

18-6597

No. _____

U.S.
FILED

SEP 11 2008

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

JAZSMINE JOSEPH — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FIFTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JAZSMINE JOSEPH
(Your Name)

FCI ALICEVILLE
(Address)

PO BOX 4000, ALICEVILLE, AL 35442
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. DID THE LOWER COURT ERR IN ITS DECISION, AS IT RELATES TO WHAT IS REQUIRED TO PROVE A CONSPIRACY CHARGE IN THE SEX TRAFFICKING OF A CHILD COUNT AND §2?
2. DID THE LOWER COURT ERR IN ITS DECISION TO UPHOLD THE DECISION WHERE EXPERT OPINION AND TESTIMONY, WAS NOT ALLOWED TO BE REBUTTED BY THE DEFENDANT HERSELF, BY LIMITING THE DEFENDANT'S TESTIMONY, DENYING HER RIGHT TO CONFRONT OR MITIGATE?
3. DID THE COURT ERR IN ITS DECISION TO STRIKE RECORD OF DOMESTIC VIOLENCE, WHERE SAID VIOLENCE COULD SHOW A PROPENSITY TO REFRAIN FROM CONTACTING THE POLICE, AND TO UNWILLINGLY AND UNKNOWINGLY, PARTICIPATE IN THE ALLEGED CONSPIRACY?
4. DID THE LOWER COURT ERR IN ITS DECISION, AS IT RELATES TO BURDEN OF PROOF AS IT RELATES TO PROVING THE SEX TRAFFICKING CHARGE, WHERE MINOR VICTIM TESTIFIED THAT DEFENDANT WAS HER FRIEND, AND DID NOT FORCE HER OR INDUCE HER TO PROSTITUTE HERSELF?

LIST OF PARTIES

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF AUTHORITIES CITED

CASES

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STATUTES AND RULES

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

[] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. §2

18 U.S.C. §1591

18 U.S.C. §1594

18 U.S.C. §3231

28 U.S.C. §1291

28 U.S.C. §3742(a)

UNITED STATES AMENDMENTS

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STATEMENT OF THE CASE

ON FEBRUARY 4, 2016, JOSEPH ALONG WITH ANOTHER COHORT, WERE CHARGED WITH A MULTI-COUNT CONSPIRACY, ALLEGING VIOLATIONS OF SEX TRAFFICKING STATUTES. JOSEPH, ELECTED TO GO TO TRIAL, WHERE A JURY OF HER PEERS, RETURNED A VERDICT OF GUILTY ON BOTH COUNTS. THE COURT SENTENCED THE DEFENDANT TO 262 MONTHS IN CUSTODY, TO BE FOLLOWED BY FIVE YEARS OF SUPERVISED RELEASE. THE DEFENDANT CHALLENGES THE LEGALITY OF HER CONVICTION, QUESTIONING WHETHER THE GOVERNMENT MET ITS BURDEN TO CHARGE/CONVICT JOSEPH OF THE HEREIN CHARGES, AND WHETHER OR NOT THE COURT VIOLATED HER DUE PROCESS AND FIFTH AMENDMENT RIGHTS, WHERE NOT ACCORDING HER THE OPPORTUNITY TO REBUT/MITIGATE THE TESTIMONY OF A DETECTIVE, THAT THE GOVERNMENT USED AS AN EXPERT WITNESS. THE COURT'S REFUSAL TO ALLOW JOSEPH TO EXPLAIN OR GIVE HER VERSION OF WHAT SHE WAS THINKING AND WHAT SHE BELIEVED, VIOLATED HER RIGHT TO TESTIFY AND DEFEND HERSELF.

THE ACTIONS OF THE COURT CONTRADICT MANY A HOLDING HANDED DOWN BY ITS SISTER COURTS, AND THIS HONORABLE COURT. IT IS JOSEPH'S BELIEF THAT WITHOUT INTERVENTION FROM THIS COURT, A MISCARRIAGE OF JUSTICE WILL GO UNCURED, AS JOSEPH CLAIMS ACTUAL INNOCENCE. JOSEPH IS NOT REFUTING THAT A CRIME OCCURRED. WHAT SHE STATES, AND ADAMANTLY STANDS BY, IS THAT SHE, A VICTIM HERSELF WAS UNCONSTITUTIONALLY CONVICTED OF A CRIME THAT SHE DID NOT COMMIT. NUMEROUS AMENDMENT VIOLATIONS HAVE OCCURRED HERE, AND JOSEPH WILL SHOW THAT HER ARGUMENT, IN THE LOWER COURT, AND HERE, MEET THE REQUIRED THRESHOLD; TO CONTINUE WITH FURTHER PROCEEDINGS.

