherwise fully advised in the premises.¹

In his Motion, Defendant requests that the Court order the Federal Public Defenders Office ("FPD") to "surrender [to him] the entire case/work file" because he intends to "file a postconviction relief motion challenging the constitutionality of his conviction and/or sentence." DE 212 at 1-2. In its Response, the FPD confirms that the voluminous discovery material from approximately 11 years ago is being reviewed to ensure the Protective Order entered by the Court is not violated and will then be provided to the Defendant. DE 230 at 1-2. It is thereupon

ORDERED AND ADJUDGED that Defendant Michael D. Beiter, Jr.'s Motion to Compel the Case/Work File [DE 212] is **DENIED as moot**.

¹ Defendant failed to file a reply and the time for him to do so has passed.

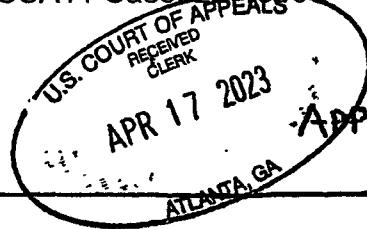
DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 25th day of August, 2022.



James I. COHN
United States District Judge

Copies provided to:
Counsel of record via CM/ECF
Pro se parties via U.S. mail to address on file

App-3



APPEAL NO: 22-13008

-H-1

UNITED STATES OF AMERICA
THE PLAINTIFF/APPELLEE,

v.

Michael David Beiter, Jr.
THE DEFENDANT/APPELLANT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION

PETITION FOR REHEARING OR REHEARING EN BANC

By: Michael David Beiter, Jr.
Reg. No. 91383-004
FCI BENNETTSVILLE
P.O. BOX 52020
Bennettsville, SC 29512

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CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT

UNITED STATES V. Michael David Beiter, Jr.

CASE NO. 22-13008

Appellant Michael David Beiter, Jr., files this Certificate of Interested Persons and Corporate Disclosure Statement, listing the parties and entities interested in this appeal, as required by 11th Cir.R. 26.1.

Berude, Robert	Assistant Federal Public Defender;
Black, Susan, H.	United States Appeal Judge;
Caruso, Michael	Federal Public Defender;
Cohn, James I.	United States District Judge;
Cone, Timothy	Assistant Federal Public Defender;
Day, Timothy	Assistant Federal Public Defender;
Dimitrouleas, William P.	United States District Judge;
Doakes, Chantel R.	Former Assistant Federal Public Defender;
Federal Public Defenders Office	Southern District of Florida;
Internal Revenue Service;	
Johnson, Linea R.	United States Magistrate Judge;
Lavoro, Michelle,	IRS CID;
Marks, Neison	Former Assistant Federal Public Defender;
Mervis, Clark D.	Attorney;
Mitrani, Bertha R.	Assistant United States Attorney;
Shumacher, Howard	Attorney;
Seltzer, Barry S.	United States District Judge;
Silversmith, Jed M.	Former Assistant United States Attorney;
Smith, Darcy	IRS CID;
Tjoflat, Gerald B.	United States Appeal Judge;
Williams, Kathleen M.	United States District Judge; and
Wilson, Charles R.	United States Appeal Judge.

STATEMENT REGARDING ORAL ARGUMENT

The Appellant, Michael David Beiter, Jr., hereinafter, Mr. Beiter, Jr., requests oral argument as his right to be heard, for he believes that this will provide assistance in deciding his case.

Mr. Beiter, Jr., is incarcerated at FCI, Bennettsville, South Carolina, hence, he requests that such oral argument be held via tele-conference.

TABLE OF CITATIONS

The following applicable case law, statute and other authorities are found at Mr. Beiter, Jr.'s INITIAL BRIEF & his REPLY TO UNITED STATES' MOTION FOR SUMMARY AFFIRMANCE..., and are incorporated herein by reference:

Darman, 58 M, J. 295 (C.A.A.F. 2003)

Gardner, Willis, Sweat & Handelman LLP v. Kelly (In re Golden Grove Pecan Farm), 460 B.R. 349, 352-53 (Bankr. M.D. Ga. 2011); In re Ginn-La St. Lucie Ltd. LLP, 439 B.R. 801, 809 (Bankr. S.D. Fla. 2010)

Hight v. Clark, Ky. No. 2005-SC-000455-MR (June 15, 2006)

Houston v. Lack, 487 U.S. 266 (1988)

Maxwell v. Florida, 479 U.S. 266 (1988)

McQuiggin v. Perkins, 569 U.S. 383, 386 (2013)

Potts v. State, 869 So.2d 1223, 1225 (Fla. 2d DCA 2004)

Rushton v. Woodbury & Kessler, P.C. (In re C.W. Mining Co.), 442 B.R. 44, 48 (Bankr. D. Utah 2010)

Spivey v Zant, 683 F.2d 881, 885 (5th Cir. 1982)

Strickland v. Washington, 689, AL Ed. 2d 674, 104 S.Ct. 2052

United States v. Ferreira, 275 F.3d 1020, 1024 (11th Cir. 2001)

United States v. McLean, 802 F.3d 1228, 1233 (11th Cir. 2015)

United States v. Wright, 607 F.3d 708 (11th Cir. 2010)

Article V. Federal Bill of Rights (1791)

Article VI. Federal Bill of Rights (1791)

ABA Standards for Criminal Justice, Defense Functions Standards and Commentary

Fed R. Civ. P. 26(b)(3)

Canon 3C of the Code of Judicial Conduct page 5-6

STATEMENT OF JURISDICTION

This Court has jurisdiction to hear this Petition for Rehearing or Rehearing En Banc pursuant 11th Cir. R. 40-3 and 11th Cir 25-2, as well as Fed. R. App. P. 259(a). The denial in this Appeal was entered on January 30, 2023.

