

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2017

IN: RE HAROLD BERNARD MASON

HAROLD BERNARD MASON

Petitioner,

v.

Vickie Churchman
Flint RiverQuarium Inc., et. al.,

Defendant(s),

Writ of Mandamus to the
United States Supreme Court



Harold B. Mason, (Pro se)

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March 15, 2019

Date

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CERTIFICATE OF GOOD FAITH

Plaintiff hereby certifies that this Petition for Mandamus is restricted to grounds specified of the Rules of the Supreme Court and is presented in good faith and not for delay.

JURISDICTIONAL STATEMENT

This court's jurisdiction is invoked upon Article III, sec. 2 and Amendment VI of the U.S. Constitution
Federal Statute U.S.C. 28-1331 thereof U. S. Supreme Court Rule 44 –
28 U.S.C. 2403(a) may apply Von Hoffman v. City of Quincy, 4 Wall. 535,552. –

Thereof Amendment XIV of the U.S. Constitution Due process and equal protection under the law as well as Amendment V of the U.S. Constitution being Due process under the law

OPINIONS BELOW

Petitioner respectfully prays a writ of mandamus issue to review the judgments below.

The opinion of the U.S. District Court, Middle District of Georgia appears at Appendix A

The order to dismiss Rehearing in the U.S. District Court, Middle District of Georgia appears at Appendix – B

The opinion of the U.S. Court of Appeal Eleventh Circuit appears at Appendix - C

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HOW THE PETITION WILL AID THE COURT

Comes now this Petition serves to aid the court in establishing the national importance and precedence in securing current and future proceedings including directly AND indirectly the legal standing of spoliation, its importance in application, terminology and euphemism as applicable in laymen's terminology.

It aids the court in reviewing evidentiary review directly affected by the following rules:

Fed. R. Evidence 102. Purpose

Which is of national importance thereof expounding on how abusive influence and affluence is, and how it can pervert and blind the law into further violation of the Constitutional Rights of Amend. VIX, Due process, thereof procedure(s) followed - *Mathews v. Eldridge* (1976)

This is in particular in NOT allowing a complaining/main defendant to participate in the hearing process in an administrative hearing or court Civil Suit procedure.

Rule 201. Judicial Notice of Adjudicative Facts

Is a matter of national importance thereof expounding on how abusive influence and affluence is and how it can pervert and blind the law into further violation of the Constitutional Rights of Amend. VIX, Due process, thereof substantive facts of:

1. Not holding opposing counsel to sanctions for detrimental adverse actions
2. Not compelling the main personnel of complaint and lawsuit to participate
3. Not compelling company personnel to produce documents of discipline

I do understand an unfavorable predisposition can happen and subject to be characterized as 'bias' or 'prejudice' requiring recusal because, it is very much evident with having a scathing review and hearing on retro evidence that should have been considered spoliation from the facts adduced or the events occurring, which explains what some courts have called the -'pervasive bias exception' to the extrajudicial source doctrine. *Liteky v. U.S.*, 510 U.S. 540 (1994), at 551.

Section 455(a) of Title 28 of the United States Code

ISSUES PRESENTED

Whereas the matter is limited to controlling intervening circumstances of obstructing justice, which did in fact occur to manipulate decision making Whereas not filing, the destruction of or discarding of key information, actions committed does in fact directly affect the Decision making with consequential affects and violates due process and equal protection under the law.

18 U.S. Code § 1519 - Destruction, alteration, or falsification of records,,,,

In Phillips v. Harmon, 297 Ga. 386, 774 S.E.2d 596 (2015), the Georgia Supreme Court broadly expanded the scope of a potential litigant's duty to preserve evidence

18 U.S.C. § 1505, - The “proceeding” mentioned in paragraph 4 of § 1505 is referred to in paragraph 1 as “any proceeding pending before any department or agency of the United States”. What constitutes a “proceeding” within the meaning of § 1505 is a question of law which must be determined by the Court. *United States v. Fruchtman*, 421 F.2d 1019, 102

FEDERAL QUESTION

Did the court have a duty to address the matter of spoliation as well the content of the 250 page Discovery that the acting attorney, C. Jason Willcox, and the defendants released, if so was the court to revisit Flint RiverQuarium I, because of NOT presenting the defendant of complaint as well sanction Attorney Willcox for such exclusion(s) in an administrative hearing and Lawsuit citing in particular Flint RiverQuarium I, ancillary to this Flint RiverQuarium II:

18 U.S. Code § 1512 - Tampering with a witness, victim, or an informant

a)

(B)

prevent the production of a record, document, or other object, in an official proceeding;

(2)

(B) cause or induce any person to—

- (i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;
- (ii) alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official proceeding;
- (iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or
- (iv) be absent from an official proceeding to which that person has been summoned by legal process;

BACKGROUND

Mason introduced this case as Flint RiverQuarium II showing adverse legal action based upon the defendants actions during the lawsuit that was consequential to fair hearing as discrimination lawsuit against Flint RiverQuarium II (FRQ II) in the initial lawsuit being Flint RiverQuarium I (FRQ I) 18 U.S. Code § 1519 - Destruction, alteration, or falsification of records,,,,,

I.

