

NO.  
IN THE  
SUPREME COURT OF THE UNITED STATES

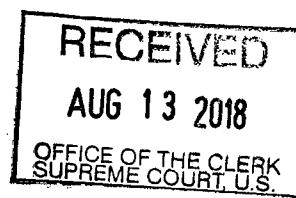
ANTHONY MAYES JUNIOR, Petitioner,

V

UNITED STATES OF AMERICA, Respondent.

PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

ANTHONY MAYES, JUNIOR  
PRO SE  
P.O. BOX 33  
USP-Terre Haute  
Terre Haute, In. 47808



Anthony Mayes  
68259-053  
3/7/18

IIO page 17

QUESTIONS PRESENTED

Whether a pro se litigant's failure to address on direct appeal trial counsel's procedural default of client's fundamental due process rights, for application of mandatory terms of federal statutes, forfeits the claim in collateral proceedings...

Whether district court's failure to address claim presented by pro se litigant in collateral proceedings involving trial counsel's waiver of client's due process rights is precluded from final review.

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Trial counsel's acts and omissions to act resulted in the waiver and forfeiture of petitioner's fundamental due process right to application of the statute's mandated exclusionary rule: the warrant must contain "a particular description of communication sought to be intercepted and a statement of the particular offense to which it relates" In this case the evidence was received in trial in violation of (ii) the order of authorization or approval under which it was intercepted was insufficient on its face.

A pro se litigant's failure to address trial counsel's procedural default on direct appeal remains subject to challenge on collateral review so long as cause and prejudice are clearly established.

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PETITION FOR WRIT OF CERTIORARI  
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FOR THE SECOND CIRCUIT

Petitioner Anthony Mayes Jr., respectfully prays this Honorable Court will issue a writ of certiorari to review opinion of the United States Court of Appeals for the Second Circuit, issued on Dec 14, 2017, affirming the Petitioner's judgment and sentence.

OPINION BELOW

The opinion of the United States Court of Appeals for the Second Circuit for which review is sought is United States v. Anthony Mayes Jr., No. 17-2357 / 17-2362. The unpublished opinion of the United States Court of Appeals for the Second Circuit is reproduced in the Appendix to this petition as Appendix A. The judgment is reproduced as Appendix B. The mandate is reproduced as Appendix C.

## JURISDICTION

The opinion of the United States Court of Appeals for the Second Circuit affirming the judgment of the United States District Court for the Eastern district of New York, was issued on May 18, 2017. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS PRESENTED

The Sixth Amendment violations are advanced as a proximate cause of the ineffective assistance of trial counsel, during trial and pretrial proceedings.

The Fifth Amendment violations occurred by means of the Government's disregard of mandatory language decreed by Congress in the Title III statute. Unchallenged by defense counsel or the lower Court. Further, defense counsel's failure to act in accord with express terms of 18 U.S.C. § 3006A(e), in making application for appointments of expert services.

District Court's failure to address issue properly presented by means of § 2255 motion papers, in accord with provisions of Habeas Corpus statute.

## PROCEDURAL HISTORY

4/28/14 ... Trial Begins [U.S.D.J., Allyne R. Ross, presided]

5/13/14 ... Motion Entered to Dismiss Racketeering Acts 14-20  
Motion Granted Ordered by the Court

5/13/14 ... Jury Verdict ... Anthony Mayes Guilty All Charges

5/28/14 ... Rule 29 (c) Fed.R.Crim.P. Motion for Acquittal  
Rule 33 Fed.R.Crim.P. Motion New Trial

6/30/14 ... Letter/Motion to Judge Ross, by Anthony Mayes, Requesting  
Opportunity To Proceed Pro se.

7/10/14 ... Motion for Rule 29 (c) denied, Rule 33 Motion, denied

7/29/14 ... Interlocutory Appeal Filed by Anthony Mayes

12/23/14 ... Sentences Imposed Life...30 Years Consecutive ...10 Years  
Concurrent and 40 Years Concurrent

12/29/14 ... Notice of Appeal filed

9/15/16 ... Judgment Affirmed ... Notice Interlocutory Appeal

4/7/17 ... 28 U.S.C. § 2255 filed

4/28/17 ... Government's Response to § 2255 filed

5/1/17 ... Mayes Reply To Government

7/28/17 ... Notice of Appeal ... COA denied by District Court  
Rule 22(b) & (b)(2) filed F.R.A.P.