STATEMENT OF THE ISSUE MERITING REHEARING OR REHEARING EN BANC

1. Whether or not this Panel's entire premise for its Opinion is predicated upon elements NOT found in the record at the District Court, and whether same Panel failed to apply proper legal precedent and legal standards due to Said predication;
2. A new Panel in which to decide on the Petition for Rehearing or Rehearing En Banc.*

* An active Complaint of Judicial Misconduct or Disability, under 28 U.S.C. §§ 351-364, Rule 5, was affirmed by DAVID J. SMITH, CLERK OF COURT, ON February 24, 2023

STATEMENT OF THE CASE
AND
COURSE OF PROCEEDINGS BELOW.

MICHAEL D. BEITER, JR. WAS charged with one count for an alleged violation to 26 U.S.C. § 1712(a), as to Count One; three counts for alleged violations to 26 U.S.C. § 7201, as to Counts 2-4; and six counts for alleged violations to 18 U.S.C. § 514, as to Counts 5-10.

As will be shown, the District Court record shows that access to the entire work/case file at the District level, was DENIED by said Court, erroneously, thus mandating an Appeal to this Court, and yet this Courts OPINION is predicated upon premises NOT found on the District Court record.

SUMMARY OF THE ARGUMENT

Mr. Beiter, Jr., contends that this Panel has severely misconstrued the specific timeline of events that transpired on the record at the District Court, and thus made a ruling that is predicated upon a gross misunderstanding of said record.

ARGUMENT AND CITATIONS OF AUTHORITY.

I. THIS PANEL'S ENTIRE PREMISE, AND THEREFORE ITS OPINION, IS PREDICATED UPON ELEMENTS NOT FOUND ANYWHERE ON THE DISTRICT COURT RECORD

From this Panel's OPINION, the Panel states:

"After the AFD responded and agreed to provide Beiter with his CASE file AFTER HE FINISHED REVIEWING IT, there was no live controversy for the District Court to resolve and no relief for it to grant Beiter, so Beiter's motion to compel was moot."

(Emphasis and underline added)

As will be shown herewith, the government itself, in its UNITED STATES MOTION FOR SUMMARY AFFIRMANCE AND TO STAY THE BRIEFING SCHEDULE, Admits that the

Very first action in this matter at the District Court, came on April 18, 2022 (at page 3 of said government Motion). The specific timeline at the District Court, as proven by the District Court record, are as such:

1. On 4/18/22, as the government acknowledges, the FIRST action at the District Court was Mr. Beiter, Jr.'s, "MOTION TO COMPEL ATTORNEY SUPERVISORY ASSISTANT, FEDERAL PUBLIC DEFENDER, ROBERT BERUBE, TO SURRENDER THE ENTIRE CASE WORK FILE IN CASE NO: 0:09-CR-60202-JJC." (ECF NO. 212);
2. On 4/19/22, the day after Mr. Beiter, Jr.'s above named MOTION was filed, Judge Cohn ORDERED, after "having reviewed the Motion" (ECF NO. 212), that the Federal Public Defender's Office indeed had to respond (see ECF NO. 213; Exhibit A herein);
3. On 5/17/22, almost one month after being ordered by Judge Cohn to respond, the FPD did respond. (See ECF NO. 230, Exhibit B herein)

IN the FPD's response, the FPD responded in a way that was completely satisfactory to Mr. Beiter, Jr. They agreed to gather the case file and to deliver it to Mr. Beiter, Jr. via Bureau of Prison protocols. They also acknowledged it would take time via a "Protective Order" of the Court's and the "voluminous" amount of discovery as well.

Mr. Beiter, Jr. was perfectly fine with everything the FPD had to say at ECF NO. 230, Exhibit B herein, and was PATIENTLY WAITING for the FPD to deliver the discovery;

4. On 8/25/22, over three (3) months after the FPD agreed to deliver the case file (Discovery) to Mr. Beiter, Jr., AGAIN something Mr. Beiter, Jr. was perfectly content to wait for. After the FPD acknowledged they would produce it, Judge Cohn, of his own accord, without ANY input from Mr. Beiter, Jr., ORDERED (see ECF No. 253, Exhibit C herein) that the ONLY correspondence Mr. Beiter, Jr. ever filed in the matter at hand (ECF No. 212) over four months previous, be deemed "Moot." Why? Because, "Defendant failed to file a reply and the time to do so has passed." (See again, Exhibit C herein).