Reminding the court the actions gave distinct disadvantage and interfered with due process on several occasions that was not known because of documents not being in plaintiff Mason's personnel records as noted of the 250 pages of Disclosure Exh. A, creating the act of spoliation. This includes excluding key personnel from an administrative hearing and not making the court aware of such exclusion as it relates to the missing complaints, again, willful spoliation.

II.

Obstruction of justice statutes apply even when no proceeding has begun and no subpoena has been served, thereby to conceal or alter "physical evidence" that is "about to be produced or used in an official proceeding or a prospective official proceeding." Physical evidence includes any document "which is or is about to be produced or used as evidence in an 'official proceeding.'" Creating, again spoliation with the willful intent to deceive the courts and deprive Plaintiff Mason his due process rights. 18 U.S. Code § 1519 - Destruction, alteration,,,,,

a.

So it's no question or doubt did the court have a duty to address the matter of obstruction after spoliation was made known of the 250 page Discovery that the acting attorney, C. Jason Willcox, and the defendants released, so the **court** was to revisit Flint RiverQuarium I, on not presenting the defendant of complaint as well sanction Attorney Willcox for such willful exclusion(s) in an administrative hearing and Lawsuit. – Barnes v. Dalton, 158 F.3d 1212, 1214 (11th Cir. 1998)

b.

This is where the court was continuously erroneous and disregarded equal protection under the law Due Process Rights **thereof influence and affluence.**

Whereas this petition for a mandamus order is made for failure to compel to turn over personnel files of Flint RiverQuarium I, **Discovery** here of Flint RiverQuarium II, **Spoliation.**

RELIEF SOUGHT

Plaintiff believes he is in fact entitled to the below relief sought on the grounds sought and stated and are legally retrievable thereof having exhausted all remedies as it relates to state and/or the federal courts inclusive of and in the ancillary case of Mason v. Georgia Dept. of Labor in both the corrective process and the alternate/associated circumstances that protect the rights of the applicant Harold Mason, thereof 18 U.S.C. § 1520 - Destruction of corporate audit records.

1. Plaintiff seeks reversal of all decisions reached that were found in favor of the defendants in Flint RiverQuarium I and Flint RiverQuarium II
2. Plaintiff seeks monetary relief of \$50,000.00 Fifty thousand in actual damages
3. Plaintiff seeks punitive monetary relief of \$150,000.00 One hundred fifty thousand

It has been consistently presented here of Flint RiverQuarium II, there of Fed. R. Evidence 102 thereof Fed. R. Evidence 201(Judicial Notice) the Motion to Compel, Exh. B

1. There is no write up in the 250 pg. Discovery for the former employee who called the supervisor Sherrel Lamar a slave as addressed in response to the mediation
2. There's No write-up for then appointed liaison supervisor Sherrel Lamar for interfering with Mason's duties as Lead Event Supervisor in the 250 pg. Discovery

Demonstrating persons similarly situated and that the courts ignored, further noted as spoliation with the defendants having a duty to record, preserve all written and verbal reports/complaints.

To which these acts of spoliation do address why plaintiff did NOT think that the defendants would act in good faith. Plaintiff Mason declined citing specifically that he did NOT think the defendants would act in good faith, including the fax on Discovery Request, Exh. C. –

STATEMENT OF THE CASE

This matter is before the court to resolve the matter of Spoliation and sanctions concerning Flint RiverQuarium II as it reflects on and supersede RiverQuarium I.

I.

Whereas the court did err in refusal to look at the discarding, destruction or total failure to file the personnel/E.E.O.C complaints in both, Plaintiff Harold Mason's and Defendant Charles George's personnel files which is the duty of the company , in particular KNOWING there was or could be pending litigation and subsequently granted. Exhibit A, citing: Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions also citing 18 U.S. Code § 1512

II.

