

UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

09-1287

U.S.C.A. - 7th Circuit  
FILED  
MAR 15 2011  
GINO J. AGNELLO  
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DOC. #

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	Appeal from the United
	)	States District Court for
v.	)	the Northern District of
	)	Illinois, Eastern Division
FRANK CALABRESE, SR.,	)	
	)	Case No. 02-CR-1050-4
	)	James B. Zagel
Defendant-Appellant.	)	Judge Presiding

**MOTION TO RECONSIDER ORDER OF MARCH 7, 2011**

Now Comes the Respondent, JOSEPH R. LOPEZ, and pursuant to Federal Rule of Appellate Procedure 27, moves for Reconsideration of the Order Dated March 7, 2011, and, in support thereof, states as follows:

1. The Respondent has been the attorney for Calabrese since January of 2003 when he first visited him at the FPC in Milan, Michigan.
2. On March 23, 2009, Respondent was appointed to represent Calabrese on appeal.
3. On December 14, 2009, the Court ordered the briefing to be suspended and that all parties meet with Don Wall on January 15, 2010.
4. Sometime in January of 2010, Lopez asked John Beal to assist him with the preparation of the brief due to the length of the transcript; and, unknown to Lopez at that time, Calabrese was seeking other counsel.

5. On January 15, 2010, Robert Caplan filed his disclosure statement and met with John Beal. There was confusion at that time as to whether Lopez was to remain in the case due to information protected by the attorney-client privilege.
6. On February 23, 2010, Mr. Calabrese sent a letter to Judge Zagel in the District Court requesting that Mr. Lopez be discharged as his attorney and that Mr. Caplan substitute. A copy of Calabrese's letter is attached to this motion.
7. On March 23, 2010, there was an execution of a search warrant at Calabrese's wife's home. *See* <http://abclocal.go.com/wls/story?section=news/iteam&id=7348966>. After the broadcast of this story, Mr. Caplan received a subpoena for his fees.
8. Thereafter, the District Court did not discharge Lopez. Calabrese did not send his request to this Court but instead directed Lopez to work with Caplan.
9. It was Lopez's understanding that he was to remain in the case as standby counsel to assist Caplan with the issues on appeal and the record. Lopez was Calabrese's trial counsel; and, continuity of counsel was in Calabrese's best interest due to the length of the record and the amount of evidence the government presented against Calabrese. This decision was made by Calabrese and communicated to the parties.
10. There were 14 status reports filed regarding the completion of the transcript.

11. There were several case management conferences with the parties. The last conference was held on August 30, 2010, which is when the briefing schedule was ordered.
12. The appeal had been pending for 19 months before the trial transcript was delivered, which is why the work did not begin until the fall of 2010.
13. The electronic transcript was filed on September 20, 2010.
14. On or about September 21, 2010, the court reporter provided Lopez with a disc of the filed transcripts.
15. Lopez copied the disc of the transcripts almost immediately and sent the disk to Caplan. The transcript was in excess of 8,000 pages. A great deal of the trial was dedicated to prosecuting Calabrese. There were many sidebars and other matters of importance unique to Calabrese's case which were contained in the transcripts.
16. Lopez had many telephone conferences and email exchanges with Mr. Caplan regarding the issues on appeal and the timely filing of the brief. Lopez, at the direction of his client, gathered documents and other materials necessary to prepare the brief and forwarded them to Caplan.
17. Lopez was more familiar than Caplan with the procedural aspects of this case since he was not only the trial lawyer, but also involved in the case prior to arraignment.
18. The Court was concerned why Lopez did not withdraw the delegation and get the work done himself in its Order of March 7, 2011. Lopez did not realize

that the work would not be done until the final February 22 deadline came and went. Mr. Caplan had been sending Mr. Lopez drafts of arguments since January of 2011. Lopez had several telephone conversations with Caplan, and Lopez had no warnings that the brief would not be timely filed. When Lopez realized the brief was not completed, it was too late to do the work himself. Lopez was assured the brief would be timely filed and it was not.