It is here and here alone that the entire crux of why Mr. Beiter, Jr. had to Appeal Judge Cohn's Denial (ECF No. 253), and why this Panel has severely misconstrued the events at the District Court. It was Judge Cohn's DENIAL that ensured that Mr. Beiter, Jr. would NOT be receiving any of the case file from the FPD. That this Panel, as proven in its own OPINION, believed that Mr. Beiter, Jr. had "FINISHED REVIEWING" a case file that Mr. Beiter, Jr. was DENIED from seeing by Judge Cohn. Without ANY Court order to respond, without ANY law mandating he respond, and without ANY Court Rule mandating that he respond, Mr. Beiter, Jr.'s original Motion (ECF No. 212), a motion Judge Cohn ORDERED the FPD to respond to (ECF No. 213), now deemed "moot" via a standard again, not ordered by the Court, not mandated by law, not mandated by Court Rules — Simply, "Defendant failed to file a reply and the time to do so has passed." Who set such "time" and declared

it's expiration date? If Judge Cohn and the government believed the DENIAL was/is Supported by law or Court rules then what/where is such? Mr. Beiter, Jr. contends that no such law/court rules exist to support Judge Cohn's actions. Did Judge Cohn expect Mr. Beiter, Jr. to state something likened to, "Thank you FPO, I am waiting for the case file!", via a MOTION to the Court?

II. Mr. Beiter, Jr. BELIEVES THAT PANEL JUDGE TJOFLAT SITS ON THE PANEL WHILE HAVING PERSONAL KNOWLEDGE OF DISPUTED EVIDENTIARY FACTS CONCERNING THE PROCEEDINGS, WHICH LEGALLY DISQUALIFIES HIM

28 U.S.C. §455. Disqualification of Justice, Judge or Magistrate [Magistrate Judge], states in pertinent part:

"(a) any Justice, Judge, or Magistrate [magistrate Judge] of the United States shall disqualify himself in any proceeding IN WHICH HIS IMPARTIALITY MIGHT BE REASONABLY QUESTIONED." (emphasis added). Also, "(b) He shall also disqualify himself in the following circumstances: (i) where he has personal bias or prejudice concerning a party, or PERSONAL KNOWLEDGE OF DISPUTED EVIDENTIARY FACTS CONCERNING THE PROCEEDINGS." (emphasis added)

(Canon 3C of the Code of Judicial Conduct, states in relevant part:

"(c) Disqualification

(1) A judge shall disqualify himself in a proceeding in which his impartiality might be reasonably questioned, including but not limited to instances where: (a) He has personal bias or prejudice concerning a party, or PERSONAL KNOWLEDGE OF

DISPUTED EVIDENTIARY FACTS CONCERNING THE PROCEEDING," (emphasis added).

As per Exhibit D herein, Judge Tjoflat was previously notified of exact matters now before the 11th Circuit Court of Appeals, in which Judge Tjoflat and others recommended the Federal Bureau of INvestigations (FBI) as the party to contact regarding the FRAUD being perpetrated at the United States District Court for the Southern District of Florida, Fort Lauderdale Division, As Exhibit D Shows at A.6, Section Chief David M. Hardy, of the FBI, utterly misconstrued my NOTICE OF FRAUD (A.2) as a "FOIA request." Any layman can see that my NOTICE OF FRAUD WAS NOT a "FOIA request." I was sent on a wild goose chase by Judge Tjoflat, when it is their Court that resides over the Southern District Court. Why the goose chase?

CONCLUSION

The Very live and active controversy in the case at hand is threefold. While the preident named at Mr. Beiter, Jr.'s "INITIAL BRIEF" and his "REPLY TO UNITED STATE'S MOTION FOR SUMMARY AFFIRMANCE..."; incorporated herein by reference, remains WHOLLY UNREBUTTED; precedence that proves Mr. Beiter, Jr. has a RIGHT to the Case file (Discovery), the following FACTS are and have been here-with established:

1. Judge Cohn, in his unilateral act not supported by law or Court Rules, cut off Mr. Beiter, Jr.'s RIGHT

(see all legal precedent at Mr. Beiter, Jr.'s "Initial Brief" and his "REPLY TO UNITED STATE'S MOTION FOR SUMMARY AFFIRMANCE," not limited to but including Maxwell v. Florida & Spivey v. Zant) to receive his entire case/work file under a ruling that lacked ANY lawful precedent or Court Rules to support his actions. Even the government, in attempting to support Judge Cohn's actions, FAILS to offer any lawful precedent or Rules to support Judge Cohn's actions, stating merely six(6) words about the matter: "Beiter did not file a reply." (See page 5 of the government's MOTION FOR SUMMARY AFFIRMANCE, filed on 11/4/22). Mr. Beiter, Jr. NEVER received ANY of the case work file in order to be able to "review" it;

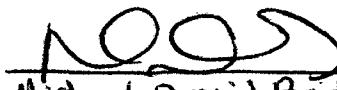
2. This Panel indisputably believed that Mr. Beiter, Jr. had received and "reviewed" the FPD's office committed to delivering to Mr. Beiter, Jr. (See ECF No. 230; Exhibit B), and this Panel now, though it had previously been made clear, that Judge Cohn's unilateral actions thwarted the FPD's commitment. It would be a very simple thing to do to ask the FPD's office, "Did Judge Cohn's "moot" order stop you from delivering Mr. Beiter, Jr.'s case file to him, as you previously committed to doing?" Neither Judge Cohn or the government has provided ANY law or Court Rules to support Judge Cohn's actions, because NONE exists. If anyone on this Panel disagrees then it is very simple to provide said law(s) or Rule(s), no?

