

150

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2022

In Re: MARK MARVIN, EX REL. Petitioner, for
NICOLE LAYMAN, Defendant

RESPONSE TO LETTER OF OBJECTIONS

The Clerk's Office returned (January 24, 2023) this instant petition and petitioner answers the Court's objections:

A, This petition will be in aid of the Court's appellate jurisdiction in that the issues raised herein are presently being formulated in other states. Some states, for example Minnesota as just seen on Fox News, are now passing similar legislation for the broad allowance of abortion. In this case, New York supposedly allowed the pregnant woman full control of her pregnancy, but when she had a miscarriage, the state charged her with murder. Clearly the terms of the law were vague and so ambiguous that the state did not understand what the law actually meant. Only this Supreme Court can use this opportunity to refine and define the terms of this and subsequent related laws so that laws are legalistically valid on a nationwide basis. State or federal local courts cannot make efficient nationwide implementation of uniformity, but The Supreme Court can use this opportunity to provide efficient nationwide guidance and avoid fifty simultaneous inconsistent litigatory nightmares.

In addition, the medical doctors did not apprehend that a miscarriage was not a crime under the New York statute. This can be refined on a nationwide basis by this Court.

And further, New York State under Governor Cuomo suspended “speedy trial” which is a Constitutional right (under due process) in New York State. The Governor simply does not have authority to suspend the Constitution except in limited circumstances. President Lincoln did not have authority to suspend habeas corpus. The onerous burden of prolonged pre-trial imprisonment coerced Ms. Layman to accept an involuntary plea. Multiple states (New Jersey, Massachusetts, Minnesota, ?) likewise suspended speedy trial. This is clearly an issue not resolved efficiently in a local court and begs for Supreme Court guidance.

B, A district court or any other court does not have nationwide authority. This case originates in the S.D.N.Y. and her local prison federal court would not have jurisdiction except for possibly parole denial or a *Bivins* / 1984 action. This issue is inherent in the originating criminal venue, but broad based beyond the local venue.

C, Corrections will be served on respondent, District Attorney of Orange County.

D, Original, 10 copies and IFP being provided.

Respectfully yours,



Mark Marvin
135 Mills Road
Walden, N.Y. 12586
845-778-4693
January 29, 2023

Nicole Layman 22G 0191
Albion Correctional Facility
3595 State School Road
Albion, N.Y. 14411-9399

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2022

In Re: MARK MARVIN, EX REL. Petitioner, for
NICOLE LAYMAN, Defendant

Against

SHERIFF OF ORANGE COUNTY, N.Y. , Respondent

APPENDIX

A, U.S. Court of Appeals denial

B-1 to B-2, U.S. D.C. dismissal

C, Instructions to Nicole Layman

D, N.Y. DoC Refusal to forward U.S. Mail to Layman

E, N.Y. Appellate Division denial of habeas corpus

F, Suspension of Due Process by Governor Cuomo

G, Letter to Medical Doctors to explain why abrupted placenta is homicide?

G-2, (no answer)

H-1 to H-6, Autopsy Report,

I-1 to I-5, M.D. Williamson consultation,

J, Fetal Growth Chart (inconsistent with testimony on fetal age),

K-1 to K-4, Grand jury testimony of forensic pathologist.

L, U.S. Court of Appeals order “In re Marvin” Jan. 6 case.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 15th day of December, two thousand twenty-two.

Present:

Debra Ann Livingston,
Chief Judge,
Barrington D. Parker,
Alison J. Nathan,
Circuit Judges.

In Re: Mark Marvin,

22-2191

Petitioner.

Petitioner, pro se, has filed a petition for a writ of mandamus and moves to proceed in forma pauperis ("IFP"). Upon due consideration, it is hereby ORDERED that the IFP motion is GRANTED for the purpose of filing the mandamus petition. It is further ORDERED that the mandamus petition is DENIED because Petitioner has not demonstrated that he lacks an adequate alternative means of obtaining relief, that his right to the writ is clear and indisputable, and that granting the writ is appropriate under the circumstances. *See Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380-81 (2004).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

Catherine O'Hagan Wolfe



A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

July 26, 2022

NICOLE LAYMAN, by Mark Marvin,

Petitioner,

-against-

SHERIFF, ORANGE COUNTY, NY,

Respondent.

