

SUPREME COURT TO THE UNITED STATES

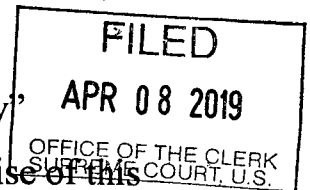
NO.: 19-5382

IN RE SOLOMON DAVID ROBERTS, Petitioner,

**PETITION FOR EXTRAORDINARY WRIT OF
PROHIBITION/MANDAMUS**

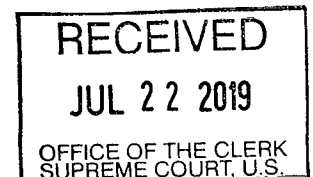
Pursuant to Supreme Court Rule 20 Petitioner, Solomon David Roberts, pro se, an indigent prisoner, unrepresented by counsel; petition this Honorable Court having supervisory control over "all" [Article III] inferior courts; for issuance of writ of mandamus in this exceptional case where there is a clear abuse of discretion and/or usurpation of judicial power, warranting restraint by this Honorable Supreme Court. See Los Angeles Brush Mfg. Co. v. James, 272 U.S. 701 at 706-07 (1927).

The writ will be in aid of this court's "appellate" or "Supervisory" jurisdiction. Where exceptional circumstances warrant the exercise of this court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court; under the material facts and circumstances. No Court state or federal have afforded a plenary review of the federal questions; nor reached a merit based analysis.



UNITED STATES COURT OF APPEALS (11TH CIR.)
(Name of court that last ruled on the merits of my case)

Solomon David Roberts #066691
Charlotte Correction Institution
33123 Oil Well Road
Punta Gorda, Florida 33955



QUESTION(S) PRESENTED

“Whether the supervisory control of U.S. Supreme Court
Is necessary to proper Judicial Administration in the
Federal System?”

“Is it of Great Public Importance Where a District Court
Exceeded or Refused to Exercise it’s Function?”

“Whether the errors of District Court affects substantial
Rights from an abuse of judicial power, or refusal
To exercise it; which is the function of Mandamus
To correct?”

“Whether Magistrate Judge abandon of neutrality, to do the work
Of an Attorney in opposition; divested the District Court of
Jurisdiction in the first instance?”

Whether District Judge’s adoption of Magistrate’s R&R is
Unlawful in the sense that it embraces Magistrate’s violation
Of 28 U.S. C. section 454 and is void; amounting to
Misprision of Treason?”

“Whether a prisoner who moves under 28 U.S.C. section 2241
On denial of meaningful access to court under Florida Constitution
Article I section 21 must be given a hearing at which he is entitled
To be present, where there is a necessity for the determination
Of a factual question?”

LIST OF PARTIES

[x]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:

United States Court of Appeals “Eleventh Circuit”

United States District Court “Middle District” Florida

United States District Court “Southern District” Florida

District Court of Appeal (Fla.) Second District

Tenth (10th) Judicial Circuit Court (Hardee County)

Assistant Attorney General [Fla. Department of Corrections]

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**IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR EXTRAORDINARY WRIT**

Petitioner respectfully prays that an Extraordinary Writ issue to review the judgment below.

OPINIONS BELOW

[X] FOR CASES FROM FEDERAL COURTS

The opinion of the U.S. Court of Appeals (11th Cir.) appears at Appendix A to the Petition and is referred to by docket entry [Doc. 34]

The opinion of the U.S. District Court appears at Appendix B

JURISDICTION

[x] FOR CASES FROM FEDERAL COURTS

The date on which the United States Court of Appeals decided my case was
Jan 14, 2019. Appendix A [Doc. 34]

After having acknowledged (dismissal) by docket, responded immediately
with belated motion to proceed 'IFP' Appendix F

The Jurisdiction of this Court is invoked under 28 USC section 1651(a) see
Los Angeles Brush MFG. Corp. v. James, 272 U.S. 701 at 706-07 (1927)

**NOTE: Appendix G consist of case numbers for Judicial Misconduct
Complaints on "Magistrate" and "District" Judges for the Southern
District Court**

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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STATEMENT OF THE CASE

[1] Petitioner initially filed under the color of law; [a] petition for “territorial” Writ of Habeas Corpus to Hardee County Courthouse (Fla.) This resulted in violation of Florida Const. Article I section 9,21 and the Fourteenth Amendment to the United States Constitution.