3. As proven by Exhibit D herein Judge Tjoflat should have

either disqualified himself, or been disqualified by his superiors, for Judge Tjoflat, beyond all doubt had PERSONAL KNOWLEDGE OF DISPUTED EVIDENTIARY FACTS CONCERNING THE PROCEEDING,

WHEREFORE, above premises established, Mr. Beiter, Jr. requests that a qualified Panel simply ORDER that the District Court must direct the FPO to do what it had already agreed to do before being STOPPED by Judge Cahn, and deliver Mr. Beiter, Jr.'s case file to him as the Supreme Court and even this Circuits precedent demands. And that this Court would either set or suggest a reasonable time frame in which the materials should be delivered to Mr. Beiter, Jr.

Mr. Beiter, Jr. seeks a Just and righteous remedy, and if need be, is prepared to ask the Supreme Court of the United States of America, "Has this Court overturned Maxwell v. Florida, holding that '[t]he right to effective assistance fully encompasses the client's right to obtain from trial counsel the work files generated during and pertinent to that client's defense. It further entitles the client to utilize the materials contained in these files in ANY proceeding at which the adequacy of trial counsel's representation may be challenged?" (emphasis added)?



Michael David Beiter, Jr.
Reg. No. 91383-004

VERIFICATION

I, Michael David Belter, Jr., do hereby attest and affirm that to the best of my knowledge and belief, the foregoing is true and correct.

Executed on this 13 day of April , Year of Yahweh 2023

M D B
Michael David Belter, Jr.
Reg. No. 91383-004
FCI Bennettsville
P.O. Box 52020
Bennettsville, SC 29512

CERTIFICATE OF SERVICE

I, Michael David Beiter, Jr., do hereby certify that a true and correct copy of the foregoing Instrument has been mailed via First Class, pre-paid postage, to the AVSA of record below, on this 13 day of April , Year of Yahweh 2023.

Laura Thomas Rivero, AVSA
99 N.E. 4th Street
Miami, Florida 33132

Executed on this 13 day of April , Year of Yahweh 2023

MDR
Michael David Beiter, Jr.
Reg. No. 91383-004
FCI Bennettsville
P.O. Box 52020
Bennettsville, SC 29512

Sent to the Court via USPS certified mail:
7020 0640 0001 2736 8514

CERTIFICATE OF COMPLIANCE

I, Pursuant to 11th Cir. R. 32-3, I, Michael David Beiter, Jr., do hereby certify that this brief complies with the type-volume limitations of Fed. R. App. P. 32(g) as well as Fed. R. App. P. 32(a)(6) and a (7)(A)-(B).

1. This brief was handwritten out of necessity.

Michael David Beiter, Jr.
Reg. No. 91383-004
FCI Bennettsville
P.O. Box 52020
Bennettsville, SC 29512

-11-

NOTICE OF INMATE FILING

The Appellant, Michael David Beiter, Jr. is confined in an institution. Today, April 13, Year of Yahweh 2023, Mr. Beiter, Jr. placed his PETITION FOR REHEARING OR REHEARING EN BANC in this Appeal, in the institutions internal mail system. All postage is being pre-paid by Mr. Beiter, Jr.

The foregoing complies with the provisions set forth in Houston v. Lack, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed 245 (1988); see also Fed. R. App. P. 4(c), as Mr. Beiter, Jr.'s deadline to file this brief is unknown.

Respectfully submitted on this 13 day of April, Year of Yahweh, 2023


Michael David Beiter, Jr.
Reg. No. 91383-004
FCI Bennettsville
P.O. Box 52020
Bennettsville, SC 29512

ORDER OF THE EXHIBITS

Exhibit A - ECF NO. 213; Judge Cohn's ORDER for the FPD

Exhibit B - ECF NO. 230; FPD response to ECF NO. 213

Exhibit C - ECF. NO. 253; Judge Cohn's "moot" ORDER

Exhibit D - Correspondence to and from Judge Tjoflat

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-60202-CR-COHN

UNITED STATES OF AMERICA,

v.

MICHAEL D. BEITER, JR.,

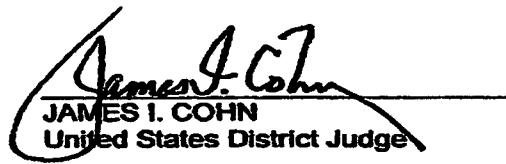
Defendant.

ORDER

THIS CAUSE is before the Court on Defendant Michael David Beiter, Jr.'s *pro se* Motion to Compel Attorney/Supervisory Assistant, Federal Public Defender, Robert Berube, to Surrender the Entire Case/Work File in Case No. 0:09-cr-60202-JJC [DE 212] ("Motion"). Having reviewed the Motion, it is

ORDERED AND ADJUDGED that the Federal Public Defender's Office shall respond to Defendant's Motion within 30 days from the date of this Order.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 19th day of April, 2022.


JAMES I. COHN
United States District Judge

Copies provided to:
Counsel of record via CM/ECF
Pro se parties via U.S. mail to address on file

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-60202-CR-COHN

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL D. BEITER, JR.,

Defendant.

RESPONSE TO COURT ORDER RE MOTION TO COMPEL

In response to the Court Order, the Federal Public Defender's office states the following:

Prior to the defendant filing his motion to compel discovery, undersigned counsel was in communication with him.