12/14/17 ... Denied by Second Circuit

2/1/18 ... Rule 35 (b)(A) ... Request Rehearing En Banc

2/20/18 ... Mandate of U.S.C.A. dismissed appeals

## STATEMENT OF FACTS

Anthony Mayes was charged with conspiracy to distribute 280 grams or more of cocaine base during Jan. of 2008 thru June of 2010. In violation of 21 U.S.C. §§ 841(b)(1)(A)(iii), and 846, as well as a firearms violation 18 U.S.C. § 924(C), between Apr. 2010 and June 2010. Possession of 28 grams or more of cocaine base with intent to distribute on June 16, 2010, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B)(iii) and 841(b)(1)(C) and 18 U.S.C. § 922(g), felon in possession firearm.

June 6, 2012, a jury acquitted Anthony Mayes, of conspiracy and all related charges, the felon in possession of a firearm, was determined on June 7th 2012, guilty.

A Grand jury indictment was filed on June 7th, 2012, against Anthony Mayes, charging (4) counts of possessing cocaine base, with intent to distribute, between June 1, 2010 and June 10th 2010.

After a number of superseding indictments, trial began on 4/28/14, the Government, presented expert witnesses, ranging from drug chemists, finger print experts, firearms and arson experts, medical examiners, and pathologists.

Moreover, the Government entered the narcotics, guns and money, taken during the warrant execution [M10-670] on 6/16/2010, for first trial. Further, the warrant [M10-670], was issued based upon Title III, warrant approved by U.S.D.J., Jack Weinstein, alleging violations of §§ 841, 843, and 846. [ 18 U.S.C. § 1962(C), had no application in Title III]

Defense counsel, failed to challenge the violation of the statute's exclusionary rule, engaging it by noting the breech of 18 U.S.C. § 2518 (4)(C), antecedent to application of §§ 2518(10)(a)(ii) and (i).

## REASONS TO GRANT

Trial counsel failed to provide effective assistance of counsel in accordance with the qualifications enforced by Sixth Amendment standards.

Trial counsel's deficient performance is evidenced by his failure to challenge the Government's non-compliance with Congressional mandates presented in statutory language of Title III Wiretap statute.

The affidavits/applications and papers reflecting the specific judicial approval of the Title III wiretap orders, do not include any reference to/or for [18 U.S.C. § 1962(C) Racketeering].

Mayes respectfully urges the Court to consider the statute as it does in fact place a substantive limitation on official discretion, thus creating a property interest in the application of the statute.

Mayes respectfully states Title III's statutory language is neither vague or amorphous, the statute imposed a binding obligation on the Government. [18 U.S.C. §§ 2510-2520 et.seq.]

For this record the affidavit and application as well as the Title III warrant listed Anthony Mayes, Jr., as the person for whom the warrant was issued. Therefore creating the privately enforceable right, which is, "strict application of the statutory provisions".

Mayes respectfully attests the immediate prejudice suffered in this case is identified in Mayes's exhibit G-5, the A.U.S.A.'s admission that the "jury was persuaded" by the wiretap evidence of the original proceedings, to make the findings on the racketeering, § 1962(C).

Mayes respectfully avers that attorney Anthony Ricco, was appointed by means of a court of competent jurisdiction, in concert with the Criminal Justice Act ("CJA").

Mayes respectfully attests that during the course of pretrial and trial proceedings, Mayes repeatedly, though unsuccessfully urged counsel Ricco, to motion the Court in compliance with the Criminal Justice Act, 18 U.S.C. § 3006A(e), for ex parte proceedings to obtain approval for commissioning select expert services.

" The American Bar Association ("ABA"), guideline for appointment and performance of counsel ... calls for retention of expert witnesses when necessary or appropriate for preparation of the defense, adequate understanding of the prosecutor's case." ..." We long have referred [ to these ABA Standards ] as guides to determining what is reasonable."

Wiggins v Smith, 539 US 510,524 (2003)

Mayes was in fact seeking the assignment of a non-partisan investigator, a cellular expert, and an independent lab expert, the last in accord with fundamental rights specified via Fed.R.Crim.P. 16(a)(1)(c).

Mayes respectfully announces, that attorney Ricco, evaded addressing the Court, regarding Mayes's requested ex parte hearings, for the Court's consideration of requested expert services required for preparation of an adequate defense.

