

No. 19-7993

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

**ORIGINAL**

Thomas Victor Sway — PETITIONER  
(Your Name)

VS.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eleventh Circuit Court of Appeals  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

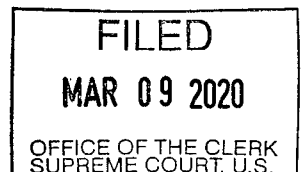
PETITION FOR WRIT OF CERTIORARI

Thomas Victor Sway-66204-019  
(Your Name)

FCC FORREST CITY-LOW  
(Address)

P.O. BOX 9000, Forrest City AR, 72336  
(City, State, Zip Code)

N/A  
(Phone Number)



## QUESTIONS FOR REVIEW

### FIRST QUESTION

When denial of COA was made in conclusory order without any precedent to rely on and there exists no sufficient basis for appellant court to review, was petitioner's ability to appeal wrongly impeded and was his procedural due process of law violated?

### SECOND QUESTION

When grounds on appeal are granted hearing and witnesses from trial provide testimony, does petitioner then have the right to confront those witnesses in order to satisfy the Strickland standard?

### THIRD QUESTION

Does discretionary review in the interest of justice standard to substitute counsel leave petitioner vulnerable to a harmful conflict of interest without any chance for remedy?

### FOURTH QUESTION

Does lost mail, that resulted in untimely filing but was supported by supplemental motion and uncontested affidavit, qualify as extraordinary circumstances and all for equitable tolling?

## LIST OF PARTIES

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

[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:

HESS, NANCY J., ASSISTANT UNITED STATES ATTORNEY

KAHN, CHARLES J. JR., UNITED STATES MAGISTRATE JUDGE

KEEFE, LAWRENCE, UNITED STATES ATTORNEY

KF, 26 YEAR OLD GIRL; VICTIM

KEITH, THOMAS S., TRIAL COUNSEL FOR DEFENDANT/APPELLANT

LOVE, J. RYAN, ASSISTANT UNITED STATES ATTORNEY

MURRELL, RANDOLPH., FEDERAL PUBLIC DEFENDER

REGISTER, LENNARD B., ASSISTANT UNITED STATES ATTORNEY

RH, 17 YEAR OLD GIRL; VICTIM

RODGERS, THE HONORABLE M. CASEY, UNITED STATES DISTRICT COURT JUDGE

SWAY, THOMAS VICTOR, DEFENDANT/APPELLANT

TIMOTHY, ELIZABETH M., CHIEF UNITED STATES MAGISTRATE JUDGE

YURACHEK, MARK, APPELLATE COUNSEL (INITIAL APPEAL)

GRANT, CIRCUIT JUDGE, ELEVENTH CIRCUIT COURT OF APPEALS

JORDAN, CIRCUIT JUDGE, ELEVENTH CIRCUIT COURT OF APPEALS

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### CONFIRMATION OF RULE 14 OF SUPREME COURT RULES

The petitioner states this Writ is presented in conformance with Rule 14 and the appendices are set out from the body of this petition.

### STATEMENT REGARDING RULE 39

The petitioner, being without counsel and being confined to an institution, states that one original alone suffices for filing on the docket pursuant to Rule 39(2) that states, "an original alone suffices".

## INDEX TO APPENDICES

Appendix A.....	Decisions of the Eleventh Circuit Court of Appeals
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## TABLE OF AUTHORITIES CITED

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### STATUTES AND RULES

28 U.S.C. § 2255	21, 23, 24, 27, 30, 34, 35
28 U.S.C. § 2253 (c)(2)	21, 22, 26, 28, 31, 34, 36

### OTHER

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 B 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.

1.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 10/09/2019.

☒ 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

### Constitutional Provision

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 of 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

### Amendment 6 Rights of the Accused

- In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

### Statutory Provisions

- 18 U.S.C. § 2252 (a)(2) and (b)(2), receipt and attempted receipt of child pornography
- 18 U.S.C. § 2252 A (a)(5)(B) and (b)(2), possession of material constituting or containing child pornography

IN THE SUPREME COURT  
OF THE UNITED STATES

PETITION FOR  
WRIT OF CERTIORARI

THOMAS VICTOR SWAY  
/Petitioner

V.