Undersigned counsel was not the attorney of record at the time the case went to trial. The process of reviewing the case file documents from approximately eleven years ago is tedious.

The discovery material that he is requesting is being reviewed. This discovery is voluminous. A Protective Order was entered by the Court, therefore undersigned counsel must be vigilant not to violate the Protective Order. Since undersigned counsel was not the attorney of record, all the discovery must be reviewed in order to locate the material under the Protective Order.

The material that Defendant Michael Beiter, Jr. is requesting was made available to him prior to his trial. Defendant Beiter, Jr. rejected all of the material he now so urgently demands. Defendant Beiter, Jr. was of the belief that he was a "sovereign citizen," thereby outside of the jurisdiction of the District Court.

Additionally, Defendant Beiter, Jr. is requesting transcripts & other documentation.

Upon the completion of the review the file, the information will be provided in accordance with the Bureau of Prison's policy.

Respectfully submitted,

MICHAEL CARUSO
FEDERAL PUBLIC DEFENDER

By: s/ Robert N. Berube
Supervisory Assistant
Federal Public Defender
Florida Bar No. 304247
One East Broward Boulevard, Suite 1100
Fort Lauderdale, Florida 33301-1842
Tel: 954-356-7436
Fax: 954-356-7556
E-Mail: Robert_Berube@fd.org

CERTIFICATE OF SERVICE

I HEREBY certify that on May 17, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: s/ Robert N. Berube SAFPD

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-60202-CR-COHN

UNITED STATES OF AMERICA,

Plaintiff.

v.

MICHAEL D. BEITER, JR.,

Defendant.

ORDER DENYING AS MOOT MOTION TO COMPEL CASE/WORK FILE

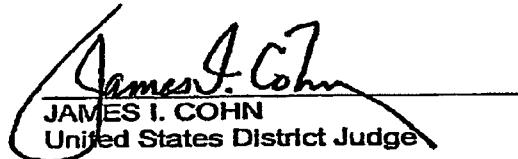
THIS CAUSE is before the Court on Defendant Michael D. Beiter, Jr.'s *pro se* Motion to Compel the Case/Work File ("Motion") [DE 212.] The Court has reviewed the Motion, the Federal Public Defender's Response [DE 230], and is otherwise fully advised in the premises.¹

In his Motion, Defendant requests that the Court order the Federal Public Defenders Office ("FPD") to "surrender [to him] the entire case/work file" because he intends to "file a postconviction relief motion challenging the constitutionality of his conviction and/or sentence." DE 212 at 1-2. In its Response, the FPD confirms that the voluminous discovery material from approximately 11 years ago is being reviewed to ensure the Protective Order entered by the Court is not violated and will then be provided to the Defendant. DE 230 at 1-2. It is thereupon

ORDERED AND ADJUDGED that Defendant Michael D. Beiter, Jr.'s Motion to Compel the Case/Work File [DE 212] is **DENIED as moot**.

¹ Defendant failed to file a reply and the time for him to do so has passed.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County,
Florida, this 25th day of August, 2022.



James I. Cohn
JAMES I. COHN
United States District Judge

Copies provided to:
Counsel of record via CM/ECF
Pro se parties via U.S. mail to address on file

EXHIBIT D

Proof of Mailing

This is notice of a notarial process and the affirmation of a document being mailed First Class ("U.S.P.S.") Mail. The following parties are to receive said mailing:

Gerald Bond Tjoflat d/b/a JUDGE GERALD TJOFLAT
56 Forsyth Street, NW
Atlanta, Ga 30303

Notarized "Proof of Mailing" attached herein

Charles R. Wilson d/b/a JUDGE CHARLES WILSON
56 Forsyth Street, NW
Atlanta, Ga 30303

Notarized "Proof of Mailing" attached herein

Susan H. Black d/b/a JUDGE SUSAN BLACK
56 Forsyth Street, NW
Atlanta, Ga 30303

Notarized "Proof of Mailing" attached herein

The following document is contained within the mailing:

1. NOTICE OF FRAUD- CASE # 11-10528 D.C. DOCKET # 09-cr-60202-JC-1

Notary

Date

0-22-17

NOTARY PUBLIC STATE OF FLORIDA

Karen Valenzuela

Commission # DD834926

Serial

NOV 11 2017

Notary Expiry



06/22/12

Gerald Bard Tjoflat d/b/a/JUDGE GERALD TJOFLAT
56 Forsyth Street, NW
Atlanta, Ga 30303

notarized "Proof of Mailing" attached herein

Charles R. Wilson d/b/a/ JUDGE CHARLES WILSON
56 Forsyth Street, NW
Atlanta, Ga 30303

notarized "Proof of Mailing" attached herein

Susan H. Black d/b/a/ JUDGE SUSAN BLACK
56 Forsyth Street, NW
Atlanta, Ga 30303

notarized "Proof of Mailing" attached herein

RE: NOTICE OF FRAUD- CASE # 11-10528 D.C. DOCKET # 09-cr-60282-JJC-1.

Gentlemen:

I have in my possession, evidence of fraud committed against myself and your court. I have no reason at this time to believe that you conspired in the multiple crimes, including but not limited to Misprision of Felony, Retaliatory Prosecution, Oath of Office violations, Fraudulent representations and deliberate concealment of material information.

