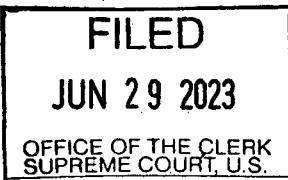


No. 23 - 5074



IN THE SUPREME COURT OF THE UNITED STATES
October Term 2022

JUAN CARLOS VALLES, JR.,
PETITIONER, *Pro Se*

v.

THE UNITED STATES OF AMERICA,
RESPONDENT.

**JUAN CARLOS VALLES JR.'S MOTION TO PROCEED ON PETITION
FOR WRIT OF CERTIORARI *IN FORMA PAUPERIS* and *Pro Se*
With incorporated Appendix**

I, Petitioner Juan Carlos Valles, Jr., *pro se*, pursuant to Rule 39 of the Rules of the United States Supreme Court, file this motion asking leave of Court to proceed on my Petition for Writ of Certiorari *In Forma Pauperis*. As good grounds to support this motion, I state:

This case arises from an incident in the Federal Correctional Institution in Marianna, Florida pursuant to which, while reserving an issue for appeal, I pleaded guilty to assaulting another inmate with a contraband weapon, specifically a “slock” which is a combination lock in a sock.

I took the action I did for the safety of, and to protect an inmate-friend who was vulnerable and elderly. He was being victimized by his bullying cellmate, a

larger, stronger, convicted sex-offender. We attempted to peacefully resolve their problem arising from the abuse and mistreatment of the weaker, elderly inmate, by the bully, including twice-attempted rape. We requested an administrative resolution, but the institution refused to separate the vulnerable inmate from the sex-offender bully, by transferring one of them be housed in a different cell. The incident occurred in December 2020, when I had only one month left to serve before my presumptive release date in January 2021.

Rather than handle this administratively within the BOP, however, which is the usual way these incidents are addressed, the matter was turned over to the United States Attorney. I was prosecuted in the Northern District of Florida. My motion to dismiss on grounds of selective prosecution was denied. I entered a guilty plea and reserved the right to appeal the wrongful denial of my jurisdictional motion to dismiss on grounds of “selective prosecution.” I was sentenced to 60 months by the Northern District of Florida, *United States v. Valles*, Case No. 5:21-cr-005-TKW-MJF.

The record shows that I was first represented by Assistant Federal Public Defender Timothy Halstrom when the magistrate judge appointed the Federal Defender in February 2021. See Appendix A. In June, 2021, the district judge gran-

ted Mr. Halstrom's motion to withdraw, and appointed CJA counsel Valerie Prevatte to represent me. Appendix B.

After my sentencing, Ms. Prevatte moved to withdraw, and CJA counsel Sheryl Lowenthal was appointed to represent me as appellate counsel. She filed an initial brief and a reply brief on my behalf. Without benefit of oral argument, the Eleventh Circuit affirmed my conviction and sentence. Ms. Lowenthal timely filed a petition for rehearing on my behalf. That petition was denied by order of April 17, 2023.

When I asked Ms. Lowenthal to prepare a petition for writ of certiorari, I sent her the issues, arguments, and authorities that I believe must be presented to this Court for its review and consideration. My petition was handwritten on yellow legal pad paper because I have no access to a typewriter or to plain white paper. I only have lined, yellow legal pad paper. Ms. Lowenthal told me that she believes that she cannot ethically file the petition for writ of certiorari that I have prepared and that I wanted her to present to this Court on my behalf. This may be the same reason that my previous two attorneys filed motions to withdraw that were granted.

Accordingly, Ms. Lowenthal has typed the petition for me on a *pro bono* basis, along with this motion, and I respectfully ask the Court to consider my *pro se* petition without payment of fees or costs because I am indigent.

Included in the Appendix at the end of the motion, are copies of the orders of a district judge and a magistrate judge for the Northern District of Florida appointing (A) the Federal Public Defender, (B) CJA counsel Valerie Prevatte, and (C) Sheryl Lowenthal as appellate counsel, and (D) a letter from the Clerk of the Eleventh Circuit Court of Appeals confirming Ms. Lowenthal's appointment in that Court as appellate counsel. Those documents are attached as Appendix A, B, C, and D, respectively.

Most recently I have been in federal prison continuously since December of 2019. Prior to that I was in federal custody for a term that was reduced in December 2017 to 88 months by the Western District of Texas in Case No. 5:10-cr-00049.

The record shows that I began my term of supervised release in June 2019. I violated supervised release in August 2019, and was rearrested. In December 2019 supervised release was revoked and I was sentenced to 18 months' imprisonment. The BOP website showed that the 18-months sentence was scheduled to terminate on January 29, 2021. Unfortunately, because of the present charges arising from the "slock" incident, I was not released on that date.