REASONS FOR GRANTING THE PETITION

When Congress enacted legislature, it was with the intention that any factor causing a deprivation of liberty, be handled via due process. It was never the intention for Judges/Courts, to use their sole discretion based on prospectus. In retrospect, due process mandates that all factors are soluble and not transparent. Joseph will show that the lower courts, with their decisions, violated her basic amendment rights. The district court, not allowing the defendant to speak freely, while giving her testimony. Limiting her statement, yet allowing the government witness to give his testimony, uninterrupted, shows a bias. Telling the jury, who asked whether or not they could consider what she stated on the stand in reference to being domestically abused, the answer no, as it had nothing to do with the question, and yet it could have been raised, as it would have shown a diminished capacity. Where the government clearly did not prove its case, as even the alleged victim, as she relates to Joseph, testified that Joseph did not force or induce her to prostitute herself, and, where she considered Joseph a friend.

There must be recourse to what is extraordinary, when what is ordinary fails. There are too many doubts, and not enough convincing proof for this conviction to stand. The courts opinions and judgement contradict what this Court stands for, and has decided in cases past, having an impact on the hereto case. Due to this, whenever there is an interpretation doubtful as to liberty, the decision must be in favor of liberty.

THE COURT'S DECISION TO LIMIT JOSEPH'S TESTIMONY CONTRADICTS THE HOLDING IN U.S. v (GREGORY) THOMAS, 114 F.3d 228 (D.C. Cir 1997)

Joseph, while testifying, emotionally testified under Oath, that she was continuously beaten, and beaten, in fact, actually having an emotional moment. The court's decision, to not allow the testimony, and having her refrain from explaining

what and why she was making those statements, violated her right to counter and negate what was said previously, by the government's 'expert' witness. The Court in Thomas, held that limiting cross-examination amounts to abuse of trial court discretion. If the result is prejudicial to the substantial rights of the defendant, which it was, then reversal is required, where it was in Thomas. The ruling of the lower court also contradicts that of ISLER V U.S., 731, A.2d 837 (D.C. 99) where the Court reversed where cross-examination bias was improperly curtailed.

A defendant going through criminal proceedings, has the right to defend his/her self, by testifying, making statements, seeking affidavits, seeking witnesses, etc, etc. There is no time limit on testimony. The court did not have the constitutional right to limit Joseph's testimony, and did not have the right to advise the jury to not use anything said in reference to domestic violence, in its deliberation. This action contradicts the holding in PUGH, 436 F.2d at 225, where 'extensive questioning on theory of mistaken identification should have been permitted, even though counsel admitted having no factual foundation for the questions. In other words, Joseph states that even though the domestic violence claim was not raised prior, the fact that she raised it on the stand, raised an affirmative defense, required her to establish by a preponderance of evidence, that she was under duress, when she did the acts that inadvertently made her an unknowing and unwitting part of a conspiracy. To limit her response, and then to tell the jury when deliberating, to basically, 'ignore' what was said, was not only unconstitutional, but also unjust.

By upholding this conviction, the lower court contradicted the ruling in STATE V BAXLEY, 73 F.3d 668 (HAW 2003)

The fact that an affirmative defense is raised does not relieve the prosecution of its burden. The government did not prove their case. Counsel should have remained

alert to possible burdens such sentencing considerations place on the defendant's constitutional right to testify.

The burden of proof at trial of a criminal case is on the prosecution to prove each and every element of the crime charged beyond a reasonable doubt. This standard is the highest jurisprudence, surpassing the less stringent standards of proof by a preponderance. This Court in IN RE WINSHIP, held that this highest of standards was constitutionally required in criminal cases, in that it was essential to due process and fair treatment.

The victim in this case, testified that Joseph was her friend, and never tried to induce or force her to prostitute herself. In fact, Joseph tried to encourage her to do better. To stop selling her body. To want to do better with herself. When the young lady needed someone to pick her up, or just talk to, it was Joseph. The government might say that this showed nothing, as she did not return her to her grandfather's home, or call him and let him know where she was. Well, it showed a person, who was trying to be a friend, but was limited in her ability, as she was physically abused by her children's father. As she was not allowed to explain this, and prohibited from speaking further for the court and jury to here her version of facts, relating to why she did not contact authorities or family members, the outcome of the case was prejudiced, and the lower court striking her testimony in its entirety, was nothing short of a violation of her amendment rights.