My intent is not to prove up my claim within this writing, but rather, to respectfully request the Constitutional mandates as well as internal policies your office is bound to in situations such as mine. Please immediately send me the protocols that mandate your actions in regards to fraud committed against one of "we the people", as well as your court. The proven acts against me are so egregious that I would be disingenuous not to inform you that silence on behalf of your office will be construed in a negative light. If a case for investigation is the first step then please immediately send me the internal case number assigned to this request, as well as the policies regarding an investigation. My goal is to expedite and not hinder your policies and Constitutional mandates. I have affidavits and much evidence to support my claim. I accept your Oath of Office as a firm and binding bilateral contract in which you have sworn to God to uphold all of my rights, including but not limited to Article 9 at Amendment 1 (Bill of Rights).

Sincerely,
Michael David Beiter Jr.

"Silence or fraudulent concealment can be a basis for Fraud but only where there is a legal or moral duty to speak or when an inquiry left unanswered would be intentionally misleading." *U.S. v. Prudden*, 424 F2d 1021, 1032 (5th Cir. 1970), Cert. Denied 400 U.S. 831, 453, 91 S.Ct. 62, 27 L.Ed.2d 62 (1971).

"Indeed, no more than (affidavits) is necessary to make the *prima facie* case." *U.S. v. Kis*, 658 F.2d, 526, 536 (7th Cir. 1981); Cert. Denied, 50 U.S. L.W. 2169; S.Ct. March 22, 1982.

A.2

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

John Ley
Clerk of Court

www.ca11.uscourts.gov

July 2, 2012

Michael David Beiter Jr.
4631 NW 31st Ave., # 289
Fort Lauderdale, FL 33309

Dear Mr. Beiter:

We have received your documents entitled "RE: NOTICE OF FRAUD- CASE # 11-10528 D.C. DOCKET # 09-cr-60202-JJC-1." In response to your inquiry, we do not have "protocols that mandate your actions in regards to fraud committed against one of 'we the people', as well as your court."

Please be advised that this Court does not have the resources or authority to investigate allegations that individuals have committed criminal acts. If you have credible information that a criminal act has occurred, you should inform the appropriate criminal investigative agency, such as the Federal Bureau of Investigation (FBI). If you wish to contact the FBI, the address of the Miami Division is: 16320 NW 2nd Avenue, North Miami Beach, FL 33169.

Sincerely,

JOHN LEY, Clerk of Court

Reply To: Andrew Gyarfas, Deputy Clerk
404-335-6577

A.3

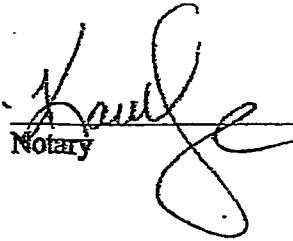
Proof of Mailing

This is notice of a notarial process and the affirmation of a document being mailed First Class ("U.S.P.S.") Mail. The following parties are to receive said mailing:

JOHN LEY, CLERK OF COURT
C/O ANDREW GYARFAS, DEPUTY CLERK
56 Forsyth Street N.W.
Atlanta, Georgia 30303

The following document is contained within the mailing:

1. "MDB-JL-7512"



Notary

Date
7-18-12

11-11-12
Notary Expires

NOTARY PUBLIC STATE OF FLORIDA
Karen Vulgamore
Commission # DD836926
Seal: 
Expires: NOV. 11, 2012
NOTARY PUBLIC STATE OF FLORIDA
KAREN VULGAMORE CO., INC.

A.4

15/12

cc: Gerald Bard Tjoflat, Charles R. Wilson, Susan H. Black
/o John Ley d/b/a JOHN LEY, CLERK OF COURT
UNITED STATES COURT OF APPEALS
LEVENTH CIRCUIT
6 Forsyth Street, N.W.
Atlanta, Georgia 30303

re: Your response to my "NOTICE OF FRAUD-CASE# 11-10528 D.C. DOCKET# 09-CR-60202-JJC-1"

ear John:

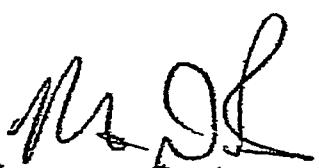
I am in receipt of your writing dated 7/2/12 and wanted to clarify a few points for mine and your legal records. Of course, if I need further clarification I will contact you immediately.

Based upon the fact that you are responding to a writing sent specifically to three individuals operating in the capacity of "Judge," I am of the belief that Gerald Bard Tjoflat, Charles H. Wilson and Susan H. Black have appointed you as their legal agent in fact. My record will herein and hereafter consider your words as their words, unless of course this is not the case. If I am incorrect in my assessment then please take ten (10) days to clarify your reason for responding for the three Judges mentioned within. If I do not hear from you within the ten (10) days allotted, then my records will reflect that I have asserted, without future protest or objection from you and those you represent.

Also, in your response, you state that I should inform the appropriate criminal investigative agency "such as" the FEDERAL BUREAU OF INVESTIGATION (FBI). Is there some other agency that you know of that handles matters such as ours? If so, then who? Again, if I do not hear back from you within ten (10) days, then I will consider the "FBI" the only agency that you deem appropriate and my records will reflect such.

