

IN THE UNITED STATES SUPREME COURT

PHILANDER PHILIPPEAUX

Petitioner

Case No. 17-6864

V.

UNITED STATES OF AMERICA

Respondent

PETITION FOR WRIT OF CERTIORARI

On Petition for Writ Of Certiorari: To United States court of appeal for the Second Circuit.

Mr. PHILANDER PHILIPPEAUX is a layman at law and ask this Honorable court to liberally construe his motion or argument as such, and held to less stringent standards than formal pleadings drafted by lawyers. If the court can reasonably read the pleading to state valid claims on which Philippeaux could prevail, it should do so despite failure to cite proper legal authorities, confusions of legal theories, poor syntax and sentence construction, or Philippeaux's unfamiliarity with pleading requirements. Pursuant to: Haines v. Kerner 404 U.S. 519, 92 S. Ct. 594, 30 L. 2d 652 (1972). See also Erickson V. Pardus, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007).

QUESTION PRESENTED: Consistent with the "DUE PROCESS" clause and the right to a "FAIR TRIAL" stemming from the fifth and fourteenth amendment of the UNITED STATES CONSTITUTION. Did the Southern District of New York have "jurisdiction" to impose a sentence on Mr. Philippeaux if the Government used "FRAUDULENT" documents as evidence to obtain "JURISDICTION/VENUE" to indict, prosecute and convict the defendant?

The Court committed "plain error" and violated the constitutional rights of the Petitioner when it instructed the trial Jury it has obtained "VENUE/JURISDICTION" using "FRAUDULENT DOCUMENT" as evidence (alleged phone call, phone records and recordings), and states that such evidence were obtained in a lawful manner. The Court also states that the use of such "FRAUDULENT" documents by the US Government were entirely legal! (see exhibit A-1, A-2, B & Y) attached. This Fraud upon the court took place at the inception of the case, during the "GRAND JURY" proceedings. (see exhibit GJ-TR or Gran Jury transcript Pg. 8 Ln 15 thru 20) attached.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED:

5th & 14th Constitutional amendment "right to a fair trial", and "due process" clause of the U.S. Constitution.

PLAIN ERROR:

Under the "plain error" standards, a court need only (1) discern an error, (2) that error must be plain, (3) affects the defendant substantial rights and, (4) implicate the fairness, integrity or public reputation of judicial proceedings. United States V. Olano, 507 U.S. 725, 732, 1135 S. Ct. 1770, 123 L.

The Supreme Court defined "FALSE" & "FRAUDULENT" as follows:

- 1-A document is false if it is untrue when made and was known to be untrue when made by the person making it or causing it to be made.
- 2-A document is "FRAUDULENT" if it is falsely made with intent to deceive.
- 3-Deceitful half-truth or the deliberate concealment or material facts may also constitute false or fraudulent information. Id.
- 4-The court also instruct the "JURY" that "False or Fraudulent" evidence was material" if "it was likely to influence the [GRAND] Jury's decision to indict" Id.

Statement of the case:

On April 3, 2014 a two count indictment and superseding indictment were filed against Mr. Philippeaux. Mr. Philippeaux pleaded not guilty, and awaited 1 year and half before the case proceeded to trial. During trial, no direct evidence were presented against Mr. Philippeaux but government agent's hearsay and phone recordings, to establish "venue" and connection to the conspiracy. The court instructed the Jury to accept and trust the evidence presented in error, and on September 23, 2015, Mr. Philippeaux was found guilty on all counts and sentenced to 17 years of imprisonment.

Reason for granting petition:

- 1) The petitioner's constitutional rights were violated. His fifth and fourteenth amendment, right to a fair trial and due process of the law rights.
- 2) The petitioner's conviction was obtained through the presentation of "clear and flagrant error" by the Government as evidence.
- 3) The trial court committed "plain error" in allowing "inadmissible" hearsay that painted Mr. Philippeaux as a conspirator and allowed the Jury to convict him on the basis he acted in conformity with it, while the court instructed the Jury to accept "a clear & flagrant error" as material evidence in corroboration with the government's agents "hearsay" about Mr. Philippeaux which violates the Petitioner's constitutional rights.
- 4) The Government obtained jurisdiction using a "clear & flagrant error" as evidence. The District Court instructed the Jury, that venue was establish by using the said "clear & flagrant error".
- 5) The petitioner "shows by clear and convincing evidence that "-if properly instructed- or but for a constitutional violation" "no reasonable Juror would have" concluded the petitioner is guilty, or the Court has jurisdiction to impose a sentence.
- 6) Mr. Philander Philippeaux is arguing actual innocence.