21-CV-10907 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

Mark Marvin, who is not an attorney, filed this petition for a writ of *habeas corpus* under 28 U.S.C. § 2254, seeking to act on behalf of Nicole Layman in connection with pending criminal charges against her in Orange County Court. Layman did not sign the petition. On January 14, 2022, the Court dismissed Marvin's premature petition without prejudice, on the ground that he failed to show that he had standing to act as "next friend" on Layman's behalf.

After this action was closed, Marvin filed multiple additional motions for reconsideration challenging the order of dismissal, which the Court denied by orders dated February 7, 2022, and April 8, 2022. (ECF 9, 11.) Marvin now brings a "motion for clarification" (ECF 12), a "motion for *nunc pro tunc* relief" (ECF 14), a "motion for review of findings" (ECF 15), and a motion arguing the merits of the petition (ECF 16). For the reasons set forth below, the Court denies the motions in this closed action.

DISCUSSION

The Court dismissed Mark Marvin's Section 2254 petition on behalf of prisoner Nicole Layman on the ground that "[t]he burden is on the 'next friend' to establish the propriety of his status and thereby justify the jurisdiction of the court." *Whitmore v. Arkansas*, 495 U.S. 149, 163 (1990). At the time that Marvin brought the petition, Layman had not yet been sentenced and was

B-1

represented by counsel in the criminal proceedings. Marvin's petition did not set forth any adequate reason for the need to resort to the "next friend" device, and on January 14, 2022, the petition was dismissed. The dismissal of this action was without prejudice to Layman, or her counsel, eventually bringing a new Section 2254 petition seeking relief on her behalf.¹

The motions Marvin now brings are again signed solely by him. He argues in one motion that Layman's sentence is excessive. (ECF 14 at 1.) He also makes arguments that perjury by medical doctors is a crime and other substantive arguments indicating that, in his view, there were clear constitutional errors in Layman's criminal proceedings. (ECF 15-16.) The Court does not consider the merits of Marvin's arguments because the Court has already held, in the January 2022 order dismissing this action, that Marvin lacks standing to proceed on Layman's behalf. Marvin's motions are therefore denied, and this action remains closed.

CONCLUSION

Accordingly, Marvin's motions (ECF Nos. 12, 14-16) are denied. This action is closed. The Clerk of Court will accept for filing in this action only documents that are directed to the United States Court of Appeals for the Second Circuit. If Marvin files other documents that are frivolous or meritless, the Court will direct him to show cause why he should not be barred from filing further documents in this action.

① NY App Division 2021-05476 Sept 8, 2021

Dishonest

¹ The Court noted in the order of dismissal (ECF 6) that, before bringing a Section 2254 petition, a petitioner must exhaust state court remedies. See *O'Sullivan v. Boerckel*, 526 U.S. 838, (1999) (holding that state courts must be given the first opportunity to review constitutional challenge to petitioner's confinement). This action does not affect Layman's opportunity to bring a *habeas* petition after exhaustion of her state court remedies.

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

M278992
AFA/

WILLIAM F. MASTRO, J.P.
ANGELA G. IANNACCI
PAUL WOOTEN
DEBORAH A. DOWLING, JJ.

2021-05476

DECISION & ORDER ON MOTION

People, etc., ex rel. Mark Marvin, on
behalf of Nicole Layman, petitioner,
v Sheriff of Orange County, respondent.

Application by the petitioner for a writ of habeas corpus and for poor person relief.

Upon the papers filed in support of the application and the papers filed in opposition thereto, it is

ORDERED that the branch of the application which is for poor person relief is granted to the extent that the filing fee imposed by CPLR 8022(b) is waived, and that branch of the application is otherwise denied as academic; and it is further,

ORDERED that the branch of the application which is for a writ of habeas corpus is denied.

MASTRO, J.P., IANNACCI, WOOTEN and DOWLING, JJ., concur.