19. The motion for extension was filed late on February 9, 2011 not because of any disrespect for the Court; but, rather, because Lopez was informed by Caplan that the brief was not done after the seven-day period had expired.
20. In retrospect, Lopez should have withdrawn from the appeal. But, in the interest of continuity of counsel and judicial economy, he made a mistake in judgment; and, he now finds himself in this troubling professional position because he wanted to accommodate his client.
21. Lopez is not accustomed to working with other lawyers who do not meet deadlines. Lopez is regretful in this instance. Further, Lopez and Calabrese had an eight-year relationship which should not be terminated because Caplan is tardy with the brief. Lopez did not abandon his client on appeal. He kept his client informed as to each step that was being taken to get the brief completed.
22. It was Calabrese's decision, and not Lopez's, to delegate the brief writing to Caplan. Calabrese's son and main witness against him at trial, Frank, Jr., stated in an interview on Fox 32 News on March 15, 2011, that his father was

a “control freak.” Lopez’s client’s propensity to control put Lopez in a difficult position with this appeal given his client’s demand that Caplan prepare the brief. Without Caplan’s involvement, the brief would have been timely filed by Lopez.

23. This Court stated that Lopez was not fit to be appointed under the CJA. However, Lopez, who was appointed to represent Jose Ortiz in *United States v. Ortiz*, 10-3110, was able to file the opening brief on March 3, 2011, which was 25 days before the due date. Lopez has filed many briefs as an appointed lawyer and has complied with Orders of this Court. Lopez has never ignored an Order of the Court while this appeal was pending. He may have been late in his filings but he kept the court advised as to the developments with Caplan and the filing of the brief.
24. Lopez did not delegate the work to someone else in order to avoid doing it. Lopez was only complying with the letter Mr. Calabrese sent to Judge Zagel on February 23, 2010 and followed the directions of the others.
25. Mr. Lopez had an honest belief that Mr. Caplan was confident to write and timely file the brief. Had Mr. Lopez believed otherwise, he would have worked 14-16 hour days to get the brief completed just as he did during the trial phase of this case.
26. Mr. Lopez is very remorseful that this Court considers his performance in this appeal woeful. Lopez values his reputation highly. He works very hard for his clients and considers it an honor to be appointed by, and practice in

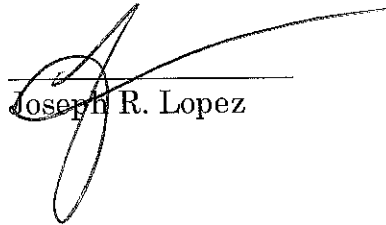
front of, this Honorable Court. Lopez understands the special responsibility he has to his client and this Court in this criminal appeal.

27. Lopez understands that this Court expects an attorney to comply with the rules concerning the timely filing of briefs. Lopez attempted to comply with the rules and inform the court of significant developments that caused a delay in preparing the brief.
28. As a result of this Court's order, Lopez has reassessed the manner in which fulfills his professional obligations when working with another lawyer. This was the first appeal where Lopez did not take the lead in preparing the brief. He has now been provided with opportunity to reform his practice. Lopez must now restore his professional reputation due to the misfeasance of Caplan.
29. If this Court were to put Mr. Lopez back on this case and on the list of persons eligible for CJA appointments, Lopez will not woefully perform again. In the alternative, given Lopez's long-running practice in the Seventh Circuit, perhaps this Honorable Court would consider giving him a temporary suspension from the CJA appointment list rather than a permanent bar.
30. Mr. Caplan has informed Mr. Lopez that Calabrese's brief is now complete. Mr. Lopez has read the brief and it adequately addresses all of the issues on appeal.

31. If the Court will accept the brief, Lopez and Caplan will file a motion requesting that the Defendant-Appellant be re-joined with the others so that the disposition will be expeditious.

WHEREFORE, Respondent prays that this Honorable Court re-appoint him to finish Mr. Calabrese's case, place him back on the list of attorneys eligible to be appointed under the Criminal Justice Act, and take him off the list of persons ineligible to receive more than two extensions in paid appeals.

Respectfully submitted,



Joseph R. Lopez

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February 23, 2010

Judge Zagel  
219 S. Dearborn  
Chicago, IL 60604

Dear Judge Zagel,

I would like to discharge Joe Lopez as my attorney.

I would like Robert L. Caplan to be my new attorney.

I would like Mr. Caplan to get permission to visit me as soon as possible.

Thank you.

Sincerely,

  
Frank J. Calabrese Sr.

Cc: Joe Lopez  
Robert L. Caplan

FRANK CALABRESE  
49955-079. U. 10-D

Medical Center for Federal Prisoners

P.O. Box 4000

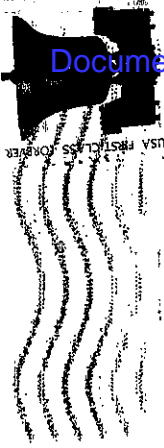
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