Based on the evidence presented during the Hearing/Discovery (250 Page EXHIBIT - A) of Flint RiverQuarium I –, it is clear that defendants failure to preserve Mason's complaints were done as malicious acts in bad faith.

Plaintiff contends this procedure was intentional and with malice because Defendants were on notice after receiving an EEOC complaint- Flint RiverQuarium I – EXHIBIT - D

a

Plaintiff was denied more information based on what was originally requested during Discovery. Further, attorney failed to notify Plaintiff of any dismissal of persons listed as Hostile witness to ascertain and/or in particular Marlon Tongue who was specifically stated to be a hostile witness in the original complaint form of E.E.O.C. in Flint RiverQuarium I

Reminding the Court that this is habitual for the Attorney and clients to bait and switch inclusive of the Administrative Hearing and Lawsuit with the Georgia Dept. of Labor, and in the separate action of Flint RiverQuarium I and of course now of Flint RiverQuarium II. Exh. D

c.

Moreover, this presents a problem citing Federal Rule of Evidence 201 and Federal Rule of Civil Procedures 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

MEMORANDUM OF LAW
JUDICIAL NOTICE

The Plaintiff, Harold Mason, has met the burden beyond reasonable doubt..

I.

"Spoliation is the destruction or significant alteration of evidence, or the failure to preserve property for another's use in pending or reasonably foreseeable litigation." *Graff v. Baja Marine Corp.*, 310 F. App'x 298, 301 (11th Cir. 2009) (internal quotation marks and citation omitted). Federal courts have broad discretion to impose spoliation sanctions against litigants as part of their inherent power to manage their own affairs. The party seeking spoliation sanctions must prove that the missing evidence existed at one time; that the alleged spoliator had a duty to preserve the evidence; and that the evidence was crucial to the party's case. *In re Delta/AirTran Baggage Fee Antitrust Litig.*, 770 F.Supp.2d 1299, 1305 (N.D. Ga. 2011).

As a matter of law it was known Plaintiff Mason would be filing lawsuit as of October 2012 as a matter described citing:

***Baxley v. Hakiel Ind.*, 282 Ga. 312, 647 S.E.2d 29 (2007), “ a prior Georgia Supreme Court case discussing spoliation, referred to litigation that is actually “contemplated or pending” and nothing more”**

II.

Attorney Charles Jason Willcox and Vickie Churchman's failure to disclose the complaints filed about OR better yet, the failure to present Charles George OR Marlon Tongue at the Dept. of Labor hearing, clearly shows that the evidence was unfavorable to her, Vickie Churchman and Flint RiverQuarium and **they were** very much responsible for loss or destruction of the evidence prior to Discovery in what is now Flint RiverQuarium II and the ancillary lawsuit of Mason vs Dept. of Labor, Defendants were on notice prior to and after receiving the EEOC complains of Flint RiverQuarium I, including attempts to Amend Complaint,, Exh. G

In particular when it was clearly stated in Motion to Compel presented to the court and it was withdrawn on the premise that attorney Charles Jason Willcox would NOT act in good faith in Flint RiverQuarium I, AND as stated to E.E.O.C. officials. – This based upon the unethical decision to inform plaintiff the night before the administrative hearing, Exh. E

MEMORANDUM OF LAW

Obstruction of justice statutes may apply even when no proceeding has begun and no subpoena has been served, thereby to conceal or alter “physical evidence” that is “about to be produced or used in an official proceeding or a prospective official proceeding.” Physical evidence includes any document which is about to be produced or used as evidence in an official proceeding. Creating, again spoliation with the willful intent to deceive the courts and deprive Plaintiff Mason his due process rights. The Courts clearly were erroneous in ruling that:

[1] An Attorney acting to with-holding and/or to condone their client destroying, discarding or not filing records/complaints as evidence of documentation of company personnel constitutes **obstruction of justice and spoliation** to give fair conclusion and transparency for a reviewing agency, including The Federal Courts (District and Appeal), to rule satisfactorily, by unilateral review in particular as an act of civil obstruction according to 18 U.S. Code 1505 thereof 18 USC 1503 – Influence and affluence.

[2] Such obstruction DID warrant sanctions in violation of the Due Process Clause of Amendment V and XIV, sec. 1 U.S. Constitution by defendant’s attorney influence/affluence.

[3] Such obstruction DID warrant sanctions in violation of the Equal Protection Clause of Amendment XIV, sec. 1 U.S. Constitution by defendant’s attorney influence/affluence.

IV.

Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

(a) MOTION FOR AN ORDER COMPELLING DISCLOSURE OR DISCOVERY.