Case No: \_\_\_\_\_

UNITED STATES OF AMERICA  
/Respondent

MEMORANDUM

Comes now, Thomas Victor Sway, petitioner, and hereby files this Writ of Certiorari in response to the Elventh Circuit's denial of his Certificate of Appealability and Writ of Mandamus. This petition presents four (4) different question to the Supreme Court of the United States of America. Petitioner has reviewed the Supreme Court Rules and asserts that this petition is in compliance.

With respect to the Court and the Motion for Extension of Time that was granted to file this Writ of Certiorari by the 7th day of March, 2020, this petition is timely filed. Petitioner is a inmate confined to a institution and files this original pursuant to Rule 39(2) and therefore this original alone suffices.

## STATEMENT OF THE CASE

The Defendant in the present case, Thomas Victor Sway, was charged in a two-count indictment in the Northern District of Florida, on July 16th, 2014. The first count charging the Defendant with receipt of child pornography in violation of 18 U.S.C. § 2252 (a) (2) and (b)(1). Count two charged the Defendant with possession of material constituting or containing child pornography in violation of 18 U.S.C. § 2252 A(a)(5)(B) and (b)(2).

The Defendant proceeded to a three-day trial on April 13th until the 15th of 2015. Which resulted in the return of two guilty verdicts by a jury on both Count one and two of the charging indictment.

On June 29th, 2015, at sentencing, the District Court granted the Government's motion to dismiss Count two. Also, the Defendant's motion to be sentenced below the advisory guideline range of 210-262 months, was granted. And the court imposed a sentence of 96 months imprisonment followed by 10 years of supervised release and a special assessment of \$100.00.

The Defendant timely filed a notice of appeal on July 17th, 2015. On direct appeal he claimed the District Court plainly erred by permitting an investigating officer to testify as both a fact and expert witness without proper instruction for the jury. On July 27th, 2016, the Eleventh Circuit found no plain error and affirmed the conviction.

The Defendant, hereby known as the Appellant then timely filed a 28 U.S.C. § 2255 motion claiming ineffective assistance of counsel at trial. In this motion the Appellant moved on four (4) different

grounds;

1.) The first ground contended that trial counsel rendered ineffective assistance of counsel by failing to request jury instruction for the dual-role testimony provided by the Government's expert/fact witnesses.

2.) The second ground contended that trial counsel rendered ineffective assistance of counsel by failing to move for suppression of the admission that was made under the influence of controlled substances.

3.) The third ground contended that trial counsel rendered ineffective assistance of counsel by failing to move to dismiss Count two of the indictment before trial to prevent the presentation of prejudicial evidence.

4.) And the fourth ground contended that trial counsel rendered ineffective assistance of counsel by failing to call a defense expert to impeach the testimony of the Government's expert witnesses at trial.

On March 19th, 2018, the Government responded, conceding to proceed to evidentiary hearing on the second and fourth grounds. To which the Appellant replied on March 29th, 2018, disputing that both ground one and three were also debatable or wrong and deserved to be heard. Note however that this reply was not filed by the court until July 30th, 2018, almost four months later.

The District Court ordered a evidentiary hearing and a amended order setting the date for hearing on August 1st, 2018. The Appellant, who was in FBOP custody was transported on a writ to the federal holding center for the Northern District of Florida, Pensacola division. Which is Santa Rosa County Jail.

While awaiting the hearing the Appellant filed a motion to release counsel and appointment of new counsel -- to be construed as a motion for substitution of counsel -- and the District Court granted a ex parte hearing.

Appellant's grievances were five in number and listed as follows; First, counsel was performing in direct contradiction to producing a favorable outcome in the present case.

Second, counsel was working directly to undermine the Defendant's access to the court.

Third, counsel failed to properly investigate and act on directions of the Defendant.

Fourth, counsel undermined Defendant's acquisition of court records.

And fifth, counsel refused to communicate with Defendant and overall, performed deficiently in working for the best interests of the Defendant.

These grievances concerned the performance of CJA Attorney, John Terrezza, who was appointed to represent the Appellant. But the court denied the motion for substitution on the grounds that the interest of justice standard was not satisfied. The court also denied a oral motion for continuance that was requested at the beginning of the evidentiary hearing on the grounds of witness availability.

