

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

UNITED STATES OF AMERICA

versus

Case No: 3:18-cr-19-HES-JRK

DONJUAN POWELL

**POWELL’S PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

DONJUAN POWELL (“Powell”), by and through his undersigned counsel, William Mallory Kent, pursuant to Title 28, United States Code, Section 2241, petitions this honorable court for a writ of habeas corpus and his immediate release from federal custody.

FACTS AND PROCEDURAL HISTORY

The Court is familiar with the facts and procedural history of this case as a result of the thorough Report and Recommendation (“R&R”) [Dkt. 98] entered by the United States Magistrate Judge on Powell’s dispositive Motion to Suppress [Dkt. 44] and this Court’s own order adopting the R&R. [Dkt. 103]

At the last status conference before this Court, August 28, 2019, the United States conceded that there was no evidence to go forward on the indictment. Assistant United States Attorney Julie Hackenberry further advised the Court that she had requested permission from her superiors in the Tampa headquarters office to file a

motion to dismiss the indictment.

Over two weeks has passed since the Government made that announcement and no motion to dismiss has been filed.

Powell remains in federal custody at the Nassau County Detention Center in Yulee, Florida on the pending federal charge.

ARGUMENT

There is no apparent procedural mechanism for the defendant to compel the Government to file a motion to dismiss under these circumstances, however the Government and Court recognize that the Government cannot go forward with the prosecution of the case given that the Court has entered an order granting a dispositive motion to suppress. Given that the Government has conceded this fact on the record, substantive Due Process entitles Powell to habeas corpus relief.

CONCLUSION

Powell respectfully moves this Honorable Court grant this petition for writ of habeas corpus and order Powell's release from federal custody.

Powell respectfully requests that the Court order an expedited response from the Government to this petition if the Government does not immediately notify the Court that it concedes that Powell is entitled to the requested relief.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 12, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

s/William Mallory Kent
William Mallory Kent