(1) *In General.* On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

(2) *Appropriate Court.* A motion for an order to a party must be made in the court where the action is pending. A motion for an order to a nonparty must be made in the court where the discovery is or will be taken.

(3) *Specific Motions.* (A) *To Compel Disclosure.* If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions.

I submit defendant’s attorney Willcox’s Discovery Outline for the Conference hearing Exh. F

REASONS TO GRANT MANDAMUS

Clearly the Court ignored these rules based upon, again, influence and affluence, not just the court's standard for preliminary approval with the result being clear legal error, and that this matter is articulate in explaining how this equates to spoliation.

I.

The Rule 26(f) conference of Flint RiverQuarium I, was to establish Discovery material in which would prove or disprove and because these records were not a part of their 250 page release and it only established a one side story that did in fact harm Mason and will further do more harm absent a Mandamus ruling by severely hampering, or rather cripple any Constitutional Rights of Due Process and Equal Protection of Amendment V and XIV, sec. 1 U.S. Constitution in by stating a company can ignore, remove, discard and destroy your complaints. **Exhibit E**

II.

The court erred in NOT giving the matter Due Process of law thereof *AMLI Residential Prop. v. Georgia Power Co., 293 Ga. App. 358, 667 S.E.2d 150 (2008)*, even if the defendants even remotely were acting in good faith. As such the court abandoned Plaintiff's Equal protection under the law by influence and affluence, which again is, **articulated in explaining how this equates to spoliation.**

a.

Whereas such failures did result in the allowance of the defendants to hide discriminatory and retaliatory actions as noted in Flint RiverQuarium I, now presented as Flint RiverQuarium II.

b.

The ultimate failure of Due Process under the law is the court NOT examining the 250 page Discovery for such omissions after ordering plaintiff to file them as a hard copy versus filing them on/by CD, which was and is appropriate presentation in particular since the court had a hard copy on file from Flint RiverQuarium I.

1. The matter was done with the specific intent to disregard plaintiff Mason's Due Process and Equal Protection under the law rights with the Georgia Dept. of Labor, its agents, officers and assigns and to mislead the superior court in having a duty to preserve the complaints as well as present the initiating Supervisor Charles George.

In Phillips v. Harmon, 297 Ga. 386, 774 S.E.2d 596 (2015)

- a. It was done to specifically discourage plaintiff Mason from pursuing the lawsuit in not being able to show contradiction to wrongful termination.
- b. It was done specifically to discourage plaintiff Mason from pursuing the lawsuit on the grounds Mason would not have evidence/facts to pursue in Discovery that would damage the defendants defense had they kept the records/complaints in the personnel file

In Phillips v. Harmon, 297 Ga. 386, 774 S.E.2d 596 (2015)

2. It was done with the specific intent to mislead the court on the matter and the specific intent to disregard plaintiff Mason's Due Process and Equal Protection under the law.
 - a. It was done to specifically mislead the Court from pursuing the lawsuit in not being able to show contradiction to wrongful termination.
 - b. It was done to specifically discourage plaintiff Mason from pursuing the lawsuit on the grounds Mason would not have evidence/facts to present under Discovery that would damage the defendant's defense had they kept the records/complaints in personnel file.

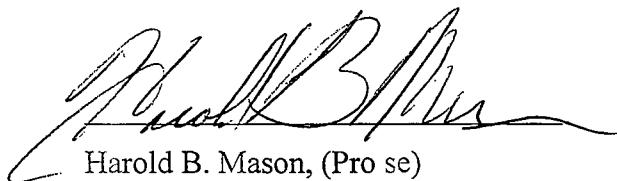
In citing *Baxley v. Hakiel Ind.*, 282 Ga. 312, 647 S.E.2d 29 (2007), “ a prior Georgia Supreme Court case discussing spoliation, referred to litigation that is actually “contemplated or pending” and nothing more”, it is a matter of law and known fact Plaintiff Mason would be filing lawsuit as of October 2012 as a matter of this stated citation.

CONCLUSION

This isn't just spoliation it was unethical, almost criminal and **should be** held as contempt and upholding Mason's original Motion for Sanctions as well granting this Petition for Mandamus and Relief Sought thereof 18 U.S.C. § 1520 - Destruction of corporate audit records.

Mandamus should be granted to correct judicial error that negated evidence that was critical and severely hampered the Constitutional Rights of Equal Protection and Due Process of the law.

Plaintiff respectful prays Writ of Mandamus to be granted.



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