During the hearing the Government offered three witnesses to provide testimony. The two investigating officers from trial, as well as the public defender who represented at trial.

At 11:47 A.M., after the investigating officers were dismissed, the court announced that the Appellant's reply to the Government's

response was filed in the court. The Magistrate, the honorable Judge Kahn, addressed the issue on record without making any decision at that time.

The hearing was conducted and all three of the Government's witnesses and the Appellant provided testimony. At the conclusion of the hearing the court ordered closing arguments to be made in brief, and allowing Appellant to argue the grounds that were not originally ordered for the hearing.

On the 12th day of September, 2018, the Appellant filed a motion to dismiss counsel and represent self. To which, the court held another ex parte hearing and granted both of the Appellant's requests. Resulting in the relieving of assistance of counsel and permitting the Appellant to represent himself.

Attached to the foregoing motion was Appellant's closing argument which was filed on the 21st day of September, 2018. On the 12th of October, 2018 the Government responded disputing all four grounds for relief. To which the Magistrate recommended that Appellant's 2255 motion be denied as well as Certificate of appealability be denied.

On the 17th of December, 2018, the Appellant filed motion for continuance to file Objections to the Magistrate's report and recommendation to deny. The court granted the motion for continuance on the 18th of December and extended the time limitation to the 18th of January, 2019.

The District Court received a motion to supplement objections on the 28th of January which were accepted late to be construed as the Appellant's objections. The court reviewed the objections and overruled.

On the 7th of February, 2019, the Appellant filed a motion to file objections out of time, claiming that his objections were lost in the mail. He further claimed that his objections were filed timely and that his supplementation that was accepted as objections referenced his timely filing and supported his motion.

On the 12th of February, 2019, the District Court denied motion for leave to file objections untimely. Appellant then filed motion for reconsideration, offering a affidavit as new evidence and requesting untimely filing again on the 4th of March, 2019.

The District Court denied the motion for reconsideration on the 5th of March, stating that there was no qualifying grounds for reconsideration.

On the 18th of March, 2019, the Appellant filed a notice of appeal to the District Court to proceed to the Eleventh Circuit Court of Appeals. Where he filed for COA, Mandamus relief-- specifically for equitable tolling-- and a motion for leave to proceed in forma pauperis.

All three of the foregoing motions were denied by the Eleventh Circuit in conclusory order on the 19th of July, 2019. To which the Appellant filed a motion for reconsideration on the grounds that none of his arguments were properly reviewed but was denied on the 9th of October, 2019.

Appellant, hereby known as Petitioner, filed for extension of time to file writ of certiorari in the Supreme Court on the 26th of December, 2019. Which was granted and this writ of certiorari was due on the 7th of March, 2020, and is now timely.

## REASONS FOR GRANTING THE PETITION

### FIRST QUESTION

The overall delinquency in the Eleventh Circuit's denial of petitioner's COA was caused by conclusory order. This order's deficiency stemmed from a lack of controlling precedent to rely on. Which confused and impeded any appeal petitioner attempts to bring forth to this court as the reasoning for denial was unexplained. Petitioner's claim is supported here in brief.

Petitioner's cause for review is imperative to his development of appeal. There is a story being unfold through the proceedings of his case. And his success hinges from the fulcrum of review.

When the Eleventh Circuit denied petitioner's COA in conclusory order it negated petitioner's voice, impeding the story of his 2255. What conclusion can he find when his questions are left unanswered?

The Second Circuit is of the opinion that [conclusory orders do not provide sufficient basis for review.] They further mention that [without any explanation or clear reasoning there should be remand.]

Petitioner's COA presented a unique circumstance that occurred during his evidentiary hearing. Along with a request for mandamus relief that relied on a proper foundation and an ineffective assistance of counsel claim based on the facts. But his non-capital voice was unheard.

Petitioner's chance for a COA in the Eleventh Circuit is slim. A mere 8.4% chance for non-capital cases according to a recent study by Columbia University Law School.



The Eleventh Circuit uses a single Judge to review COA instead of a panel, which may be a factor in the levity left behind from the conclusory order used to deny petitioner's COA.

Had the Eleventh Circuit relied on controlling precedent or provided explanation then petitioner's right to due process of law would have been preserved. But petitioner can not develop his appellant story without the answers to his questions.