[2] Petitioner sought relief in an orderly fashion which ended n Petition For Writ of Habeas Corpus in the United States District Court “middle” case no. 18-cv-00307. Pursuant to 28 U.S.C. section 2241(c)(3),(d) on Federal Question: “whether Petitioner was denied meaningful access to court under Art. I Section 21 [and] Due Process Guarantee of Federal protected right to be heard according to law.” See Appendix A [Doc. 1]

[3] The Honorable Charlene E. Honeywell, District Judge, [# 18-cv-00307][Doc. 7] having concurrent jurisdiction; transferred the case to it’s Sister Court, [S.D.Fla.]. In furtherance of justice for a hearing and determination under 28 U.S.C. section 2241(d). id at footnote 2.

Appendix C

[4] United States District “Southern” District [# 18-cv-21195] proceeded; where the Honorable Cooke, J. and Magistrate White [Doc.9] was assigned to the case, where [a] miscarriage of justice manifest “affirmatively” on record, Which includes District Judge’s adoption of Magistrate’s R&R [Doc. 9 & 28] in that it is unlawful in the sense that it embraces a violation of [28 U.S.C. section 454] inherently resulting in Misprision of Treason [18 U.S.C. section 4 and 2384] and/or Article VI clause 3 of the United States Constitution.

Appendix B

[5]On COA Review,[or] Appeal the Honorable (11th Cir.) Dismissed Appeal without Providing Service on the Petitioner [Doc. 34]. After having received Complaint of Judicial Misconduct pursuant to [28 U.S.C. section 351-364]

Appendix A [Doc.34]

[6]Petitioner became aware of dismissal by requesting for case docket [Appendix D]; followed by Clerk of Court having responded.

Appendix E

[7] Petitioner immediately filed belated Application to proceed without Court cost in Response.

Appendix F

REASONS FOR GRANTING PETITION

Petitioner contends that the Honorable Magistrate White (S.D. Fla.) did not afford Petitioner, his federal protected right to an “Impartial Magistrate” in Habeas Corpus Proceedings under 28 U.S.C. section 2241(C)(3)(d)

“Every litigant is entitled to nothing less than the cold neutrality of an Impartial Judge.” See U.S.C.A. Const. Amend. XIV

Petitioner contends that the “All Writs Act” is necessary in this exceptional case (instance) where there has been a clear “abuse of discretion” and “usurpation of judicial power.” [A]ffirmatively appearing in the record. Thus, [“manifest facts”] does not require proof.

The exceptional circumstances here warrant the use of extraordinary remedy of mandamus.

A. PLAIN-ERROR

I

**“Whether Magistrate Judge abandon of neutrality,
To do the work of an attorney in opposition;
Divested the District Court of jurisdiction in the
first instance.”**

Here, Petitioner easily satisfies the first two prongs of the Olano requirements: where Magistrate White committed error by refusing to exercise the function of the District Court pursuant to 28 USC Section 2241, which was given. [Appendix C] and Usurp the authority under 28 USC Section 2254 which was not given. Followed by a clear abandon of neutrality to practice the work of an Attorney in violation of [28 USC section 454(1)]; also U.S.C.A. Const. Amend. XIV sec.3

Appendix H

Whether Error Affected “Substantial Rights?”

Petitioner argues that these errors [a]ffected [His] “substantial rights” **Olano**, (507 U.S. at 734);¹ where Magistrate White refused to exercise its function pursuant to 28 USC section 2241(d); including usurpation of judicial power under section 2254.