ENTER:

Maria T. Fasulo

Maria T. Fasulo
Acting Clerk of the Court

September 8, 2021

PEOPLE EX REL. MARVIN, on behalf of LAYMAN v SHERIFF OF ORANGE COUNTY

E

1 DR. KATHLEEN McCUBBIN

2 Q In your experience and training are
3 premature babies who are born at approximately 30
4 weeks of gestation period viable?

5 A Yes, certainly babies at 30 weeks,
6 approximately 30 weeks gestation can be viable
7 with medical care.

8 Q What type of medical care is typical
9 in those circumstances?

10 A So in situations where these babies
11 would be born in hospitals they would be watching
12 the labor and monitoring the baby for signs of any
13 distress and after the baby was born they would be
14 making sure that the baby was kept warm and they
15 would be making sure that the baby had adequate
16 nutrition and that the blood sugars are okay.
17 They would also often be helping the babe breathe
18 because at 30 weeks gestation the lungs are not
19 fully developed enough to typically be able to
20 breathe by themselves.

21 Q Why is it important to keep a baby of
22 30 weeks gestation period warm?

23 A Babies are vulnerable to changes in
24 temperature. Even a full term baby is very
25 vulnerable so you have to make sure that you keep

K-2

1 DR. KATHLEEN McCUBBIN

2 had on the listener, that is, what impact
3 that fact may or may not have had to this
4 expert witness.

5 Q Were you able to come to an opinion,
6 within a reasonable degree of medical certainty,
7 as to the cause of death of Baby Girl Layman?

8 A Yes, I was.

9 Q What was that opinion?

10 A The cause of death was environmental
11 exposure of newborn premature infant.

12 Q What does that mean?

13 A In my mind, environmental exposure
14 means that this baby was left essentially
15 abandoned in an environment where they could not
16 take care of themselves, and in this particular
17 situation it was a very cold environment.

18 Q You mentioned that medical therapy for
19 premature newborns of approximately 30 weeks
20 gestation period involve keeping a child warm.
21 Are premature newborns particularly vulnerable to
22 colder environmental conditions?

23 A Yes. All newborns are but in
24 particular premature newborns would be very
25 vulnerable.

K-3

1 DR. KATHLEEN McCUBBIN

2 Q In your opinion, under this scenario
3 and these conditions, how long could a newborn of
4 30 weeks gestation period survive, if left
5 untreated?

6 A In my opinion in this particular
7 scenario a newborn, a premature newborn in this
8 particular scenario could live probably on the
9 order of minutes in that cold. *seconds at best* X

10 Q Are you able to opine, within a
11 reasonable degree of medical certainty, as to
12 whether or not medical therapy, including taking
13 the child to a warmer environment, could have
14 prolonged Baby Girl Layman's life?

15 A It's certainly possible that medical
16 therapy may have prolonged her life.

17 Q Did you observe any evidence or
18 indication of medical therapy here?

19 A No, I did not.

20 Q You mentioned you performed
21 approximately 18,000 autopsies -- hundred
22 autopsies?

23 A 1800.

24 Q 1800, thank you.

25 Would you be able to opine if a

K-4

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-3105

September Term, 2022

1:21-cr-00119-CJN-1

Filed On: December 29, 2022 [1979475]

In re: Mark Marvin,

Petitioner

US v Miller (Nan 6)
cross appeal case

ORDER

Because the docketing fee in this case has not been paid, it is

ORDERED, on the court's own motion, that by January 30, 2023, petitioner either pay the \$500 docketing fee to the Clerk, U.S. Court of Appeals for the District of Columbia Circuit, or file with this court a motion for leave to proceed on appeal in forma pauperis. See Enclosure.

A request for appointment of counsel does not relieve petitioner of the obligation to file responses to any motion filed by respondent or to comply with any order issued by the court, including a briefing schedule. Failure by petitioner to respond to a dispositive motion or comply with any order of the court, including this order, may result in dismissal of the case for lack of prosecution. See D.C. Cir. Rule 38.

The Clerk is directed to send a copy of this order to petitioner by certified mail, return receipt requested, and by first class mail.

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Laura M. Chipley
Deputy Clerk

1

**Additional material
from this filing is
available in the
Clerk's Office.**