So now petitioner asks a new question, evolved from the delinquency of conclusory order. Was petitioner's right to due process of law violated by conclusory order that lacked any controlling precedent to rely on? And furthermore, was petitioner's ability to appeal wrongly impeded by the unexplained reasoning for denial?

There may be contention that COA review is not by right. And only if a Constitutional right is violated should COA be granted. But this does not allow the Eleventh Circuit to deny petitioner's assertions of Constitutional violations without clear reasoning.

To deprive petitioner of reason is to deprive him of review. Conclusory order without precedent to rely on is a quitesential violation of procedural due process of law.

Therefore, petitioner requests with the upmost respect to this highest of courts, to grant certiorari, because the Eleventh Circuit's conclusory order is conflicting with the Second Circuit's decision. It also presents an important question of federal law that has not been, but should be settled by this court.

## SECOND QUESTION

There is a fatal contradiction to due process of law when the confrontation clause has no application to 2255 proceedings. Because when a clerical error during evidentiary hearing prevented the cross-examination of witnesses, petitioner had no right to appeal on. Petitioner further asserts that his ability to satisfy the Strickland standard was hamstrung without a right to cross-examine. Now he supports why his right to confront those witnesses should have applied to his 2255 proceedings.

The gravity of conviction seems to attract appellant review. And although the gateway to review is narrow, it is the precedent and standards put in place that are meant to guide those they apply to. As is the meaning of the Strickland standard in 2255 proceedings.

Ofcourse the purpose of 2255 proceedings is to provide an opportunity for the collateral attack of conviction through civil action. To which the procedure is bound by both civil and criminal law as long as it does not violate any statutory provision.

The rights a appellant may assert during these proceedings is limited. Specifically it has been interpreted that the confrontation clause is not applicable during habeas corpus proceedings. And it certainly may be interpreted that the confrontation clause does no apply to 2255 proceedings either.

But may there be certain circumstances that would provide petitioner the right to confront those witnesses again after trial?

In the present case a dispute in the facts led to the granting of evidentiary hearing. In the order granting hearing, the District Court stated that the hearing would be limited to grounds two and

four of the four grounds presented in the original motion.

The petitioner asserted in his reply to the Government's response that all four grounds deserved to be heard. Which was in an effort to be allowed argument on the other grounds, grounds one and three from the original motion, during the evidentiary hearing.

But petitioner's reply was not properly filed and published by the District Court. In fact, it was not filed and published until the day of the hearing, during the proceedings. And only after the witnesses upon which ground one concerned, had already testified and been dismissed. This prevented petitioner from any chance to cross-examine these witnesses on the facts concerning ground one.

Petitioner moved in the Eleventh Circuit Court of Appeals on the ground that his right to confront those witnesses was violated. But the Eleventh Circuit denied in conclusory order.

Now petitioner is left with the lingering question, did he have the right to confront those witnesses during 2255 proceedings? To which he asserts that he did, but only for unique reasons.

•The first reason the confrontation clause should have applied during these proceedings is the witnesses' relation to trial proceedings. The two witnesses in question, S.A. Bosso and Mr. Wilkinson, were the two investigating agents from the original criminal action and they provided testimony at trial.

Petitioner had the right to confront these witnesses during trial, and this right should apply, if and when they offer new testimony about the facts of this case.

•The second reason the confrontation clause should apply to these proceedings is petitioner's ability to satisfy the Strickland standard was impeded without it's application. Petitioner's claims

on appeal concerned ineffective assistance of counsel and several of his grounds challenged his reasonableness. To satisfy Strickland petitioner had to make adequate showing of a different outcome had reasonable counsel acted in the same circumstances.

Petitioner attempted to show the possibility of a different outcome had reasonable counsel asked the questions that were not asked at trial. Not questions that the best attorney would have asked but questions any reasonable attorney would have asked. But without cross-examination there was no way for him to reach such a high standard.

The third reason the confrontation clause should apply to these proceedings is that petitioner's grounds were granted hearing but denied cross-examination. During the hearing the Magistrate addressed the error in filing and commented the potential for rehearing based on such a misfiling. Towards the end of the hearing he ordered that closing arguments will be briefed and the two misfiled grounds will be allowed argument. Which he then again mentioned the potential for rehearing.

