

No. **18-9124 ORIGINAL**

Supreme Court, U.S.  
FILED

**APR 30 2019**

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

GARLAND D. MILLER, JR. - PETITIONER,  
DEFENDANT

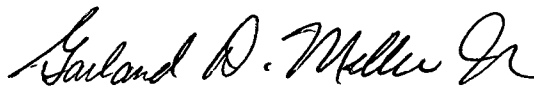
VS.

NO - RESPONDENTS  
UNITED STATES OF AMERICA - PLAINTIFF

ON PETITION FOR A WRIT OF CERTIORARI TO

THE FIFTH CIRCUIT COURT OF APPEALS CASE# 18-30306

PETITION FOR A WRIT OF CERTIORARI



Garland D. Miller, Jr.

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## QUESTION PRESENTED

### DOES JURISDICTION EXIST TO CORRECT AN ILLEGAL SENTENCE AT ANY TIME.

Petitioner was sentenced to 3<sup>rd</sup> party restitution in violation of existing statutes

. Quoting United States v. Morgan 346 U.S.502 (1954)

. In behalf of the unfortunates, federal courts should act in doing justice if the record makes plain a right to relief. We think a belated effort to set aside the conviction and sentence in the federal criminal case is shown. We therefore treat the record as adequately presenting a motion in the nature of a writ of error coram nobis enabling the trial court to properly exercise its jurisdiction. Adams v. U.S. ex rel. McCann, 317 U.S. 269, 272, 63 S.Ct. 236, 238, 87 L.Ed. 268.<sup>4</sup> So treating

the motion, { "pageset": "S64" \* 506 Rule 35, Fed.Rules { "pageset": "S64" \*\*250  
C., allowing the correction of 'an illegal sentence at any  
time' is inapplicable. Sentences subject to correction under that rule are  
those that the judgment rim. Proc., 18 U.S.C.A of conviction  
did not authorize.

While Rule 35 has changed Justice Stanley F. Reed set a precedent and Title 18 hss not changed.

Title 18 §3742 states:

A defendant may file a notice of appeal in the district court for the review of an otherwise final sentence if the sentence  
(1) was imposed in violation of the law.

## **LIST OF PARTIES**

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### QUESTION FOR REVIEW

#### DOES THE DISTRICT COURT HAVE JURISDICTION TO HEAR AN APPEAL OF AN ILLEGAL SENTENCE

APPENDIX A Order Denying Rehearing En Banc on Feb 6, 2019

APPENDIX B Judgment and Opinion stating that the District Court  
lacked Jurisdiction to hear the Illegal Sentence therefore,  
the 5<sup>th</sup> Circuit Court of Appeals also lacked jurisdiction

APPENDIX C Order Denying the Rule 35/ Title 18 §3742 which states:

A defendant may file a notice of appeal in the district court for  
the review of an otherwise final sentence if the sentence  
(1) was imposed in violation of the law.

this Order does NOT question Jurisdiction nor does it mention  
Rule 35 or cite Morgan and Justice Stanley F Reed.  
Judge Hicks rants about Coram nobis and Rule 60 b  
BUT NOWHERE DOES HE QUESTION HIS COURT'S  
JURISDICTION

APPENDIX D Explanation for sentencing Outside Guidelines and verification  
of conviction of tax evasion ....It cites Title 18 under which  
Miller has NO CONVICTION

## TABLE OF AUTHORITIES CITED

### CASES

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

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

OPINIONS BELOW

For cases from federal courts:

1. The judgment denying rehearing en banc 5<sup>th</sup> Circuit appears at Appendix A is unpublished
2. The opinion and judgment of the US 5<sup>th</sup> Circuit court of appeals appears at Appendix B and is unpublished
3. The opinion and judgment of the U.S. District Court for the Western District of Louisiana Shreveport Division appears at Appendix C and is unpublished.
4. The Sentencing Document explaining the reason for an Out of Guideline Sentence is at Appendix D.



## JURISDICTION

For cases from **federal courts**

The date on which the United States 5<sup>th</sup> Circuit Court of Appeals decided my case was 11/21/2018.

A timely petition for rehearing was denied by the United States 5<sup>th</sup> Circuit court of Appeals on the following date: 2/6/2019 and a copy of the order denying rehearing appears at Appendix A.

The Jurisdiction of this Court is invoked under 28 USC §1254(1)

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### Eighth Amendment

The **Eighth Amendment** to the United States Constitution states: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

**26 U.S.C. §7201 JUDGMENT.** This statute states in its entirety,

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

### NO MENTION OF 3<sup>RD</sup> PARTY RESTITUTION

Title 18 §3742 states:

A defendant may file a notice of appeal in the district court for the review of an otherwise final sentence if the sentence (3) was imposed in violation of the law.

