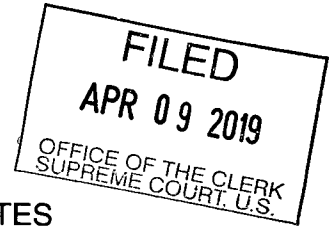


No. 18-8968 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



EMMANUEL MATHIS — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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

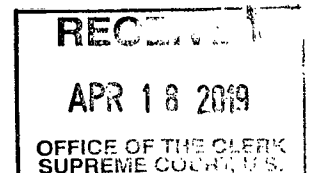
PETITION FOR WRIT OF CERTIORARI

EMMANUEL MATHIS #84132-004
(Your Name)

FCI, COLEMAN, PO. BOX. 1032
(Address)

COLEMAN, FLORIDA 33521 - 1032
(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

1. Whether the United States Court of Appeals for the Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's Supervisory power; specifically after failing to grant Certificate of Appealability when one of the jurors in this case was a Correctional Officer at the Jail where petitioner was incarcerated, and .. then accused him of masterbating over her while she was a direct supervisor over - petitioner ?

2. Whether a Remmer hearing - was required in this case after the District Court failed to interview the entire jury panel who knew of the extoreanous communication between the "tampered juror" and the nature of the communication with the person associated with the Petitioner ?

3. Whether Petitioner's Due Process rights were violated after both the district court, and the Eleventh Circuit failed to resolve all the claims presented in the 28 U.S.C. § 2255 proceeding ?

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:

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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

☒ 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 1/11/2019.

☒ 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

AMENDMENT 5

Criminal actions-Provisions concerning-Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

During trial in this case, a juror alerted the District Court that she was approached by an individual on her train ride to Court and that the individual had attempted to talk to her. The District court spoke to the juror with defense counsel and the prosecutor present but without the presence of the other jurors - and thanked the juror for reporting the incident. The juror responded that she "diffused it and told him I cannot talk about anything that is proceeding." CR DE# 161 @ 41. The district court again thanked the juror and then asked if she knew the individual. The juror responded that she did not know the person and that he approached her on the train and "tried to go into conversation." CR DE# 161 @ 41. The juror explained that she told the individual "we can have no discussion of the proceedings." CR DE# 161 @ 42. The juror then said that the individual "started going into another conversation" and that, in response, she "tried to get on my phone and made phone calls." CR DE# 161 @ 42. The district court then inquired whether the encounter would affect the juror's

ability to be fair and impartial or to deliberate with her fello jurors. The juror then indicated it would not. Based on the discussion with the juror and her demeanor, the court concluded that she was "fairly poised and took care of herself .. verry well." CR DE# 141 @ 42. Both defense counsel, and the prosecutor agreed. The court then concluded there was no taint to the proceedings and the trial continued. In claim two of Petitioner's § 2255 motion, and objections to the Magistrates R&R Petitioner asserted that the Court failed to interview any of the the remaining individual juror as to what information the juror who encountered the unapproved contact said to them about the tainted communication, and whether they could make a fair and impartial decision. See App-B.² Petitioner next argued that counsel was ineffective for failing to request a hearing pursuant to Remmer v. United States, 347 U.S. 227, 229, 74 S. Ct. 450, 98 L. Ed. 654, 1954-1 C.B. 146 (1954). However, the U.S. District court **never** addressed the claim presented in the district court.

2

THE COURT: Mr. Jones I have received a report that you have had contact with a juror in this case. I am not going to comment, and I am not asking you to say a word. I am telling you that from this moment forward you are banned from this courtroom and you are banned from this courthouse(con

Next, Petitioner raised in Claim 2 - that-one juror was a Detention Deputy who was biased due to a prior encounter with him at the jail. (The Correctional Officer was in charge of Petitioner in a supervisory position as a law enforcement .. Officer who accused petitioner of masturbating - over her while in lock-up confinement). The U.S. Court of Appeals issued a perfunctory review of .. this claim, as well as the United States District Court stating "No evidence supported Mr. Mathis's contention that one juror was a detention deputy who was biased due to a prior encounter with him. Second, Mr. Mathis failed to show that extrinsic evidence biased the jury." See APP A.

The United States District Court failed to address all of petitioner's claims raised in his 28 U.S.C. § 2255 motion. The United States Court of Appeals in conjunction with the United States District Court interpolated the claims, and failed to address all of the Petitioner's claims, now .. resulting in piecemeal litigation. This Certiorari is timely filed within 90 days of the 1/11/19 OP/OR.

tinued) and I am not to see you here while this case is going on or any time in the future. Do you understand what I am telling you, sir?

MR. JONES: Yes, ma'am. We were on the train together, that's why --

THE COURT: I don't want to know anything about that. I am just saying you have to leave the courtroom and you have to leave the courtroom now.

