

No.: _____

In the
SUPREME COURT OF THE UNITED STATES

October Term 2011

CHARLES DAVIS,

Petitioner,

v.

United States of America,

Respondent.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For the Seventh Circuit

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The Petitioner, Charles Davis, through his attorney, Gregory N. Dutch, asks leave to file the attached petition for writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

The Petitioner has previously been granted leave to proceed *in forma pauperis* in the following courts:

1. The Northern District of the Western Division of Illinois.

2. The United States Court of Appeals for the Seventh Circuit.

The Petitioner is currently in the custody of the United States Bureau of Prisons, and has been so since January 27, 2010. Counsel for the Petitioner was appointed under 18 U.S.C. § 3006A.

Dated this 14th day of July, 2011.

MONTIE, BRYANT & DUTCH
Attorney for Charles Davis

Gregory N. Dutch
131 W. Wilson Street, Suite 1104
Madison, WI 53703
Office: 608-251-0505
Fax: 608-251-3104

Counsel for the Petitioner

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PETITION FOR A WRIT OF CERTIORARI

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131 W. Wilson Street, Suite 1104
Madison, WI 53703
Office: 608-251-0505
Fax: 608-251-3104

Counsel for the Petitioner

QUESTION PRESENTED

Does the Fair Sentencing Act of 2010 (The Act) Pub. L. No. 111-220, 124 Stat., 2372 (2010) apply to Charles Davis who committed crack cocaine offenses before August 3, 2010, the date of The Act's enactment, but who pled and was sentenced after the date?

LIST OF PARTIES

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

TABLE OF CONTENTS

Question Presented	4
List Of Parties	5
Table Of Contents	6
Table Of Authorities	7
Index Of Appendices	8
Petition For Writ Of Certiorari	9
Opinion Below	9
Statement Of Jurisdiction	9
Constitutional And Statutory Provisions Involved	9
Statement Of The Case	10
Reasons For Granting The Petition	11
Conclusion	12

TABLE OF AUTHORITIES

CASES

United States v. Bell, 624 F.3d 803 (7th Cir., 2010) 11

United States v. Charles Davis, 11-1202 8, 9

United States v. Douglas, No. 10-2341 (1st Cir., 2011) 9, 12

United States v. Fisher, 653 F.3d 336 (7th Cir., 2011) 9, 11

United States v. Carmelina Vera Rojas, No. 10-14662 (11th Cir., 2011) 9, 11

STATUTES

18 U.S.C. § 3006A 2

21 U.S.C. §841(a)(1) 10

21 U.S.C. §841(b)(1)(B) 11

28 U.S.C. § 1254(1) 9

INDEX OF APPENDICES

Appendix A. Seventh Circuit decision in *United States v. Charles Davis*, 11-1202, decided May 31, 2011.

PETITION FOR WRIT OF CERTIORARI

Charles Davis respectfully prays that a writ of certiorari issue to review the Seventh Circuit decision in *United States v. Charles Davis*, 11-1202, which upheld the Appellant's conviction entered by Judge Frederick J. Kapala in the United States District Court for the Western Division of the Northern District of Illinois.

OPINION BELOW

The Seventh Circuit's final order affirming the District Court's decision and sentence issued May 31, 2011, is App. A.

STATEMENT OF JURISDICTION

The Seventh Circuit affirmed the District Court's decision and sentence. The Seventh Circuit denied the Appellant's appeal. This Petition for Certiorari is timely filed.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

There is a split in jurisdictions. See *United States v. Fisher*, 653 F.3d 336 (7th Cir., 2011) and contrary decisions in *United States v. Douglas*, 10-2341 (1st Cir., 2011) and *United States v. Carmelina Vera Rojas*, 10-14662 (11th Cir., 2011)

STATEMENT OF THE CASE

Charles Davis (hereinafter Davis) was arrested on January 27, 2010 by the Illinois State Police for conduct related to the instant offense. On February 23, 2010 an indictment came down from the Northern District of Illinois, Western Division. Count I charged that on or about November 13, 2009 at Rockford, in the Northern District of Illinois, Western Division, Davis and Vinell Friar knowingly and intentionally distributed a controlled substance, namely approximately 61.1 grams of a mixture containing cocaine base in the form of crack cocaine, a Schedule II narcotics controlled substance, in violation of 21 U.S.C. § 841(a)(1). Count II charged on the same date, Davis knowingly and intentionally distributing a controlled substance. Count III charged that on or about January 27, 2010 in Belvidere and Rockford, in the Northern District of Illinois, Davis knowingly and intentionally possessed with the intent to distribute a controlled substance, namely approximately 117 grams of a mixture containing cocaine base in the form of crack cocaine, a Schedule II narcotics drug controlled substance; in violation of 21 U.S.C. § 841(a)(1). (PSR at p. 1, ¶¶ 5 through 30.)

On August 17, 2010, Davis appeared before the Honorable Frederick J. Kapala and entered a guilty plea to Count III of the indictment. The cause was referred to the Probation Department for the preparation of the Presentence Report. Sentencing was scheduled for December 16, 2010. After a continuation of the original sentencing in which the Court ordered briefs, on or about January 10, 2011, Davis was convicted of Count III, Counts I and II were dismissed. Davis was committed to the custody of the United States Bureau of

Prisons for a total of 290 months. In addition, upon release, Davis will be on supervised release for 10 years. Special conditions of supervision included Davis paying a fine of \$1,000.00 and follow other rules set forth by the Judge and Probation Department. (Tr. 57.)

After indictment but before Davis' plea and sentencing, The Act, enacted by Congress, became law. Although The Act did a number of things, the two things which are relevant for purposes of this case are: First, The Act increased the quantity of crack cocaine necessary to trigger the mandatory minimum penalty provision for drug trafficking offenses in 21 U.S.C. § 841(b)(1)(B). Second, The Act ordered the Sentencing Commission to promulgate guidelines, policy statements, and/or amendments for The Act as soon as possible but in no event later than 90 days after the date of the enactment of The Act.

Davis had requested The Act be applied prior to his plea, at his plea, and prior to his sentence. (Tr. 37, 55, and 57.) All three times Judge Kapala ruled against Davis.

REASONS FOR GRANTING THE PETITION

1. There is a split in jurisdictions.

The Seventh Circuit has upheld The Act will not be applied it retroactively. See *United States v. Fisher*, 653 F.3d 336 (7th Cir., 2011). (The Seventh Circuit has ruled The Act does not apply retroactively to defendants whose offense predated The Act's effective date, *United States v. Bell*, 624 F.3d 803 (7th Cir., 2010).) Contrast that to *United States v. Carmelina Vera Rojas*, No. 10-14662 (11th Cir., 06-24-2011) which holds the opposite: that is if a person is sentenced after the enactment of The Act, it is retroactive. See

also *United States v. Douglas*, No. 10-2341, (1st Cir., 05-31-2011) which held The Act applies to defendants whose offense conduct and adjudication of guilt were prior to the effective date of The Act, November 1, 2010, but whose sentence was after the date.

CONCLUSION

For the reasons stated above, the Court should grant this petition for a writ of certiorari.

Dated this 14th day of July, 2011.

Gregory N. Dutch
Montie, Bryant & Dutch
131 West Wilson Street, Suite 1104
Madison, WI 53703
Office: 608-251-0505
Fax: 608-251-3104

Counsel for the Petitioner