Thank you so much for your timely response to this most urgent matter.

NOTICE TO AGENT IS NOTICE TO PRINCIPAL
NOTICE TO PRINCIPAL IS NOTICE TO AGENT


Sincerely,
Michael David Beiter Jr.
4631 NW 31st Ave. #289
Ft. Lauderdale, FL
33309

A.5



Federal Bureau of Investigation

Washington, D.C. 20535

August 6, 2012

MR. MICHAEL DAVID BEITER, JR.
#289
4631 NORTHWEST 31ST AVENUE
FORT LAUDERDALE, FL 33309

Dear Mr. Beiter:

This is in reference to your Freedom of Information Act (FOIA) request asking that the Federal Bureau of Investigation conduct an investigation on your behalf. The FOIA does not require federal agencies to answer inquiries, create records, conduct research, or draw conclusions concerning queried data. Rather the FOIA requires agencies to provide access to reasonably described, nonexempt records. The questions posed in the referenced letter are not FOIA requests because they do not comply with the FOIA and its regulations.

Sincerely yours,

A handwritten signature in black ink, appearing to read "David M. Hardy".

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

A handwritten mark consisting of the letters "A.6" in black ink.

Mike Bentler 91393-001
Federal Corrections Facility
P. O. Box 52020
Bennettsville, SC 29512

USCA11 Case: 22-13008



Document 20 Date Filed: 04/17/2023

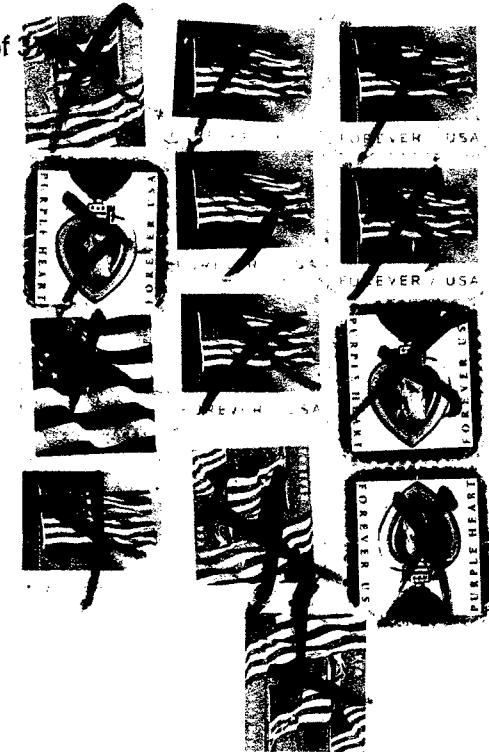
Page: 37 of 37

2020 0640 0001 2736 8514

CLEARED DATE

APR 1 2023

U.S. Marshals Service
Atlanta, GA 30303



11th Circuit Court of Appeals

c/o T. Richardson, BB

56 Forsyth Ave N.W.
Atlanta, Georgia 30303

Legal
Mail



App-4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-60202-CR-COHN/SELTZER

UNITED STATES OF AMERICA,
Plaintiff,

vs.

MICHAEL D. BEITER, JR.,
Defendant.

MOTION TO WITHDRAW AS COUNSEL

COMES NOW Kathleen M. Williams, Federal Public Defender, by and through the undersigned Assistant Federal Public Defender, and files her Motion To Withdraw As Counsel to the defendant Michael D. Beiter, Jr., and states as follows:

FACTUAL BACKGROUND

1. Mr. Beiter is charged in a multi-count second superceding indictment with interfering with the administration of the internal revenue laws, tax evasion and fictitious obligations. The matter is presently set for trial on Monday, August 23, 2010.

2. On April 22, 2010, Magistrate Judge Seltzer appointed the Office of the Federal Public Defender to represent Mr. Beiter in this matter, after Mr. Beiter was non-responsive to Magistrate Judge Seltzer's inquiry regarding Mr. Beiter's desire to retain counsel or to proceed *pro se*. The matter was set for Arraignment on April 26, 2010.

3. Prior to Mr. Beiter's Arraignment, the undersigned met with Mr. Beiter in the Marshals lockup to review with him the charges contained in the superceding indictment. During the meeting, Mr. Beiter advised the undersigned that he did not want court appointed counsel to represent him in these proceedings. He further refused to review the superceding indictment with the undersigned.

4. On April 26, 2010, at Mr. Beiter's Arraignment, the undersigned advised Magistrate Seltzer that Mr. Beiter did not want the Office of the Federal Public Defender to represent him. Magistrate Judge Seltzer again inquired of Mr. Beiter if he wished to represent himself, to which Mr. Beiter did not reply. Because Mr. Beiter did not affirmatively waive counsel, Magistrate Judge Seltzer did not discharge the Office of the Federal Public Defender. As such, the undersigned proceeded to arraign Mr. Beiter on the superceding indictment.

5. Subsequent to Mr. Beiter's arraignment, counsel from the Office of the Federal Public Defender attempted to meet with Mr. Beiter at the Broward County Jail on two separate occasions in order to discuss his case. Mr. Beiter refused to meet with counsel on both occasions.

6. On May 10, 2010, the undersigned moved this Court for a status conference regarding the undersigned's continued representation of Mr. Beiter. The matter was set for a hearing on May 18, 2010.