I was sentenced to a term of 60 months by the Northern District of Florida for the "slock" incident. I have been continuously incarcerated since that time. My current BOP online webpage shows a presumptive release date of May 20, 2025.

I have always had court-appointed counsel. I have no assets, no income, no savings, and no means to retain counsel, or to pay filing fees or court costs. I respectfully ask this Court to grant this motion to allow me to proceed *pro se*, and *In forma Pauperis*. I will try, but I may not be able to have this document notarized.

Signed, sworn to, and affirmed:

Juan Carlos Valles, Jr.

JUAN CARLOS VALLES, JR.

Petitioner, *Pro Se*

Reg. No. 50415-179 FCI Marianna
Federal Correctional Institution
PO Box 7007
Marianna FL 32447

Dated: 7-7-2023

State of Florida
County of Jackson

SWORN TO AND SUBSCRIBED before me on this _____ day of _____, 2023, by Juan Carlos Valles, Jr., who is personally known to me.

Notary Public, State of Florida at Large

(if a notary public is available at FCI and willing to notarize this)

I certify that this motion is typed in Times New Roman 14-point font and that it contains no more than 880 words.

Appendix to the Motion to Proceed IFP

A

Order of February 1, 2021, Docket No. 8
Northern District of Florida No. 5:21-cr-5-MJF
Appointing Federal Public Defender
To Represent Juan Carlos Valles, Jr.

B

Order of June 16, 2021, Docket No. 32
Northern District of Florida No. 5:21-cr-5-TKW
Granting Ass't Federal Public Defender Timothy C. Halstrom's
Motion to Withdraw
And appointing CJA Attorney Valerie Prevatte

C

Order of January 10, 2022, Docket No. 63
Northern District of Florida No. 5:21-5-TKW
Granting CJA Attorney Valerie Prevatte's Motion to Withdraw
And appointing CJA Attorney Sheryl Lowenthal as Appellate Counsel

D

Letter from the Clerk, Eleventh Circuit Court of Appeals

Docket No. 3, January 12, 2022

Appeal No. 22-10069

Acknowledging Order of Appointment of Sheryl Lowenthal
as CJA Appellate Counsel

I certify that one copy of this motion with appendix, and one copy of the petition were mailed to the Clerk of the Supreme Court of the United States, and copies of both were mailed to the Solicitor General on:

(Date) _____

By handing it to (Name) _____

at FCI Marianna for mailing with the United States Postal Service.

Appendix A

Order of February 1, 2021, Docket No. 8
Northern District of Florida No. 5:21-cr-5-MJF
Appointing Federal Public Defender
To Represent Juan Carlos Valles, Jr.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

UNITED STATES OF AMERICA

v.

Case No.: 5:21-mj-6-MJF

JUAN CARLOS VALLES, JR.

ORDER

The above-named Defendant having appeared before the court, and having been examined by the undersigned, and the court having determined from the sworn testimony of the Defendant that said Defendant is qualified for appointment of counsel pursuant to the provisions of the Criminal Justice Act, it is hereby

ORDERED:

The **FEDERAL PUBLIC DEFENDER**, Blount Building, Suite 200, 3 West Garden Street, Pensacola, Florida, telephone number (850) 432-1418, is appointed to represent this Defendant and serve as counsel of record in the above-styled cause. Further proceedings will be held before the United States District Court AS DIRECTED. The Defendant is presently in custody. If a Criminal Justice Act (CJA) panel attorney is selected by the Public Defender as Defendant's attorney, this order

authorizes payment of the CJA attorney for work on behalf of Defendant from the time that attorney was contacted by the Public Defender to take the case and agreed

Case 5:21-cr-00005-TKW-MJF Document 8 Filed 02/01/21 Page 2 of 2

Page 2 of 2

to take

the case, even though that work predicated this order. The pretrial service officer is hereby authorized to provide copies of the Defendant's criminal history to counsel for both parties.

DONE and **ORDERED** this 1st day of February 2021.

/s/ Michael J. Frank
Michael J. Frank
United States Magistrate Judge

Appendix B

Order of June 16, 2021, Docket No. 32
Northern District of Florida No. 5:21-cr-5-TKW
Granting
Ass't Federal Public Defender Timothy C. Halstrom's
Motion to Withdraw
And appointing CJA Attorney Valerie Prevatte

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 5:21cr5-TKW

JUAN CARLOS VALLES, JR.,

Defendant.