"...We observe that 18 U.S.C. § 3006A(e), the analogous appointment provision of the Criminal Justice Act, has been interpreted as virtually guaranteeing that decisions on expert appointment motions will be made as the statute requires. After the appropriate inquiry in an ex parte proceeding." United States v Chavis, 476 F2d 1137,1141-42 (D.C. Cir. 1973).

Mayes respectfully presents Mayes' exhibit D, which is listed as court's document 412-3 page ID #4729. Reflecting the Court's discussion of the Government's motion to preclude an testimony related to prior judgment of acquittal as inadmissible hearsay. The Court noted the motion was unopposed by the defendants, then approved the motion.

The Court's order [at lines 14-17], ordered defense counsel not to elicit information regarding identities, of defendants, neither the charges, nor the verdicts reached in the prior trial.

Mayes respectfully submits in accord with the Federal Rules of Evidence 803(8)(C), " the public records exception to the hearsay rule which allows a criminal defendant to introduce factual findings resulting from an investigation made pursuant to authority granted by law"...

United States v Ramirez, 894 F2d 565,571 (2d Cir. 1989)

Mayes respectfully states ..."The Federal Rules of Evidence are a Legislative enactment, we turn to the "traditional tools of statutory construction..."Beech Aircraft Corp. v Rainey, 488 US 153,163 (1988); INS. v Cardoza Fonseca, 480 US 421,446 (1987), "...in order to construe their provisions."

Mayes respectfully states the omission to act, was the manner in which attorney Ricco, conducted the defense, through-out the second trial. The record of procedural failures shall be established herein, while those errors do not make representation ineffective by the Sixth Amendment standards, it clearly repeatedly worked to Mayes' actual and substantial disadvantage.

Mayes respectfully provides exhibit F, which is in effect court's document at page ID #4707, addressing the probable cause for a Franks' hearing related to suppression of wiretap evidence.

Mayes respectfully offers attorney Ricco's docket entry 44, filed on 5/30/13, listed as motion to Dismiss on Double jeopardy Grounds, Suppression of Wiretap Evidence, *inter alia*...

Mayes respectfully says, attorney Ricco's motion # 44's attempt to dismiss on double jeopardy grounds, in the case at hand serves to corroborate the degree of ineffective representation delivered by the defense counsel in this case.

Mayes respectfully submits the Blockberger elements test is matter of hornbook law, ..."Where the same act or transaction constitutes a violation of two distinct statutory provisions, each provision requires proof of a fact which the other does not." Cf. United States v Dixon, 509 US 688,702 (1993).

Mayes respectfully suggests that attorney Ricco's focus would have served better purpose in proving the two claims did arise from the same nucleus of operative facts, that is the underlying facts were related in time, space, origin, and motivation...Cf. Lawlor v Nat'l Screen Serv. Corp., 349 US 322,329 (1955) "Res Judicata may be a defense in a second prosecution, that doctrine applies to criminal as well as civil proceedings. " Sealfon v United States, 332 US 575 (1948).

Mayes respectfully tenders ..."Allowing a second jury to reconsider the very issue upon which the defendant has prevailed serves no valuable function. To the contrary, it implicates concerns about the injustice of exposing a defendant to repeated risks of conviction for the same conduct

and to the ordeal of multiple trials, that lie at the heart of the double jeopardy clause. citing United States v Mespoule, 597 F2d 329, 337 (2d Cir. 1979)(citing Green v United States, 355 US 184,187-88 (1957) United States v Duffy, 188 F.Supp2d 281,286 (2d Cir. E.D.N.Y.2002) The Honorable Fredrick Block, U.S.D.J., presided...affirmed by United States v Duffy, 40 Fed.Appx.637 (2d Cir. 2002)

..."the Government is free,...to charge a defendant with new crimes arising out of the same conduct, "but it may not prove the new charge by asserting facts necessarily determined against it on the first trial." United States v Kramer, 289 F2d 909,916 (2d Cir. 1960).

Attorney Anthony Ricco, failed to challenge admission of wiretap evidence which served to actually prove racketeering act 23 and count 15, of the new indictment. Significantly no application for § 1962(C) under Title III was presented to Judge Weinstein, thus the statute's mandatory prerequisites were disregarded by the government and defense counsel. Noteably one of the initial requests for appointment of expert services, was precisely for non-partisan investigator, for the determination of the date of judicial authorization for extentison of wiretap order to include racketeering acts subsequently charged by superceding indictments. ( See Pro se filing at K-2 entry #32 )

Mayes respectfully states the failure to challenge circumvention of the mandatory provisions of Title III wiretap statute resulted in the waiver and subsequent forfeiture of Mayes's substantive and procedural rights afforded to all parties served under the terms of the wiretap statute at 18 U.S.C. §§ 2510-2520 et.seq.