There isn't any issue as to a minor being involved in prostitution. When she was detained, she was infact prostituting herself. (Joseph was not alleged to be involved in this instance. What the government was required to prove that Joseph overwhelmingly, deliberately set out to conspire with another person, and use this minor as a way and means to solicit money, through sexual acts.

The government did not do this. Joseph attempted to explain her abuse. Being scared to not comply with her abuser, as it relates to allowing him to use her identification and other legal documentation, to rent rooms, and place ads. Referring customers back to her phone to secure deals. The court cannot say without a doubt that the jury may have considered her diminished capacity claim, as it would have been applicable to knowing and intentional crime, but would have took away the deliberate intent, which was needed to convict under the statute. See State v DELibero, 149 N.J. 90 692, A.2d 981, 984 (NJ 99).

The government did not prove its case beyond a doubt, as clearly her testimony alone, negated mens rea, and offered another theory on purposeful, knowing and reckless conduct. The decision of the lower court contradicts this axiomatic holding, held in many cases out of many circuits. See Atkins v Virginia 536 US 304, 122 SCT 2242 (2002), where diminished capacity lessens moral culpability.

Joseph needed only to show that the district court's actions were questionable, and, if not for its actions, the government would not have proven their case, as the victim, testified that Joseph was not the person responsible for her being prostituted, and Joseph was the one who tried to be a friend, to help her. Joseph showed this, and for the Fifth to deny relief, contradicts Miller-El, v Cockrell, 537 US 322 (2003 SCT).

This Court held: "Fifth Circuit had eluded (2) seperate stages of the process-determination whether to issue a COA and the assessment of the merits (id at 335-36). Deciding the substance of an appeal in what should only be a threshold inquiry, undermines the concept of a COA." id at 342. A claim can be debateable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail.

The fact that the jury asked whether or not they could consider what Joseph said on the stand, in reference to domestic violence, shows a propensity that they might have considered her a victim as well, and not guilty of deliberate intent. Joseph met that threshold, and the Fifth's refusal to acknowledge as much, is a violation of due process. In an offense, the will and not the outcome is regarded-voluntas in delictis non exitus spectatur.

This decision affirmed by the district court contradicts the general accepted holding in Pinkerton v U.S., 328 US 640 66 SCT 1180.

This Court held in Pinkerton: " §853-The plain text and structure of §853 leave no doubt that Congress did not as the government claims, incorporate the principle that conspirators are legally responsible for each other's foreseeable actions in furtherance of their common plan. Joseph, worked two legal jobs. She, was trying to better herself. Establish a business, maybe acquire further education in the near future. Her focus was on herslef. Work, take care of her family, back to work. She did not have the time or the intent to inquire about what her cohort was doing. She did not profict from the spoils. She didnt handle day to day appointments. She wasnt aware of what was going on every minute of the day, as it relates to the minor. She was working. If this offense affected her financially, then why slave away to two jobs, and take care of the family in between times. Why not quit the jobs, and hire a nanny, a maid? Because she couldnt. As aforementioned, only her name and identification was used in furtherance of this crime, and for that, she received a sentence reserved for those repeat offenders. For those who take lives. For those who ruin society with a substantial amount of narcotics. It just doesnt make sense, for the lower court to not even consider her claims, especially where t his Court has reiterated that not all conspirators are equal.

Lastly, the lower court's decision contradicts the holding in, In re L.A. V,
578, A.2d 708, 710 (DC 1990).

The Court found that "mere presence insufficient, although respondent knew of the criminal activity. Also, in Mayfield v U.S., 650, A.2d 1249, 1254-55 (DC 95), the Court held: " co-defendants need not be convicted of identical offenses. One may be convicted as an aider and abettor for a lesser-included offense, even if the principal is convicted of a greater offense. Joseph's alleged role in this offense was minor, and involuntary. The government overreached with convicting her in the same capacity as the principal. She was not on location, she wasnt physically present at any time. §2 to the instant offense just isnt plausible, and has not been proven.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joannine Joseph". The signature is fluid and cursive, with "Joannine" on the top line and "Joseph" on the bottom line, which is slightly curved.

Date: 8/30/18