

IN THE
SUPREME COURT OF THE UNITED STATES

No, 6765

MAMBERTO REAL, PETITIONER,

v.

MICHAEL PERRY, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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SUPREME COURT, U.S.

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Petitioner Mamberto Real (“Mr. Real” or “Petitioner”), relies principally on his petition for writ of certiorari. He addresses here only Respondent’s contention that warrant a brief reply.

INTRODUCTION

Petitioner respectfully suggests that this court should take this case to resolve and to clarify specifically the dimension of the power of discretion that courts below have regarding how to decide the “broad authority” enacted upon Fed. R. Civ. P. 60 (b); in order to protect the due administration of justice from a misconduct of a defense’s witness, pouring outside influence upon the jury before the verdict. A defense’s witness broke the law when chatting with the jury before the verdict, but the United States Court of Appeals for the Eleventh Circuit answered “no” because Petitioner’s motion under Fed. R. Civ. P. 60 (b), it was not new discovered evidence. So, a person who poisons a water source, and as consequence, an unknown number of people die, but he or she is captured a year later, because he or she was caught on video surveillance committing the crime, but it would not be new discovered evidence to be convicted of the crime, because “after the facts” the video surveillance “cannot” be reviewed.”

I. ARGUMENT

A. Respondent's violation of this court Rule 5.

Rule 5, among other things states as follows:

"Must not have been the subject of any adverse disciplinary action pronounced or in effect during that 3-year period; and must appear to the Court to be of good moral and professional character."

In order to support the foregoing Petitioner is attaching Exhibit A. It is for this court to decide if Respondent is eligible to proceed before this Court.

B. The Decision Below is Wrong. Broad Authority Upon Fed. R. Civ. P. 60 (b).

First and foremost, the "broad authority" from Fed. R. Civ. P. 60 (b), structure, history, and purpose, it was amended by congress in 1946, as an avenue to defeat injustices, miscarriage of justice, willfully misconduct from anyone, among others illegal conduct, in order to vacate a judgment, and inherently to apply due process and equal protection of the laws without respect to persons. In *Klapportt v. United States*, 335 US 601 (1949), a naturalized citizen was deprived of his citizenship through a default proceeding. A divided court vacated the default judgment, holding that the facts in the case constituted extraordinary circumstances which brought the motion within the "any other reason" clause of Fed. R. Civ. P. 60 (b) (6). In *Liljeborg v. Health Serv. Acquisition Corp.* 486 US 847, 868 (1988); in deciding if vacatur was the appropriate remedy, this court considered three factor the risk of injustice to the parties, whether the denial of relief will produce injustice in other cases, and whether the public's confidence in the judicial process would be undermined.

C. A Defense's Witness communication with the jury before verdict, and thereafter going to the stand to testify against Petitioner constituted an extraordinary circumstance to vacate the judgment under Fed. R. Civ. P. 60 (b).

Without legal doubt the denial of relief will produce the judicial process to be undermined. In addition, there are two more extraordinary circumstances, when a jury that remained in silent against jury instructions, and Petitioner's lawyer that

failed to object to that despicable action from a defense's witness. There is no reasonable argument from the respondent to supersede Petitioner's argument, unless there is unfair reasoning interpreting the text, structure, history and purpose of Fed. R. Civ. P. 60 (b).

D. Parker v. Glidden, 385 US. 363 (1966)

Even assuming that Mr. Real's motion under Fed. R. Civ. P. 60 (b), by the rule is not considered to be newly discovered , this court in Parker v. Glidden, 365 US. 363 (1966), stated "that the statements of the bailiff to the jurors are controlled by the command of the Six Amendment, made applicable to the States through the Due Process Clause of the Fourteenth Amendment..." And the bailiff 's expressions were private talk tending to reach the jury outside influence. In Mr. Real's case the "private talk" is unknown because trial court refused to review the cameras "after the facts" to detect an extraordinary circumstances calling for relief under Fed. R. Civ. P. 60 (b).

Moreover, even if the "private talk" or conversation is unknown by all parties as the respondent asserts; See Doc 31 at 6, Case No. 21-14496 July 22, 2022, respondent's answer brief. No matter how they do it, people who try to influence jurors, the action is calling for new trial. See State v. Wilson, 314 N. C. 653 (1985). This court Rule 10 (a) states:

"a United States court of appeals has entered a decision in conflicts with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort..."

States v. Wilson is an example of conflict with the decision from the United States Court of Appeals for the Eleventh Circuit upon Mr. Real's case, because even if trial court's interpretation had no authority to review the cameras "after the facts," Mr. Real was entitled at least for a fair hearing sua sponte for trial court to verify allegation of misconduct from a defense's witness, because Fed. R. Civ. P. 60 (b) (6) clause provides relief for any other reason. "All laws ought to be expressed in such a manner as that its meaning may be unambiguous , and in such a language as may be readily understood by those upon whom

it is to operate." See *Session v. Dimaya* No. 15-1498, Decided April 17. 2018. (Opinion of Gorsuch, J.).