¹ United states v. Olano, 507 US 725 , 113 S.Ct., 1770 (1993)

Although Petitioner's knowledge were obtained through erudition; it is difficult to discern any situation where an error in failing to apply the rule or function of 28 USC section 2241(C)(3),(d) by an [Article III] judge would not affect a defendant's substantial rights. This followed by Magistrate's commission of "High Misdemeanor" in violation of section 454(1). [App. H]

The final question is whether the errors **"seriously affects the fairness, integrity, or public reputation of judicial proceedings."** **Olano**, (507 U.S. at 732). Petitioner contends because the subject concerns the enforcement of the Constitution, statutes, rules; which by law it is formulated and put in force to correct errors so palpably improper that the failure to address and/or correct them would result in a "Miscarriage of Justice." See **Coleman v. Thompson**, 501 U.S. 722 at 750 (1991)

POINT TWO

Whether District Judge Adoption of Magistrate's R & R is Unlawful in the sense that it embraces Magistrate's violation of 28 USC sections 453-454(1) and is void, amounting to Misprision of Treason

Petitioner contends that he was denied his Federal Protected Right to be heard by a judge mindful of his or her own 'oath of office' [28 USC sections 453-455] See **Laird v. Tatum**, 409 U.S. 824 at 838 n.11 (1972).

In this context, District Judge having been timely advised by Objection [Doc. 16] of Magistrate's Palpable Abuse of Discretion at issue. District Judge appears to have turned a blind-eye to the recorded evidence. This included deviation from the well-settled principle of law established by the

(11th Cir) (en banc) decision in Clisby,² instructions to: **“resolve all claims for relief raised in petition for writ of habeas corpus; regardless whether habeas relief is granted or denied.”**

Petitioner like any other litigant is “entitled to careful consideration and plenary processing of [his] claim, including full opportunity for presentation of the relevant facts. This is because of the United States Supreme Court’s Reasoning in Whitney v. Florida, 389 U.S. 138 (1967) that [Art.I sec. 21] of Florida Constitution. The phrase “every person” clearly includes Petitioner.

“Whether a prisoner who moves under 28 U.S.C. section 2241
On denial of meaningful access to court under Florida Constitution
Article I section 21 must be given a hearing at which he is entitled
To be present, where there is a necessity for the determination
Of a factual federal question?”

THEREFORE, based on the preponderance of the recorded evidence established in the District Court and presented to this Honorable Supreme Court for review; the errors [is] of **“Great Public Importance by which the District Court exceeded and/or refused to exercise its judicial function.”** See Bankers Life & Casualty Co. v. Holland, 346 U.S. 379 at 383 (1953); U.S. v. Will, 449 U.S. 200 at 231 [FN 19] (1980). Whether District Judge had a clear duty to report Magistrate’s “High Misdemeanor” pursuant to 18 USC section 4 and 2384, including a violation of Article VI cl.3 of the United States Constitution. Is for this Honorable [Article III] Court to say what the law is?

² Clisby v. Jones, 960 f.2d 925 at 936 (11th Cir. 1992)

MOREOVER, whether it is of Public [American Citizens] interest that a federal court would exceed or refuse to exercise its judicial function in the endeavor to prevent addressing federal questions at an actual hearing [is] constitutionally intolerable as a matter of law?

Thus, this Honorable court should not hesitate to restrain an inferior judge who have practically nullified [28 USC sec. 2241(C)(3),(d); James, 272 US at 707.

Petitioner reiterate the importance of the extraordinary writ, to be used “only” in such extraordinary case where there is a clear abuse of discretion and/or ‘usurpation of judicial power.’ See Holland, 346 US at 383; Roche v. Evaporated Milk Asso., 319 US 21, 63 S.Ct., 938 (1943).

POINT THREE:

Whether a Prisoner who moves under 28 USC section 2241 on denial of meaningful access to court, under Florida Constitution; [Art. I sec.21] must be given a hearing at which he is entitled to be present where there is a necessity for the determination of a factual question?

