TRULINCS 18079002 - JOYNER, LEROY THOMAS JR - Unit: YAZ-B-A

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SUBJECT: ***Request to Staff*** JOYNER, LEROY, Reg# 18079002, YAZ-B-A
DATE: 10/10/2025 09:48:44 AM

To:
Inmate Work Assignment: SUPREME COURT

No. 25-6087

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

LEROY THOMAS JOYNER, JR.

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

FILED
OCT 22 2025
OFFICE OF THE CLERK
SUPREME COURT, U.S.

On Petition for Writ of Certiorari to the
United States Courts of Appeals
For the Eleventh Circuit

EMERGENCY PETITION FOR WRIT OF CERTIORARI

Leroy Thomas Joyner, Jr. #18079-002
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QUESTIONS PRESENTED

1. Whether a Federal Court may grant summary affirmance of an appeal taken from the district court order denying transcription of audio and video recordings when they were prior testimony and custodial examinations a established in Crawford v. Washington, 541 U.S. 36, 51 (2004).

2. If so, whether a Federal Court may grant summary affirmance where it mandate conflicts with this Court holding in Coppedge v. United States, 369 U.S. 438 (1962).

3. If so, whether a Federal Court may grant a party summary affirmance where its mandate sanctions a lower court's departure from the accepted and usual course of judicial proceedings as it relates to Griffin v. Illinois and its progeny.

4. If so, whether a Federal Court may grant a party summary affirmance where its mandate sanctions a lower court's departure from the accepted and usual course of judicial proceedings as it relates to Griggs v. Provident Consumer Discount Co., 459 U.S. 56 (1982).

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PROCEEDINGS IN FEDERAL TRIAL AND APPELLATE COURTS DIRECTLY RELATED TO THIS CASE

UNITED STATES DISTRICT COURT (M.D. Ala.):

United States v. Leroy Thomas Joyner, Jr., No. 1:20-CR-00033-ECM-SMD (June 21, 2020)

United States v. Leroy Thomas Joyner, Jr., No. 1:21-CR-00339-RAH-SRW (January 27, 2021)

United States v. Leroy Thomas Joyner, Jr., No. 1:22-CR-00242-ECM-JTA (August 9, 2024)

UNITED STATES COURT OF APPEALS (11th Cir.):

United States v. Leroy Thomas Joyner, Jr., No. 21-11928 (July 1, 2021)

United States v. Leroy Thomas Joyner, Jr., No. 21-12175 (November 2, 2021)*

United States v. Leroy Thomas Joyner, Jr., No. 21-13944 (March 23, 2022)

United States v. Leroy Thomas Joyner, Jr., No. 23-10189 (Aprill 11, 2023)

United States v. Leroy Thomas Joyner, Jr., No. 24-12193 (November 21, 2024)

United States v. Leroy Thomas Joyner, Jr., No. 24-12605 (Pending)

United States v. Leroy Thomas Joyner, Jr., No. 25-10616 (July 29, 2025)

*When adjudicating appeal number 21-12175, the Eleventh Circuit pursuant to Parr v. United States held that the initial and all subsequent indictments would be considered one single prosecution. 351 U.S. 513, 518-19 (1956); (See p. 49a-51a).

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TABLE OF AUTHORITIES

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TRULINCS 18079002 - JOYNER, LEROY THOMAS JR - Unit: YAZ-B-A

FROM: 18079002
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PETITION FOR WRIT OF CERTIORARI

Petitioner, Leroy Thomas Joyner, Jr., respectfully petitions for a Writ of Certiorari to review the decree of the United States Court of Appeals for the Eleventh Circuit. (See p. 387a - 390a).

OPINIONS AND ORDERS BELOW

The Eleventh Circuit's Opinion dated July 29, 2025 is provided in the petition appendix (Pet.App.) at 387a-390a.

The District Court's decisions deny transcripts on appeal are provided in the petition appendix (Pet.App.) at 333a-343a.

JURISDICTION

The Eleventh Circuit issued its decision on July 29, 2025. Pet. App. 387a-390a. The jurisdiction of this Court is invoked under Section 1254. Petitioner timely filed this petition pursuant to this Court's order regarding filing deadlines (March 19, 2020) and Rule 29.2.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in relevant part:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury ...; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself; nor be deprived of life, liberty, or property, without due process of law."

The Sixth Amendment to the United States Constitution provides:

"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 by the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Federal Rules of Appellate Procedure (Rule 4):

(b) Appeal in a Criminal Case

(1) Time for Filing a Notice of Appeal.