E. Clark v. Martinez 543 US 371 (2005)

"For this court however to sanction indefinite detention in the phases of Zadvydas would establish within our jurisprudence beyond the power of congress to remedy the dangerous principle that judges can give the same statutory text, different meaning in different cases."

(Hon. J. Antonin Scalia)

Mr. Real respectfully suggests that the precedents of this court with respect to "broad authority" upon Fed. R. Civ. P. 60 (b), likewise other courts, are suggesting that Mr. Real's case inexorable is calling for that broad authority without the dangerous principle of different interpretation upon his case. The Eleventh Circuit was reversed by this court on *Clark v. Martinez* because of that different interpretation.

F. Respondent's Brief in Opposition Does Not Satisfy This Court Rule 15.2 and 15.3, among others.

Petitioner respectfully suggests that after carefully reading Respondent's brief in opposition, the response does not satisfy this court Rule 15. 2 and 15.3, among others.

CONCLUSION

Petitioner's writ of certiorari should be granted.

Respectfully submitted:

Mamberto Real

POBOX 1001 Fort Myers, Florida 33902

(239) 2024420

realmamberto@gmail.com



March 17 2023

EXHIBIT A. (ATTACHMENT TO SUPPORT STATEMENT)

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

IN RE: Complaint by Mamberto O. Real against Robert B Burandt
The Florida Bar File No. 2021-10,458 (20C)

NOTICE OF GRIEVANCE COMMITTEE REVIEW

TO: Mr. Robert B Burandt
1714 Cape Coral Pkwy E
Cape Coral, FL 339049620

NOTICE: PLEASE BE ADVISED that the Twentieth Judicial Circuit Grievance Committee "C" will vote on the above named matter on July 7, 2022, as to whether probable cause is present for further proceedings.

Enclosed are copies of Rules 3-7.4(h) and 3-7.4(i), as amended, and a list of the grievance committee members.

ALLEGATIONS AND RULES TO BE CONSIDERED:

represented a law enforcement officer accused of utilizing excessive force on complainant, Mamberto Real. Mr. Real has been diagnosed with Post-Traumatic Stress Disorder that results in his uncontrolled defecation when in the presence of law enforcement as a result of the alleged excessive force. Respondent took Mr. Real's deposition on January 13, 2021. Respondent made accommodations as to Mr. Real for the deposition due to Mr. Real's diagnosis. The accommodations included respondent's client not being present. During questioning by respondent, Mr. Real became uncooperative when asked to obtain his driver's license from his car. Respondent then stated that if Mr. Real did not want to cooperate that he would invite the officer to be present for the remainder of the deposition. Respondent's statements caused Mr. Real distress. Respondent stated there was "no threat, just a question" in efforts to conclude the deposition.

The following Rules Regulating The Florida Bar may have been violated:

3-4.3 (Misconduct and Minor Misconduct);

4-8.4 (Misconduct).

The following documents will be considered by the committee in making its determination:

1. Initial Inquiry/ Complaint dated February 4, 2021
2. Further information provided by complainant dated March 3, 2021
3. Response to 15 day letter
4. Rebuttal of complaint
5. Emails between respondent and TFB dated May 19, 2021.

If you have not received copies of the aforementioned documents, please advise Bar counsel, in writing, on or before the date noted below, when a written statement is due.

You have the opportunity to make a written statement, sworn or unsworn, explaining, refuting or admitting the alleged misconduct. This statement must be received by me no later than 2 days prior to the scheduled meeting date. Pursuant to Rules Regulating The Florida Bar 3-7.4, the respondent has no right to personally appear before the committee. You may request permission to appear before the committee by submitting a written detailed explanation of the need for a hearing which must include a summary of the information anticipated to be developed through personal appearance. The rules do not allow for any right of appeal of the committee's decision allowing or disallowing a personal appearance.

I HEREBY CERTIFY that the foregoing notice was sent to the above addressee on this 23 day of June, 2022, by U.S. Mail and via email to robert@capecoralattorney.com.



Evan D. Rosen
Bar Counsel

The Florida Bar
Tampa Branch Office
2002 N. Lois Ave., Suite 300
Tampa, Florida 33607-2386
(813) 875-9821
Florida Bar No. 106640
erosen@floridabar.org

cc: Diana Dawn Maselli, Chair

Rule 3-7.4(h) Rights and Responsibilities of the Respondent. The respondent may be required to testify and to produce evidence as any other witness unless the respondent claims a privilege or right properly available to the respondent under applicable federal or state law. The respondent may be accompanied by counsel. At a reasonable time before any finding of probable cause or minor misconduct is made, the respondent shall be advised of the conduct that is being investigated and the rules that may have been violated. The respondent shall be provided with all materials considered by the committee and shall be given an opportunity to make a written statement, sworn or unsworn, explaining, refuting or admitting the alleged misconduct.