This misfiling concerned petitioner's reply to the Government's response wherein he asserted that the two grounds left out of the the court's order for hearing deserved to be heard. The issue is that because the reply was misfiled and only addressed after the witnesses in question were dismissed cross-examination was denied.

Petitioner asserts that he had the right to confront those witnesses because of the foregoing reasons. Petitioner also asserts that he attempted to move for rehearing in his objections to the Magistrate's report and recommendation. But his objections were lost in the mail and therefore no ruling was made.

In the Eleventh Circuit's conclusory order it was stated that there was no constitutional violation. Meaning that petitioner did not have the right to confront those witnesses during 2255 proceedings.

This decision of federal law has not been, but should be settled by this court. Because with no application of the confrontation clause during the petitioner's evidentiary hearing there was not adequate means to test the reasonableness of trial counsel's actions on grounds that were granted hearing.

Cross-examination was denied and due process of law was violated. But the harm that petitioner suffered was without remedy because of this grey area in the application of the confrontation clause.

Petitioner's cross-examination must be guaranteed to provide proper basis for appeal. And under the foregoing circumstances petitioner asserts that he was entitled to the application of the confrontation clause and therefore entitled to redress from the Eleventh Circuit.

Petitioner now prays that this highest of courts will accept his respectful request to grant certiorari and review this important question of federal law.

### THIRD QUESTION

There is a overbearing burden of satisfying interest of justice standard to substitute counsel. Because, in the present case, this standard relied more on petitioner's conduct than the facts presented concerning counsel's conduct on appeal. Which allowed the Magistrate Judge discretion to deny substitution without considering the conflict of interest that was established. Leaving petitioner vulnerable to a harmful conflict of interest without remedy. Petitioner supports in brief...

This all began when petitioner motioned the District Court to substitute counsel on appeal. The counsel in question was CJA attorney, John Terrezza, who was appointed to represent petitioner during a evidentiary hearing for 2255.

In this motion to substitute, petitioner made a unequivical request to release his counsel and be appointed new counsel. To support his request he offered five grievances and explained his reasoning for each. Which he was granted a ex parte hearing that was ordered to take place on the morning of the evidentiary hearing.

The District Court entertained petitioner's grievances which were supported further by counsel's admission to a conflict of interest that was interfering with his representation. But ultimately the Magistrate relied on counsel's conduct in the past and the heavy burden of the interest of justice standard to deny substitution.

The evidentiary hearing was held and counsel operated under instruction of petitioner. At the end of the hearing the Magistrate judge ordered for closing arguments to be briefed.

Petitioner was then transported back to the county jail where

he was being held. Counsel returned to the agrieved behavior that inspired the original motion for substitution. Petitioner made numerous attempts to correspond with counsel but he was ignored and neglected and faced with a time limitation to file closing arguments petitioner's only logical choice was to dismiss counsel and file pro se.

The District Court held another ex parte hearing and petitioner's motion to dismiss and represent self were both granted.

Petitioner filed a COA in the Eleventh Circuit Court of Appeals claiming that counsel rendered ineffective assistance of counsel on appeal. To which the Eleventh Circuit denied in conclusory order.

Although this order may have lacked explanation there is a debatable theory derived from the developement of this appeal.

The interest of justice standard to substitute counsel requires any breakdown in communication between attorney and client to be the fault of attorney and not the client. The Magistrate had discretion to determine who was at fault for the conflict of interest between petitioner and his counsel.

So the challenge in petitioner's COA of abuse of discretion may be rendered moot. Because it was within the discretion of the Magistrate to determine if the conflict of interest was petitioner's fault.

But the real issue here is that the interest of justice standard allowed the Magistrate to rely more petitioner's conduct then counsel's because if petitioner was responsible for the breakdown in communication then counsel is absolved from assisting him to an objective standard for reasonableness.

This discretion conflicts with the preservation of the Constitution, specifically petitioner's sixth Amendment right to assistance of counsel. Because to push the burden of satisfying the interest of justice standard onto petitioner's conduct allowed counsel to be accorded undue leniency. Leaving petitioner at the mercy of a harmful conflict of interest without remedy.

There may be contention that petitioner is simply trying to find cause for appeal. But this presentation is the result of the development through appeal. Which is preserved by the arguments offered in the court of appeals concerning ineffective assistance of counsel and abuse of discretion.