### **18 U.S. § 3663**

#### **§ 3663. Order of restitution**

(a)(1)(A) The court, when sentencing a defendant **convicted of an offense under this title**, section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863) (but in no case shall a participant in an offense under such sections be considered a victim of such offense under this section), or section 5124, 46312, 46502, or 46504 of title 49, other than an offense described in section 3663A(c), may order, in addition to or, in the case of a misdemeanor, **in lieu of any other penalty authorized by law**, that the defendant make restitution to any victim of such offense, or if the victim is deceased, to the victim's estate. **The court may also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.**

## **STATEMENT OF THE CASE**

An UNOPPOSED MOTION TO CORRECT AN ILLEGAL SENTENCE was filed in the United States District Court for the Western District of Louisiana Shreveport Division. Not one AUSA or United States Attorney opposed this Motion. ADDENDUM 3 Yet district court Judge Maurice Hicks denied this motion. The 5<sup>th</sup> Circuit Court of Appeal realizing that the sentence was illegal stated that there was NO Jurisdiction citing changes in Rule 35 but disregarding Title 18 §3742 PROVIDED JURISDICTION for the District Court.

Question: DID THE DISTRICT COURT HAVE JURISDICTION TO MAKE THE ABOVE MENTIONED RULING ON AN ILLEGAL SENTENCE?

Fact: On or about October 31, 2008, Miller was sentenced for attempting to evade or Defeat tax payment in violation of 26 U.S.C. §7201 JUDGMENT. This statute states in its entirety,

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

Fact: Id. No other penalty or punishment is available under the statute. Including RESTITUTION or 3<sup>rd</sup> PARTY RESTITUTION ADDENDUM 4

FACT: Restitution under Title 18 only applies to those convicted under Title 18

18 U.S. § 3663  
§ 3663. Order of restitution

Currentness

(a)(1)(A) The court, when sentencing a defendant convicted of an offense under this title, section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863) (but in no case shall a participant in an offense under such sections be considered a victim of such offense under this section), or section 5124, 46312, 46502, or 46504 of title 49, other than an offense described in section 3663A(c), may order, in addition to or, in the case of a misdemeanor, in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of such offense, or if the victim is deceased, to the victim's estate. The court may also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

Miller was NOT convicted under Title 18 and did not submit to a plea agreement.

Therefore, Sentencing Miller to pay \$55,470.94 in 3<sup>rd</sup> party restitution was illegal,

THIS WAS NOT CONTESTED OR DISPUTED BY RESPONDENTS

what was contested is:

DID THE DISTRICT COURT HAVE JURISDICTION TO RULE ON THIS ILLEGAL SENTENCE?

This was contested by the Judicial panel of the 5<sup>th</sup> Circuit Court of Appeals.

NOT the RESPONDENTS

During the initial argument to the District Court Miller quoted

Supreme Court Justice Stanley F Reed in Morgan

. Quoting United States v. Morgan 346 U.S.502 (1954)

*In behalf of the unfortunates, federal courts should act in doing justice if the record makes plain a right to relief.* We think a belated effort to set aside the conviction and sentence in the federal criminal case is shown. We therefore treat the record as adequately presenting a motion in the nature of a writ of error coram nobis enabling the trial court to properly exercise its jurisdiction. *Adams v. U.S. ex rel. McCann*, 317 U.S. 269, 272, 63 S.Ct. 236, 238, 87 L.Ed. 268.<sup>4</sup> So treating

the motion, { "pageset": "S64 \* **506 Rule 35, Fed.Rules** { "pageset": "S64 \*\*250  
**C., allowing the correction of 'an illegal sentence at any time'** is inapplicable. **Sentences subject to correction under that rule are those that the judgment rim. Proc., 18 U.S.C.A of conviction did not authorize.**

Since Miller mentioned rule 35 and it has been changed the 5<sup>th</sup> Circuit Ruled that the motion lacked JURISDICTION..but Justice Reed also cited Title 18 and set a precedent that courts should act to help the unfortunates, and for that matter that an illegal sentence may be addressed anytime ...Justice Reed did mention Title 18 which does grant jurisdiction to the District Court.

Since Title 18 §3742 states:

A defendant may file a notice of appeal in the district court for the review of an otherwise final sentence if the sentence  
(1) was imposed in violation of the law.

Miller corrected his pleading in Petition for Rehearing citing Title 18 § 3742 but Rehearing and Rehearing En Banc was DENIED.

The District Court had JURISDICTION and the 5<sup>th</sup> Circuit Ruling was in ERROR.

For this reason the **WRIT OF CERTIORARI** should be **GRANTED.**

## **REASON FOR GRANTING THE WRIT**

PETITIONER IS A **PRO SE** litigant. who lacks knowledge of the law.

JURISDICTION is GRANTED to the District Court by Title 18 §3742

Justice Stanley F. Reed established the precedent that an illegal sentence can be addressed at any time and that the Federal Courts should act in doing justice when the record makes plain a right to relief

There was no objection by RESPONDENTS i.e. The UNITED STATES of AMERICA.

The Illegal Sentence is a violation of the Eighth Amendment to the Constitution

**CONCLUSION**

The petition for a writ of certiorari should be granted

Respectfully submitted

  
Garland D. Miller Jr

Date: April 30, 2019