Petitioner request whether he is entitled to application under Rule 20(4)(a) directed to Respondent [FDOC] or to another court for the relief sought on the underlying claim accompanying the denial of meaningful access to court under Bound v. Smith, and Lewis v. Casey,³ precedents; where the District Court refused to exercise its function under section 2241(d) in the first instance.

NOTE: While the index to Appendix [A thru H] refers to point one & two. The substantial evidence in support of point three is referred to as

³ Bound v. Smith, 430 US 817 (1977); Lewis v. Casey, 518 US 343 (1996)

index to Attachment [A thru E] following index to appendix [A thru H] attached hereto.

In this instance, the “**non-frivolous underlying claim**” on the federal question of “denial of meaningful access to the court” raised in s. 2241(d) petition; which presents a justiciable controversy on jurisdictional defect, which inherently renders [FDOC] commitment void as a matter of law. Thus, the state ‘habeas’ court decided an important federal question in a way that conflicts with relevant decisions of this court. See Rule 10(c).

While Petitioner’s Life sentence following violation of probation [#78-5774 B] for a non-homicide offense, committed prior to Petitioner’s 18th Birthday; violates the 8th Amendment Ban on Cruel and Unusual Punishment, presents a compelling reason for the exercise of this court’s supervisory power or control; on the authority of **Blackledge v. Allison**, 431 U.S. 63 at 68 (1977)(an Unkept promise).

The underlying new felony offense(s) [1982 Case(s)] which form the basis for violation of probation; is not binding on Petitioner, the Prosecutor or the Court. See **Harden**, 453 so.2d at 550; because there have been no fair and reliable determination of guilt. The errors, affirmatively appears in the record, to wit; the Plea colloquy and respective written judgment and sentence instruments. Which consist of (1) trial court failed to formally accept Petitioner’s open guilty plea in open court and for the record ⁴ see [Attachment A pg. 7] and (2) the court imposed multiple illegal sentences, to

⁴ United States v. Arami, 536 f.3d 479 (5th Cir. 2008); Harden v. state, 453 so.2d 550 (Fla. 4th Dist. 1984)

wit; Stacked minimum mandatory three years terms pursuant to s. 775.087(2) Fla. Stat. in both # 82-8169 [Attachment B] and #82-15413 [Attachment D] including imposition of life in all three cases [Attachment B thru D] for attempted 1st degree murder; a first degree felony punishable by a maximum term of 30 years. See King v. State, 390 so.2d 315 at 320(Fla. 1980) The fact is, Petitioner cannot acquiesce to an illegal sentence. See Cheney v. State, 640 so.2d 103 at 105(Fla. 4th DCA 1994);Williams v. State, 500 so.2d 501 at 503 n.4 (Fla. 1986).

Petitioner argues that even if the plea was accepted by the court; imposition of an illegal sentence rendered the plea process in its entirety void based on the undisputed facts that the court “exceeded its jurisdiction” and engaged in “usurpation of judicial power.”

THEREFORE, because the “voluntariness of the plea” is ensured by the court’s compliance with rule 3.172(f). see U.S. v. Jones, 381 f.3d 615 at 618 n.3(7th Cir.2004); Quillen v. State, 73 so.3d 890 at 892(Fla. 4th Dist 2011)[381 f.3d 619 n. 7]; Harden, 453 so.2d at 551.

Petitioner’s plea was obtained in violation of the 14th Amendment to the United States Constitution and West’s F.S.A. Const. Article 1 sec.9 See Bolware v. State, 995 so.2d 268 at 272(Fla.2008)(citing McCarthy v. U.S., 394 us 459(1969).

However, trial court refused to allow Petitioner the unqualified right to withdraw his guilty plea on more than one occasion “pre-acceptance” resulting in Plain-error. See [Ex. F] [156 so.3d 2].

In which the trial court lacked discretion to deny a pre-acceptance withdrawal of a guilty plea.[536 f.3d 482]. In furtherance, State Appellate

Court [Attachment E] failed to adequately exercise its function on the federal questions concerning the errors presented for review.