There may be contention that petitioner chose to dismiss counsel and represent self and gave up his right to appeal counsel's conduct. Which fails because the only reason petitioner dismissed counsel is because of the deficient performance that was caused by a personal conflict of interest. And considering the lack of any alternative remedy and the potential harm from counsel's actions, what choice did petitioner really have but to dismiss?

The foregoing logic cuts to the heart of how discretionary review in the interest of justice standard left petitioner vulnerable to a harmful conflict of interest. Which violated his Sixth Amendment right to assistance of counsel without any chance for redress from the court of appeals.

Petitioner can only pray that this court, the Supreme Court of the United States of America, will grant this writ of certiorari and settle this important question of federal law that has yet to be settled.



#### FOURTH QUESTION

The inexplicable denial of petitioner's writ of mandamus by the Eleventh Circuit was erroneous. Petitioner's mandamus pertained to equitable relief, specifically equitable tolling to file objections in the District Court. The basis was that the District Court had ample cause to provide petitioner equitable relief but ignored thier duty. Now petitioner must briefly present why this Court should exercise it's supervisory power.

In the present case petitioner attended a evidentiary hearing that was granted to dispute the facts presented on 2255. Following the hearing the Magistrate, the Honorable Judge Kahn, filed a report and recommendation to deny all four of the petitioner's grounds on appeal.

Petitioner had fourteen days to reply but was interrupted from any attempt to produce his objections by the U.S. marshal service. Because after he recieved the recommendation to deny he was transported and unable to review his legal property for various reasons.

While being held in Oklahoma holdover, petitoner filed a motion for extension of time to file his objections to allow him time to arrive back at prison and produce objections. Petitioner arrived at FCC Forrest City-Low on the 26th of December, 2018.

The District Court granted extension, extending the time limitation to the 18th of January, 2019. To which petitioner was able to gain access to his legal property and produce objections.

On the 18th of January, 2019, petitioner relinquished his objections into the custody of the prison mail service. The District Court never recieved his objections.

In the motion to file objections, petitioner included a notice to the court that he was awaiting evidence and would supplement such evidence once it was available. The District Court did receive this supplementation on the 22nd of January and accepted it as petitioner's objections.

This acceptance of the supplementation was made in good faith but caused much confusion when petitioner filed a motion to file objections out of time. Because how can petitioner file out of time when he has already filed and been accepted as timely.

In the motion to file out of time petitioner offered the supplementation as supportive evidence of his timely filing of objections. Stating that his objections were lost in the mail and the supplementation not only mentioned the objections in the title, defendant's supplementation to the objections..., but also the introduction to this supplementation mentioned the recently filed Objections.

The District Court denied and petitioner motioned for reconsideration proffering affidavit as new evidence to support his timely filing. The District Court denied stating that petitioner had offered no sufficient grounds for relief.

On appeal in the Eleventh Circuit Court of Appeals, petitioner motioned for mandamus relief, asserting that he qualified for Equitable tolling and that the District Court was presented sufficient grounds for relief. The Eleventh Circuit denied without explanation or controlling precedent rely on.

Now petitioner has difficulty interpreting on which part of the standards regarding equitable relief he was denied on. Which leaves petitioner with the necessity of rehashing the same claim

in this court.

Petitioner therefore asserts that all three prongs for equitable relief and both prongs for equitable tolling were satisfied by his writ of mandamus. The following concisely shows how;

- Petitioner had the right to file through the prison mail system on the last day of the time limitation as well as the right to file objections to the Magistrate's recommendations.

- The District Court's duty to review his objections is non-discretionary.

- The District Court's denial of petitioner's motion to file out of time and motion for reconsideration left no alternative remedy available.

- And for equitable tolling petitioner showed that he has pursued his rights diligently by not only filing timely on all other motions but also the long trail of appeals concerning this matter clearly shows his diligence in pursuing a remedy.

- And finally petitioner asserts that his lost mail does qualify as extraordinary circumstances that were outside his control and prevented his timely filing.

Despite the requisite showing petitioner was denied relief. This is a issue because the harm that petitioner suffered as a result was egregious. So much so that his appeals are still being impeded by his denial of de novo review.

