

Case No. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2017

MARK PROCTOR,
Petitioner,

vs.

MOTION TO PROCEED
IN FORMA PAUPERIS

THE UNITED STATES OF AMERICA,
Respondent

_____ /

Petitioner MARK PROCTOR, 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 MARK PROCTOR comes to this Court seeking review of a final order of the United States Court of Appeals, Eleventh Circuit, dismissing his appeal for lack of jurisdiction. The record shows that Mr. Proctor entered a guilty plea in the Southern District of Florida to promotion and distribution of child pornography, and in a second, related case to failure to appear. In spite of defense requests to consolidate the two cases for purposes of sentencing, the district court refused. When sentenced on the first, underlying case, Proctor's sentence was enhanced to almost double the original guidelines range, and nearly double the sentence due Proctor's failure to appear. Even though Proctor was sentenced for the failure to appear offense in his original sentencing, a second, consecutive

sentence was imposed for the failure to appear charges, in violation of Proctor's Fifth and Sixth Amendment Due Process rights.

The questions presented before this Court for review in Proctor's petition are the following: (1) Whether in its supervisory jurisdiction over the Courts of the United States, and based upon the unique facts and circumstances in the record, this Court should find that the Eleventh Circuit reversibly erred and abused its discretion in dismissing Mark Proctor's appeal for lack of jurisdiction? (2) Whether the conviction is invalid because the necessary elements for federal jurisdiction were neither listed in the plea agreement nor could they be proven beyond a reasonable doubt? (3) Whether Proctor's constitutional rights were violated when he was punished for the same failure to appear offense in two separate cases, because the total punishment of incarceration was 16 months greater than the statutory maximum for failure to appear as provided in in 18 USC §3146? (4) Whether it was unconstitutional for the probation office to unilaterally alter the terms of the written plea agreement without notice or hearing; the government honored only a portion of the agreement, and the district court overlooked Fed.R.Crim.P. 32?

In this Petition Mr. Proctor asks this Court to exercise its supervisory jurisdiction over the United States Courts to correct any or all of these unfair, unjust, erroneous rulings.

Mr. Proctor was incarcerated since 2005, and was proceeding in his case *pro se* for years when the undersigned was appointed to represent him for purposes of appeal in June of 2017. His financial status has not improved significantly since that time.

He is still proceeding through court-appointed counsel. Accordingly Mark Proctor respectfully requests that he be permitted to proceed with this petition in this Court *in forma pauperis* in light of his continuing indigence and his proceeding through CJA counsel on appeal.

Therefore, Petitioner respectfully prays that this Honorable Court will grant 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 copies of the petition in typewritten form, that are, or soon will be, submitted together with this motion.

Respectfully submitted,

/s/ *Sheryl J. Lowenthal*

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