Mayes respectfully provides [attached hereinafter appendix], copies of the affidavits authored by FBI Special Agent Salter. These papers were initially presented in order to allege probable cause for the applications for the Title III Wiretap warrants. Based largely upon information supplied by drug addict informant, who executed (7) seven controlled buys from Antoine Mayes. Mayes's exhibit M1 pg 7-19 and exhibit M2 pg 6-14.

It should be noted the Honorable Jack Weinstein, U.S.D.J., E.D.N.Y., signed approvals of the Title III warrant applications. F.N.#1

Mayes respectfully declares that his express purpose for insisting counsel move the Court for designation of autonomous investigator was in order to ensure an accurate resolution regarding exact filing date of signed judicial approval for the extention of the existing Title III wiretap warrants which ostensibly enabled the inclusion of purported claims of Racketeering acts, as defined in 18 U.S.C. § 1962. The discovery failed to produce new affidavits and applications, for the new allegations advanced. Prominently the language of the controlling statute is clear and unambiguous, i.e., 18 U.S.C. §§ 2510-2520 .

" § 2518(4) : Each order authorizing or approving the interception of any wire, oral, or electronic communication under this chapter shall specify-(C) a particular description of the type of communication sought to be intercepted and a statement of the particular offenses to which it relates." ...

---

#1 (Case #10-cr-473 (ARR)), See Docket Sheet Entry #138, filed pro se by Anthony Mayes, to Judge Weinstein, Questions regarding Title III warrants affidavits/applications and subsequent approval by the Court.

Mayes respectfully states as a proximate cause of the jury's verdict and the findings of the presiding judge below, on 1/2/14, the result was in effect defacto elimination of the alleged basis of probable cause advanced for Title III warrants by means of affidavits and applications presented for judicial approval prior to issuing warrants.

Mayes respectfully moves Mayes exhibit G 1-10 illustrating the Government's response to Anthony Mayes's § 2255 motion papers addressing case # 12-cr-385 (ARR) and Civil No. # 17-2198 and 17-2200 (ARR), filed on 4/28/17. In pertinent part: " ...The government introduced evidence of intercepted telephone calls wherein [Anthony Mayes] explicitly discussed his narcotics distribution activites [with other enterprise members]. The jury found this evidence persuasive, finding that the Government had proved Racketeering Act twenty-three and count fifteen beyond a reasonable doubt." It should be noted that A.U.S.A., Richard M. Tucker, is listed as advancing the above depicted document as Sworn to the Court. [See exhibit G-5 ]

In accord with the Second Circuit in Figueroa v Mazza, 825 F3d 89, 107 (2d Cir. 2015)... "defining Judicial admissions as "formal concessions in the pleadings ... by a party or counsel that have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact."

Cf. Gibbs v CIGNA Corp., 440 F3d 571,578 (2d Cir. 2006) "Facts admitted in an answer, as in any pleading, are judicial admissions that bind the defendant throughout ... litigation."

Cf. Federal Rules of Evidence 801 (d)(2)(C)

Mayes respectfully declares the record attached hereinafter establishes, "the wiretap evidence" from the previous trial was moved by the Government into evidence subsequent to the district Court's grant of the unopposed motion. [See Exhibit E]

Mayes respectfully submits the jury's findings on the racketeering act (23) count (15), were unambiguously described within the terms of the A.U.S.A.'s responsive pleadings.

Significantly the Court in exhibit N, explicitly notes the fact that "the jury would have based its conspiracy acquittal on the government's failure to prove an unlawful agreement." (Also see *Footnote 1-2*).

Mayes respectfully advances in pertinent part: " 18 U.S.C. § 1962(C), ' It shall be unlawful for any person employed by or associated with any enterprise engage in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.' "

Mayes respectfully presents Mayes' exhibit I, exposing the third page of A.U.S.A. Carter Burwell's sworn request for a Title III, 10 day extention in accord with 18 U.S.C. § 2518(f)(5), the extension was signed as granted on 6/15/10, by the Honorable Jack Weinstein, U.S.D.J., for the E.D.N.Y.