Rule 3-7.4(i) Rights of the Complaining Witness. The complaining witness is not a party to the disciplinary proceeding. Unless it is found to be impractical by the chair of the grievance committee due to unreasonable delay or other good cause, the complainant shall be granted the right to be present at any grievance committee hearing when the respondent is present before the committee. Neither unwillingness nor neglect of the complaining witness to cooperate, nor settlement, compromise, or restitution will excuse the completion of an investigation. The complaining witness shall have no right to appeal.

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

IN RE: Complaint by Mamberto O. Real against Robert B. Burandt
The Florida Bar File No. 2021-10,458 (20C)

NOTICE OF ASSIGNMENT OF INVESTIGATING MEMBER

TO:

Mamberto O. Real
P.O. Box 1001
Fort Myers, FL 33902
(239) 202-4420
realmamberto@gmail.com

Robert B. Burandt
1714 Cape Coral Pkwy. East
Cape Coral, FL 33904
(239) 542-4733
robert@capecoralattorney.com

The complaint is hereby assigned to the following member(s) of the committee for investigation:

Andrew H. Foster
12681 Creekside Lane
Fort Myers, FL 33919
(239) 461-5951
afoster@finemarkbank.com

Evan D. Rosen
2002 N. Lois Avenue, Suite 300
Tampa, FL 33607
(813) 875-9821
erosen@floridabar.org

Notice is given that this case will be considered by the committee.

DATED this 12th day of October, 2021.



Evan D. Rosen, Bar Counsel
The Florida Bar, Tampa Branch Office
2002 N. Lois Ave., Suite 300
Tampa, Florida 33607-2386
(813) 875-9821
erosen@floridabar.org

Copies furnished to:

Diana Dawn Maselli, Chair, Twentieth Judicial Circuit Grievance Committee "C"
Andrew H. Foster, Co-Investigating Member

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

THE FLORIDA BAR,
Complainant,

The Florida Bar File
No. 2021-10,458 (20C)

v.

ROBERT B. BURANDT,
Respondent.

**NOTICE OF FINDING OF PROBABLE CAUSE FOR FURTHER
DISCIPLINARY PROCEEDINGS**

TO: Robert B. Burandt
1714 Cape Coral Parkway East
Cape Coral, FL 33904
robert@capecoralattorney.com

The Twentieth Judicial Circuit Grievance Committee "C", at a duly constituted meeting on September 15, 2022, found probable cause to prepare a formal complaint pursuant to Rule 3-7.4(l), Rules Regulating the Florida Bar, based upon violation of the following rules:

Rule 3-4.3 (Misconduct and Minor Misconduct);

Rule 4-8.4(d) (Misconduct).

Pursuant to Rule 3-7.5(a) of The Rules Regulating The Florida Bar, on **September 20, 2022**, the Designated Reviewer approved the action of the grievance committee, which is now final. It is recommended that you review the procedures for admission of minor misconduct and conditional guilty pleas. See Rules 3-5.1 and 3-7.9.

Dated this September 21, 2022.

[Signature]
Evan D. Rosen, Bar Counsel
The Florida Bar, Tampa Branch Office
2002 N. Lois Ave., Suite 300
Tampa, Florida 33607-2386
(813) 875-9821
erosen@floridabar.org

Copies furnished to:

Patricia Ann Toro Savitz, Staff Counsel
Jesus Manuel Casas, Chair
John David Agnew, Designated Reviewer
Mamberto O. Real, Complainant

From: Mamberto Real realmamberto@gmail.com
Sent: Thu, 22 Sep 2022 10:28:05 -0400
To: eastcountylibrary-bw@printspots.com
Subject: Fwd: BURANDT - TFB#2021-10,458 (20C) - NOTICE OF PROBABLE CAUSE
FINDING

Sent from my iPhone

Begin forwarded message:

From: "Serralta, Yra" <YSerralta@floridabar.org>
Date: September 21, 2022 at 12:27:15 PM EDT
To: Robert Burandt <robert@capecoralattorney.com>
Cc: "Savitz, Patti A." <psavitz@floridabar.org>, "Casas, Jesus"
<jesus.m.casas@usdoj.gov>, "Agnew, John D" <johna@bapfirm.com>,
realmamberto@gmail.com, "Rosen, Evan D" <erosen@floridabar.org>
Subject: BURANDT - TFB#2021-10,458 (20C) - NOTICE OF PROBABLE CAUSE
FINDING

On behalf of Evan D. Rosen, Bar Counsel, please find enclosed correspondence regarding the above-referenced matter. Thank you.

Yra Serralta, Legal Assistant to:
Evan D. Rosen, Bar Counsel
Courtney L. Thomas, Bar Counsel
Chris Phillips, Bar Counsel
The Florida Bar, Tampa Branch Office
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Please note: Florida has very broad public records laws. Many written communications to or from The Florida Bar regarding Bar business may be considered public records, which must be made available to anyone upon request. Your e-mail communications may therefore be subject to public disclosure.