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

CASES FROM FEDERAL AND STATE COURTS' OPINION BELOW

-Supreme court teaching in the case of Townsend V. Burke, (1948) 334 U.S. 736, 740-41, 685. Ct.1252, 12 55 L. Ed. 1690 (conviction/sentence cannot be based on misinformation).

-State v. Thomas, 2017 BL 355197, Ohio, No. 2012-2026, 10/4/17. Justice Terrence O'Donnell, Joined by chief Justice Maureen O'Connor and Justice William M. O'Neil wrote "the trial court committed "plain error" in admitting evidence that painted Thomas as someone with bad character and allowed the Jury to convict him on the basis that he acted in conformity with it", it said in reversing his convictions and death sentence.

-The court concluded that, notwithstanding a procedural, it could "reach the merits" of Hutton's claims to "avoid a fundamental miscarriage of justice". Hutton v. Mitchell, 839 F. 3d 486, 498 (2016).

- Our body of jurisprudence has never countenanced the fabrication of any sort of evidence either "tangible or testimonial". Cf, Yarris v. County of Delaware, 465 F. 3d. 129 (3rd. Cir. 2006); United States v. Salemme, 91 F. Supp. 2d 141 (D. Mass. 1999); United States v. Hernandez-Rodriguez, 443 F. 3d. 138 (1st. Cir. 2006); Olmstead v. United States (1928) (J. Brandeis dissenting) 277 U.S. 438, 479; Demjanjuk v. Petrovosky, 10 F. 3d 338 (6th. Cir. 1993); Universal Oil Products v. Root Refining Co., (1946) 322 U.S. 575, .

As to do so, would be to deliberately "defile the temple of Justice, cf, Root Refining Co., Id at, 580.

CONCLUSION

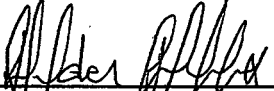
The Government obtained venue using "fraudulent evidence" in error, of alleged "phone call, number and records". That are in fact non-existent, before and during the times alleged in the indictment which warrants "dismissal" under the fifth amendment due process of law clause, as explained thoroughly in the case of United States v. Samango, 450 F. Supp. 1097, aff'd 607 F.2d 877 (9th Cir. 1979)

(Indictment dismissed with prejudiced where it was determined "fraud had been practiced on the Grand Jury).

Our body of jurisprudence announces, "absent a reason for mistrust, courts have not hesitated to take judicial notice of agency records and reports", see generally Terrebonne v. Blackburn, 646 F. 2d. 997, 1000, n* 4 (5th. Cir. 1981). Therefore At&T's reply to this agency court's Subpoena, can be judicially noticed, as evidence of "clear and flagrant error upon the court".

The petition for a writ of Certiorari should be granted to "avoid a fundamental miscarriage of justice".

Respectfully Submitted,



1-19-18

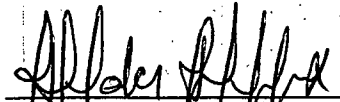
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CERTIFICATE

The Petitioner certifies that, the grounds on which this request for re-hearing of Writ of Certiorari are limited to intervening circumstances or substantial or controlling effect "and" other substantial grounds not previously presented. The Petitioner also certify that, the Petitioner's petition is presented in good faith and not being taken for purpose of delay, that he raises substantial questions of "law and fact". The proposed issues in the petition are not frivolous, they are meritorious and should decide the other way to ameliorate this "travesty of Justice" (to ameliorate: to make better or more tolerable: to grow better syn. Improve i.e., make amends. Inexorable: not to be persuaded, moved or stopped: RELENTLESS i.e. impossible to prevent). (Merriam Webster's collegiate Dictionary 11th Edition Copyright 2009).

For the forgoing reasons, the petition for "RE-HEARING & WRIT OF CERTIORARI" should be granted.

Respectfully Submitted,

 5/2/18

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