7. At the May 18, 2010 hearing, this Court inquired of Mr. Beiter if he wished to represent himself or to be represented by counsel. Mr. Beiter advised this Court that he did not authorize the undersigned to represent him and further advised this Court that he had fired the undersigned. Nonetheless, this Court determined that because Mr. Beiter had not expressly waived his right to counsel, the Office of the Federal Public Defender would continue to represent him in

this case.

8. Since the May 18, 2010 hearing, Mr. Beiter has refused to assist in the preparation of his defense. He has continued to advise the undersigned counsel that she does not represent him in this matter and has requested the undersigned to provide him with legal authority supporting her continued representation in this matter. Mr. Beiter has returned, unopened, all legal correspondence pertaining to his case, sent to him by the undersigned.

MEMORANDUM OF LAW

The Sixth Amendment provides that “In all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defense.” U.S. Const. amend. VI.

The right to counsel, however, is “a tool, not a tether. It is one thing to hold that every defendant has the right to the assistance of counsel, and quite another to say that a State may compel a defendant to accept a lawyer he does not want.” *United States v. Garey*, 540 F.3d 1253, 1263 (11th Cir. 2008) (citing *Faretta v. California*, 422 U.S. 806, 835 (1975)) (brackets, internal quotation marks and ellipses omitted). That being said, an indigent defendant does not have the right to have a particular lawyer appointed to him, or to demand a different lawyer be appointed, except for good cause. *Garey*, 540 F.3d at 1263 (citing *Thomas v. Wainwright*, 767 F.2d 738, 742 (11th Cir. 1985)). Defendants who refuse court appointed counsel, either expressly by their words, or implicitly by their actions, must, in the absence of hiring private counsel, proceed *pro se*. *Garey*, 540 F.3d at 1265-66.

Obviously, before a district court relieves a defendant of court-appointed counsel, the court must make sure it is a “knowing, intelligent act done with sufficient awareness of the relevant circumstances.” *Garey*, 540 F.3d at 1266 (citing *Iowa v. Tovar*, 541 U.S. 77, 81 (2004)) (brackets and internal quotation marks omitted). Therefore, before a court can conclude that a “defendant has

knowingly waived his right to counsel, the defendant ‘should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with eyes open.’” *Garey*, 540 F.3d at 1267 (quoting *Faretta*, 422 U.S. at 835).

“To that end, the best practice is for district courts to begin by attempting to engage the defendant in a full discussion of the dangers of self-representation whenever a defendant expresses a desire to waive his right to counsel, whether affirmatively or by his conduct.” *Garey*, 540 F.3d at 1267. That being said, the court need not engage in a dialogue with unwilling defendants,¹ but must inform them of the challenges of *pro se* representation:

A dialogue cannot be forced; therefore, when confronted with a defendant who has voluntarily waived counsel by his conduct and who refuses to provide clear answers to questions regarding his Sixth Amendment rights, it is enough for the court to inform the defendant unambiguously of the penalties he faces if convicted and to provide him with a general sense of the challenges he is likely to confront as a *pro se* litigant.

Garey, 540 F.3d at 1267.

The right to counsel belongs to Mr. Beiter – it is his to invoke or to waive. Mr. Beiter has

¹ Of course, if a defendant’s request stems from mental illness or confusion, then the court should not terminate court appointed counsel:

If, when viewing all relevant circumstances, a court concludes a defendant’s equivocal, irrational, or otherwise uncooperative conduct stems from serious mental illness, confusion, or any other condition indicative of a lack of understanding, the court should prohibit the defendant from proceeding *pro se*, even if the defendant has rejected counsel or made an affirmative request to proceed without counsel.

Garey, 540 F.3d at 1268 n.9 (citing *Indiana v. Edwards*, --- U.S. ----, 128 S. Ct. 2379, 2386-87 (2008)).

not asked that a different attorney be appointed to him, but rather that no court appointed attorney be assigned to represent him. While he may not have expressly waived his right to counsel, he has unequivocally expressed his desire that the undersigned not represent him in this matter.

WHEREFORE, in view of the foregoing, counsel for Mr. Beiter respectfully requests that she be permitted to withdraw from the above-styled cause.

Respectfully submitted,

KATHLEEN M. WILLIAMS
FEDERAL PUBLIC DEFENDER

By: s/ Chantel R. Doakes

Chantel R. Doakes
Assistant Federal Public Defender
Federal Bar No. A5500578
One E. Broward Boulevard, Suite 1100
Ft. Lauderdale, FL 33301-1842
(954) 356-7436
(954) 356-7556, Fax
Chantel_Doakes@FD.Org, e-mail

CERTIFICATE OF SERVICE

I HEREBY certify that on August 6, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: *s/Chantel R. Doakes*
Chantel R. Doakes

J:\Beiter, Michael D\Reg 91383-004\Pleadings\mtnto wd.wpd

SERVICE LIST
UNITED STATES v. MICHAEL D. BEITER, JR.
CASE NO. 09-60202-CR-COHN/SELTZER
United States District Court, Southern District of Florida

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Notices of Electronic Filing

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Three Lafayette Centre
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202-418-5531, fax
Attorney for the Government
Notices of Electronic Filing

**Additional material
from this filing is
available in the
Clerk's Office.**