Mayes respectfully asserts the order's terms conspicuously, states " the subject telephone has been and is being used to facilitate the engagement in unlawful activities, violations of 21 U.S.C. §§ 841, 843, and 846..." The statutes which are pinpointed by the order fail to make any mention of Racketeering under 18 U.S.C. § 1962(C).

Mayes respectfully suggests: "The essential safeguards of Title III include two (2), " the warrant must contain " a particular description of communication sought to be intercepted and a statement of the particular offenses to which it relates."

United States v Heatley, 1998 Dist. Lexis 15207 (2d Cir. Dist.)

opinion by the Honorable Sonia Sotomayor

Mayes respectfully reminds the Court, of the position taken by the Court, in United States v Giordano, 416 US 505,528 (1974) ...

" we are confident that the provision for pre-application approval was intended to play a central role in the statutory scheme and that suppression must follow when it is shown that this statutory requirement has been ignored."

Title III contains its own exclusionary rule, in pertinent part: at §§ 2515 : "Prohibition of use as evidence of intercepted wire or oral communication." "Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, ... if the disclosure of that information would be in violation of this chapter." ( 18 U.S.C. §§ 2510 thru 2520 et seq. ). Giordano @524

Mayes respectfully declares, as he has maintained through the proceedings below, that the substantive and procedural rights granted by and thru the statutory constraints, addressed at § 2518(10)(a)(i)(ii) " Any aggrieved person in any trial, hearing or proceeding in or before any court, ... may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom on the grounds that:

- (i) " the communication was unlawfully intercepted "...
- (ii) " the order of authorization or approval under which it was intercepted is insufficient on its face."

Mayes respectfully submits the discovery papers as produced below provided no affidavit, nor application identifying racketeering under 18 U.S.C. § 1962(C). The Government's failure to provide amended documents to the district Court for approval, would render the warrant illegal under section (i) above.

However, perhaps insufficient on its face is the nature of the warrant, as a result of the Government's failure to act in compliance with the explicit terms of the statute.

Mayes respectfully states as the record below will confirm via the district court's docket sheet entries, at exhibits K1 & K2, Mayes's repeated pro se entries, serve to establish Mayes has at all times been attempting to preserve and employ his fundamental rights. To that end Mayes's filings including docket entries at #172 and #176 each address the ineffective assistance of counsel, which attorney Ricco's acts and failures to act actively demonstrated.

Mayes respectfully offers when Mayes approached Judge Amond, by means of filing pro se motions, the single purpose was to preserve whatever, rights Mayes, had left, attorney Ricco's failure to move the court for appointments of non-bias, expert services, concerned Mayes, greatly.

Mayes respectfully states as a proximate cause of trial counsel's misrepresentation of facts and misstatements of law, Mayes forfeited judicial proceedings to which he was otherwise entitled under the proviso's of 18 U.S.C. § 3006A(e), i.e. ex parte hearings for appointments of select expert services, in order to prepare an adequate defense.

Trial counsel Anthony Ricco, waived and subsequently forfeited Mayes's substantive and procedural rights identified by the express language presented in two Federal statutes, i.e., 18 U.S.C. §3006A(e) and 18 U.S.C. §§ 2510 - 2520 et.seq.

Trial counsel's failure to act did result in the procedural default of Mayes's fundamental due process rights attached to the statutes addressed above.

Mayes respectfully submits that as a result of the district court's failure to address all the issues presented demonstrating the violations of fundamental constitutional rights, filed within the § 2255 motion papers, Mayes suggests that the (Eleventh Circuit's) holding in Clisby v Jones, 960 F2d 925,936 (11th Cir. 1992) En Banc, should be applied to the instant case.

CONCLUSION

For all of the foregoing reasons together with issues presented properly below, Mr Mayes, respectfully prays this Honorable Court, grant relief as sought, that is, vacation of convictions and sentences, obtained in violation of rights provisioned under the Fifth Amendment's Due Process Clause, and the Sixth Amendment to the United States Constitution. Remand Mayes, back to the district court, to address whatever proceedings may be deemed appropriate.

DATE: 3/7/18

Respectfully submitted

Anthony Mayes Jr.  
Anthony Mayes, Jr.

VERIFIED DOCUMENT

I, Anthony Mayes Jr., certify and attest that all of the foregoing

statements made by me are true and correct to the best of my personal knowledge and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to the penalty for perjury under (28 U.S.C. § 1746).

DATE: 3/7/18

BY:

Anthony Mayes Jr.  
Anthony Mayes, Jr.



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