This court has already recognized the prison mailbox rule. Reasoning that prisoners have no control over delays with thier mail. Because pro se prisoners have no choice but to entrust thier mail to prison authorities whom he cannot supervise.

There is other case law that supports the extent of harm caused to petitioner. Wherein the court commented on the disastrous consequences that results if a motion is lost in the mail.

It has also been stated that it is the prisoner who faces the the stark consequences if his motion is never recieved.

The harm petitioner suffered from his lost objections has interfered with his entire appeal thereafter. Because lacking his objections the Magistrates recommendation to deny all four grounds was adopted without contest. And instead of developing the facts for any further review petitioner has been pigeon-holed into filing for equitable relief so is objections can be reviewed.

The harm is clear and the case law in support as well as the facts in support provide clear logic to show cause for relief but petitioner was denied. Therefore petitioner asserts that his lost mail did qualify as extraordinary circumstances and that he must now look to this court for relief.

This matter is a textbook example of departure from the accepted and usual course of judicial proceedings by the lower courts who denied petitioner relief. This matter also shows a decision to a important federal question in a way that conflicts with relevant decisions of this court.

Which is why petitioner now requests with the upmost respect to this Supreme Court of the United States, to grant certiorari so that the Elventh Circuit's denial may be explained and redressed.

AFFIDAVIT OF THOMAS VICTOR SWAY

I, Thomas Victor Sway, declares under penalty of perjury that the foregoing is true and correct.

- I am at least 18 years of age, of sound mind, and make this declaration knowingly and voluntarily.

- I filed motion for certificate of appealability with a motion for writ of mandamus in the Eleventh Circuit Court of Appeals.

- The Eleventh Circuit Court of Appeals denied in conclusory order without any clear reasoning.

- I filed a motion of reconsideration informing them of the delinquency in thier denial and only recieved another denial that lacked explanation.

- My Fifth Amendment Right to Procedural Due Process of Law was violated by the Elventh Circuit's conclusory order.

- I filed a Motion to vacate under 28 U.S.C. § 2255 claiming ineffective assistance of counsel on four grounds in the Northern District of Florida, Pensacola Division.

- I was granted hearing on grounds two and four of the four grounds presented before I was able to reply to the Government's Response.

- In my reply to the Government's response I asserted that my other grounds, grounds one and three, were debatable or wrong and deserved to be heard.

- My Reply was granted hearing at the end of proceedings but I was denied cross-examination.

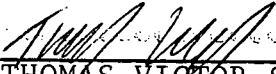
- My Sixth Amendment Right to confront those witnesses against me was violated by the District Courts misfiling of my reply.

- During the hearing I was granted ex parte hearing to express the grievances submitted to the District Court in my motion to realease counsel and appointment of new counsel.
- Appellant counsel's conduct was below an objective standard for reasonableness.
- The Magistrate advised me that counsel, Mr. John Terrezza, was a good lawyer because of his past conduct in his court and that my perception of him was therefore debatable.
- The Magistrate, the Honorable Judge Kahn, denied my construed motion for substitution of counsel, after explaining how difficult of a standard it was to satisfy.
- In a attempt to salvage the situation I tried to make amends with my attorney during these proceedings.
- My attorney made a admission during these proceedings that there was a personal conflict of interest that was interfering with his representation.
- My Sixth Amendment Right to assistance of counsel was violated by counsèl's deficient performance.
- My Fifth Amendment Right to Due Process of Law was violated by the District Court's denial of substitution of counsel when there was an established conflict of interest caused me harm.
- On January 18th, 2019, I relinquished my Objections to the Magistrate's report and recommendation to deny my 2255.
- My objections were lost in the mail and never arrived at the District Court.
- I filed for relief from the District Court and was denied.
- The District Court had a duty to review my objections and

there should have been mandamus relief provided by the  
Eleventh Circuit Court of Appeals.

•My Fifth Amendment Right to Procedural Due Process of Law  
was violated by my objections being lost without any redress  
by the District Court or the Court of Appeals.

I hereby declare under penalty of perjury that the foregoing is  
true and correct on the 6th day of March 2020.

  
THOMAS VICTOR SWAY  
66204-019  
FCI FORREST CITY-LOW  
P.O. BOX 9000  
Forrest city AR, 72336

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
Thomas Victor Sway

Date: 3/07/20