/

**ORDER GRANTING MOTION TO WITHDRAW
AND APPOINTING CJA COUNSEL**

Upon due consideration of Defendant's *ex parte* motion to withdraw as counsel of record (Doc. 31), it is **ORDERED** that the motion is **GRANTED**, and

1. Attorney Timothy C. Halstrom shall have no further obligation to represent Defendant in this case, and the Clerk shall terminate him as Defendant's counsel of record in the CM/ECF system.
2. Attorney Valerie Prevatte is appointed as counsel for Defendant.

DONE and ORDERED this 16th day of June, 2021.

T. Kent Wetherell, II

**T. KENT WETHERELL, II UNITED STATES
DISTRICT JUDGE**

Appendix C

Order of January 10, 2022, Docket No. 63
Northern District of Florida No. 5:21-5-TKW
Granting
CJA Attorney Valerie Prevatte's Motion to Withdraw
And appointing CJA Attorney Sheryl Lowenthal
as Appellate Counsel

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

UNITED STATES OF AMERICA,

v.

Case No. 5:21cr5-TKW-MJF

JUAN CARLOS VALLES, JR.,

Defendant.

**ORDER GRANTING TRIAL COUNSEL'S
MOTION TO WITHDRAW AND APPOINTING APPELLATE COUNSEL**

Upon due consideration of defense counsel's motion to withdraw (Doc. 60), it is ORDERED that:

1. The motion is GRANTED, and attorney Valerie Prevatte shall have no further obligation to represent Defendant in this case. The Clerk shall terminate Ms. Prevatte as counsel of record for Defendant in CM/ECF.
2. CJA attorney Sheryl Lowenthal is appointed as appellate counsel for Defendant.

DONE and ORDERED this 10th day of January, 2022.

T. Kent Wetherell, II
T. KENT WETHERELL, II
UNITED STATES DISTRICT JUDGE

Appendix D

Letter from the Clerk
Eleventh Circuit Court of Appeals
Docket No. 3, January 12, 2022
Appeal No. 22-10069
Acknowledging Order of Appointment
of Sheryl Lowenthal
as CJA Appellate Counsel

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

January 12, 2022

Sheryl Joyce Lowenthal
Law Offices of Sheryl Lowenthal
9130 S DADELAND BLVD STE 1511
MIAMI, FL 33156-7851

Appeal Number: 22-10069-G
Case Style: USA v. Juan Valles, Jr.
District Court Docket No: 5:21-cr-00005-TKW-MJF-1

Party To Be Represented: Juan Valles, Jr.

Dear Counsel:

We are pleased to advise that you have been appointed to represent the indigent litigant named above. This work is comparable to work performed pro bono publico. The fee you will receive likely will be less than your customary one due to limitations on the hourly rate of compensation contained in the Criminal Justice Act (18 U.S.C. § 3006A), and consideration of the factors contained in Addendum Four § (g)(1) of the Eleventh Circuit Rules.

Supporting documentation and a link to the CJA eVoucher application are available on the internet at <http://www.ca11.uscourts.gov/attorney-info/criminal-justice-act>. For questions concerning CJA eVoucher please contact our CJA Team by email at cja_evoucher@ca11.uscourts.gov or phone 404-335-6167. For all other questions, please call the "Reply To" number shown below.

Certificate of Interested Persons and Corporate Disclosure Statement ("CIP")

Every motion, petition, brief, answer, response, and reply must contain a CIP. See FRAP 26.1; 11th Cir. R. 26.1-1. In addition:

- Appellants/Petitioners must file a CIP within 14 days after this letter's date.
- Appellees/Respondents/Intervenors/Other Parties must file a CIP within 28 days after this letter's date, regardless of whether Appellants/Petitioners have filed a CIP.
- Only parties represented by counsel must complete the web-based CIP. Counsel must complete the web-based CIP, through the Web-Based CIP link on the Court's website, on the same day the CIP is first filed.

The failure to comply with 11th Cir. Rules 26.1-1 through 26.1-4 may result in dismissal of the case or appeal under 11th Cir. R. 42-1(b), return of deficient documents without action, or other sanctions on counsel, the party, or both. See 11th Cir. R. 26.1-5(c).

Within fourteen (14) days from this date, you must file a Transcript Information Form, as required by Fed.R.App.P. 10(b)(1); a Transcript Information Form is available from the district court clerk. Appellant is required to file and serve copies of the form in accordance with the instructions included on the form. See 11th Cir. R. 31-1(b).

Your claim for compensation under the Act should be submitted within 60 days after issuance of mandate or filing of a certiorari petition. We request that you enclose with your completed CJA Voucher one additional copy of each brief, petition for rehearing, and certiorari petition which you have filed. Please ensure that your voucher includes a detailed description of the work you performed. Thank you for accepting this appointment under the Criminal Justice Act.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Lee Aaron, G
Phone #: 404-335-6172

CJA-1 Appointment of Counsel Letter