This constitutes 'Plain-Error' where the trial court had no discretion to deny a pre-acceptance withdrawal of a guilty plea in the first instance. [536 f.2d 482] At no time did the state judge accept plea.[Attachment A pg. 7]

Fla. R. Crim.P. Rule 3.172(f)

Petitioner argues that rule 3.172(f) is an absolute rule that imposes an absolute right on a defendant to withdraw his or her guilty plea before the court accepts it. Arami, 536 f.3d at 482; Harden, 453 so.2d at 550.

HERE, Petitioner easily satisfies the first two prongs of the plain-error test.

- (1) trial court committed error under rule 3.172(f) by denying petitioner's motion to withdraw before the court had accepted his plea. (2) the error is 'clear and obvious' because of the plain language of rule 3.172(f) is unambiguous, as it clearly gives defendants an absolute right to withdraw a plea before the court accepts it. Id.

Petitioner argues that the error affected his substantial rights where the the clear language of rule 3.172(f) which provides Petitioner with an unqualified right to withdraw a guilty plea "without any necessary justification" indicates that any error in the court's failure to consider the rule would affect a defendant's substantial rights. Without the error Petitioner would have been able to withdraw his guilty plea and proceed to trial; thereby demonstrating a "probability of a different result" that undermine the confidence of [His] plea.

The Fifth Circuit expressly articulated that:

“It is difficult to discern any situation where an error in failing to apply Rule 11(d)(1) would not affect a defendant’s substantial rights” *id.* At 536 f.3d 484. The same applies to Fla.R.Crim.P. Rule 3.172(f).

Here, the ‘probability of a different result’ exist; that is sufficient to undermine confidence in the outcome of the proceeding. [536 f.3d. 484].

The final question is whether the error “**seriously affected the fairness, integrity, or public reputation of judicial proceedings.**” (e.g. Olano, 507 us at 732).

Petitioner ‘ad informandum conscientiam judicis’ that “denying him the right to have a jury determine his guilt, satisfies this test. *Id.* at 484 citing *U.S.v. Bradley*, 455 f.3d 453 at 464(4th Cir. 2006)(the fact is no jury rendered a verdict in this case; there has been no ‘fair and reliable determination’ of the Petitioner’s guilt.” A jurisdictional defect is not subject to procedural default.

WHEREFORE, rule 3.172(f) set out an absolute rule allowing Petitioner to withdraw his guilty plea before the court accept it. Then [here] it follows that depriving Petitioner of his unconditional right under the rule would and [did] affect the fairness, integrity, or public reputation of judicial proceeding because the Petitioner would lose his right to take his case before a jury. [536 f.3d at 485] because the errors affirmatively appears in the record. The apparent manifest miscarriage of justice is compelling to aid this Honorable Court of its supervisory control of the federal court of appeals and district court as necessary to proper judicial administration of the federal system.

Thus, the recorded material facts in this context, indicates that the federal and state court “exceeded its jurisdiction” [and] engaged in “usurpation of judicial power.” Whereas the judiciary refused to exercise its function; to address and correct the apparent miscarriage of justice on face of record. Where both State Habeas Court and U.S. District Court(S.D.Fla.) has decided an important federal question in a way that conflicts with relevant decisions of this Honorable Supreme Court.

CONCLUSION

The petition for extraordinary writ should be granted as this Honorable Court must find that the District Court abused its discretion and committed usurpation of judicial power based on the ‘substantial evidence’ before this court where the court must not hesitate to restrain the inferior judges. Also order federal evidentiary hearing on the underlying section 2241 claim of denial of meaningful access to the courts under Florida Constitution Article I section 21 Federal Question. The failure to act in preserving justice administration would defeat the ends of justice and promote and/or acquiesce to judicial corruption which is a “federal question” of Great Public Importance; in which the American People would find constitutional intolerable.

Presented in Good Faith and not for frivolous or deceptive purposes

/s/ Solomon Roberts
Petitioner pro se