

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 08-20730-CIV-LENARD/WHITE

JULIO CESAR BELLIZIA,

Petitioner,

vs.

WALTER A. MCNEIL,

Respondent.

**ORDER GRANTING PETITIONER'S MOTION TO ENFORCE MANDATE
OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT (D.E. 55)**

THIS CAUSE is before the Court on Petitioner Julio Cesar Bellizia's ("Bellizia") Motion to Enforce Mandate ("Motion," D.E. 55), filed on November 12, 2010.¹ Respondent Walter A. McNeil ("Respondent") has not opposed Bellizia's Motion; however, he has submitted two status reports apprising this Court of Bellizia's state court proceedings. Upon review of the Motion and the record, the Court finds as follows.

On July 14, 2009, this Court granted Julio Cesar Bellizia's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Order Conditionally Granting Petition for Writ of Habeas Corpus, D.E. 32.)² The Court found that Bellizia had demonstrated that the performance of his attorney at his 2002 trial was constitutionally deficient when she

¹ This Motion was originally denied as moot. On December 15, 2010, the Court *sua sponte* vacated the denial as moot. (Order Vacating in Part Order Denying as Moot Motion to Enforce Mandate, D.E. 60.)

² Attached as Exhibit A.

failed to argue that the weight of the heroin allegedly possessed by Bellizia was illegally calculated, ordering Bellizia to be brought before the state court and he be re-sentenced or there be an otherwise appropriate disposition of his case.³ Respondent appealed the Order(Notice of Appeal, D.E. 34) and the Court stayed the relief pending the Eleventh Circuit's decision on appeal. (Order Provisionally Granting Respondent's Emergency Motion to Stay, D.E. 44.) On October 1, 2010, the Eleventh Circuit affirmed the judgment of the Court, issuing its Mandate (D.E. 53).⁴

On November 12, 2010, Bellizia filed the instant Motion, indicating that since the issuance of the Mandate over thirty days prior, no further action had been taken by Respondent, and that he has been incarcerated for ten (10) years for crimes for which the maximum possible penalty is three (3) years. (*See* Mot. at 3.)⁵ On December 13, 2010, Respondent filed a Status Report (D.E. 58), in compliance with the Court's November 29, 2010 Order (D.E.57), wherein he provides the current status of Bellizia's state court proceedings.⁶ Pursuant to the order of Circuit Court Judge Diane Ward of the Eleventh Judicial Circuit, Bellizia was to have been transferred to a South Florida facility on or before December 6, 2010. (Status Report at 2.) However, as of December 13, over sixty days since the issuance of the Eleventh Circuit's Mandate, no counsel has been appointed

³ Bellizia is currently incarcerated, having been sentenced in 2002 to a mandatory minimum term of twenty-five years.

⁴ Attached as Exhibit B.

⁵ Attached as Exhibit C.

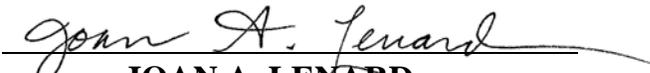
⁶ The Status Report and its exhibits are attached as Exhibit D.

and no date for re-sentencing or other disposition has been set.⁷

Accordingly, it is hereby **ORDERED AND ADJUDGED** that:

1. Julio Cesar Bellizia's Motion to Enforce Mandate (D.E. 55), filed on November 12, 2010, is **GRANTED**.
2. A hearing shall be set for a date no later than December 31, 2010 for either re-sentencing or other appropriate disposition of Bellizia's case consistent with the order of this Court and the Mandate of the United States Court of Appeals for the Eleventh Circuit. At least five (5) days prior to this hearing, counsel shall be appointed to represent Bellizia.

DONE AND ORDERED in Chambers at Miami, Florida, this 15th day of December, 2010.


JOAN A. LENARD
UNITED STATES DISTRICT JUDGE

cc: Chief Judge Joel Brown (via fax)
Harvey Ruvin, Clerk of Court (via fax)

⁷ A copy of the full docket in this action is attached as Exhibit E.