REASONS FOR GRANTING THE PETITION

A. At no stage - of these proceedings, did the District Court address Petitioner's claims raised in his 28 U.S.C. § 2255. The Eleventh Circuit now issued a perfunctory review of the case and essentially disposed of these claims raised without so much as addressing the District Court's failure - to do so. This Court has stressed "A final decision generally is one that ends the litigation on the merits and leaves nothing for the court to do but execute the judgement." Catlin v. United States, 324 U.S. 229-244, 89 L. Ed. 911, 916 (1921). See also Rose v. Lundy, 455 U.S. 509 (1982) ("To the extent that the ['total exhaustion'] requirement reduces piecemeal litigation, both the courts and the prisoner should benefit, for as a result, the district court will be more likely to review all of the prisoner's claims in a single proceeding, thus providing for a more focused and thorough review."). This was a clear "Clisby Violation" that has yet to be resolved. The Clisby Court held that "[t]he havoc a district court's failure to address all claims in a habeas petition may wreak

in the federal court system compels us to require all district court to address all such claims. Accordingly, this court, from now on, will vacate the district court's judgement without prejudice and remand the case for consideration of all-remaining claims whenever the district court has-not resolved all such claims." Clisby at 960 F.2d 938. Petitioner here admits, that the "fact that.. a juror was a correctional officer is insufficient to establish actual bias" See Aguilar v. Cate, 2015 U.S. Dist. LEXIS 95757, 2015 WL 4460657, at *30 (E.D. Cal. 2015). However, the juror in this case, was a Correctional Officer/Law Enforcement Official in charge of security over petitioner's incarceration; and accused Petitioner of masturbating (.. "gunning" her), while under her Supervision. The District Court failed to hold an evidentiary hearing to determine, if true, what affect it would .. have had on the trial. Counsel was informed post-judgement that this event took place. Petitioner did not recognize the Correctional Officer until after the trial had ended. Counsel failed to act as a zealous advocate and move for a Rule 33 motion.

B. In Remmer v. United States, 347 U.S. 227, 74 S. Ct. 450, 451, 98 L. Ed. 654, 1954-1 C.B. 146 (1954), the Supreme Court held that:

... any private communication, contact, or tampering, directly or indirectly, with a juror during a trial about the matter pending before the jury is ... presumptively prejudicial The presumption is not conclusive, but the burden rest heavily upon the Government to establish, after notice and hearing of the defendant, that such contact with the juror was harmless to the defendant. 347 U.S. at 229. However, the Court has also discussed that:

[D]ue Process does not require a new trial every time a juror has been placed in a potentially compromising situation. Were that the rule, few trials would be constitutionally acceptable. The safeguards of juror impartiality, such as - voir dire and protective instructions from the trial judge, are not infallible; it is virtually impossible to shield jurors from every contact or influence that might theoretically affect their vote. Due process means a jury capable, and willing to decide the case solely on the evidence before it, and a trial judge ever watchful to prevent prejudicial occurrences and to determine the effect of such occurrences ... when they happen. Smith v. Phillips, 455 U.S. 209 217, 102 S. Ct. 940, 71 L. Ed. 2d 78 (1982).

The extrinsic evidence in this case is, well, overwhelming. The prospective juror was admonished by the court not to have any communications, or discuss the case with anyone. What has never been divulged is the what was said to the juror which required a Remmer Hearing. A person known to this Petitioner had recently been acquitted in the same court for ~~similar conduct which included the actions of the same Police Officers testifying in this case.~~ The juror was approached not in conversation, rather as ~~a message~~ or warning that the Police that were involved in Petitioner Mathis' case, were the same Police who lied in his case resulting in an exoneration/acquittal in his case. This person who was known to the Petitioner, was also present during the trial proceedings from the very first day. The court had colloquy with the person engaged in tampering with the witness, however he was instructed by the court to remove himself from the proceedings, and to not return. At no stage in the interview process did the court "flesh out" the nature of the tainted communication between the juror and the private communication by one of Petitioner's correspondence.

In fact, the individual stricken from the Court, attempted to inform on record what he had said to the juror on the train during the direct communication - with her. And informed Petitioner Mathis' brother as to the same conversation he had with the juror as he was escorted out of the court room which took place in the parking lot.² At no stage of the proceedings, did the court inquire as to the nature of the taint, and failed to conduct a Remmer hearing. The United States Court of Appeals issued a perfunctory review of the Petitioner's colorable claim of extraneous influence, which requires an exercise of this Court's Supervisory power.

In Smith, the Court held "that the remedy for allegations of juror partiality is a hearing in .. which the defendant has the opportunity to prove actual bias," Id at 215. However, based on the Court's reasoning, a new trial will therefore not be necessary every time a question of juror partiality is raised. Id at 217. 102, S. Ct. 940. Rather, "where a colorable claim of extraneous influence has been raised, however, a Remmer Hearing is necessary to provide the defendant with the opportunity to prove actual bias." Id

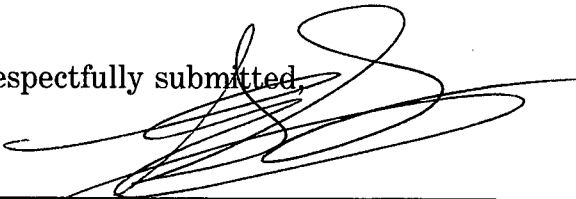
"The district Court knew that the juror had told the entire panel of jurors what had occurred.

The Remmer presumption thus only entitles a .. defendant to a hearing in the trial court to ascertain actual prejudice following the allegation of extrinsic contacts with the jury. Crowe v. Hall, 490 F.3d 840, 847 (11th Cir. 2007)(citing Remmer, 347 U.S. at 229). The Eleventh Circuit has so far departed from the accepted and usual course of the judicial proceedings as to call for an exercise of This Court's Supervisory power.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, consisting of several loops and flourishes, is written over a horizontal line.

Date: 4-8-2019