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the later of:

(i) the entry of either the judgment or the order being appealed; or

(ii) the filing of the Government's notice of appeal.

Federal Rules of Appellate Procedure (Rule 10):

(a) Composition of the record of appeal. The following items constitute the record on appeal:

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(1) the original papers and exhibits filed in the district court;

(2) the transcript of proceedings, if any; and

(3) a certified copy of the docket entries prepared by the district clerk.

(b) The Transcript of Proceedings

(1) Appellant's Duty to Order: Within 14 days after filing the notice of appeal or entry of an order disposing of the last timely remaining motion of a type specified in Rule 4(a)(4)(A), whichever is later, the appellant must do either of the following:

(A) order from the reporter a transcript of such parts of the proceedins not already on file as the appellant considers necessary, subject to a local rule of the court of appeals and with the following qualifications:

(i) the order must be in writing;

(ii) if the cost of the transcript is to be paid by the United States under the Criminal Justice Act, the order must so state; and

(iii) the appellant must, within the same period, file copy of the order with the district clerk; or

(B) file a certificate stating that no transcript will be ordered.

Section 1291. Final Decisions of District Courts.

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a district review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

Section 753(f). Court Reporter Act.

Each reporter may charge and collect fees for transcripts requested by the parties, including the United States, at rates prescribed by the court subject to the approval of the Judicial Conference. He shall not charge a fee for any copy of a transcript delivered to the clerk for the records of Court. Fees for transcripts furnished in criminal proceedings to persons proceeding under the Criminal Justice Act [Section 3006A], or in habeas corpus proceedings to persons allowed to sue, defend,

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or appeal in forma pauperis shall be paid by the United States out of monies appropriated for those purposes. Fees for transcripts furnished in proceedings brought under Section 2255 of this title ..... to persons permitted to sue, or appeal in forma pauperis shall be paid by the United States out of monies appropriated for those purpose if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal. Fees for transcripts furnished in other proceedings to persons permitted to appeal in forma pauperis shall also be paid by the United States if the trial judge or circuit judge certifies that the appeal is not frivolous (but presents a substantial question). The reporter may require any party requesting a transcript to prepay the estimated fee in advance except as to transcript that are to be paid by the United States."

STATEMENT OF THE CASE

Having raised evidentiary issues (hereinafter "raised issues") under case no. 1:20-cr-000333-ECM-SMD (hereinafter "Indictment #1-2"), case no. 1:21-cr-00339-RAH-SRW (hereinafter "Indictment #3") and case no. 1:22-cr-00242-ECM-JTA (hereinafter "Indictment #4"), the Petitioner requested transcripts from his standby counsel. (See p. 327a, n.4). The district court was aware of that request. Id. After exhausting more than four months requesting the needed transcripts, Petitioner filed an emergency motion for transcripts. (See p. 326a). Not only was the district court aware that the standby counsel did not produce the transcripts, but they waited over a month to provide him some transcripts/ Id. Moreover, that court failed to consider that the June 20, 2024 ex parte hearing was held to raise with the court that standby counsel had continued the Petitioner's sentencing hearing and submitted objections to the Pre-sentence Investigation Report (hereinafter "PSR") without his authorization. (See p. 326a). That violation of his Sixth Amendment right to self-representation was known to the district court as outlined by doc. 240. Id. It was first brought to the court's attention that transcripts were requested by him for sentencing and on appeal within that filing and others. (See p. 101a, para. 2-3).

Nonetheless, the district court refferred the non-disclosure of the transcripts as well as the clerk of court erroneous filing of an exhibit as objections to the PSR to the magistrate judge. (See p. 254a-255a). The court's refferral was a plain error. (See p. 264a). That error was raised with the district court. (See p. 100a-104a). It was known or should have been known that the Federal Magistrate Act prohibits magistrates from conducting an evidentiary hearing or making a finding of fact during the sentencing phase of a felony case. See United States v. Ruiz-Rodriguez, 277 F.3d 1281 (11th Cir. 2002). This prohibition was

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not only raised with the district court, but was known by the chief judge before issuing her December 19, 2024 denying Petitioner transcripts on appeal. (See p. 100a-104a). Nevertheless, the magistrate judge not only issued an order regarding the raised issues, but held a Status Hearing regarding his need for transcripts. (See p. 265a-275a). The order and hearing were a plain error that left the Petitioner without evidentiary support to 1) object to enhancements, 2) contest the Government establishing of a sentence and 3) challenge both his conviction as well as sentence, among other things on appeal.

Because the magistrate judge ensured Petitioner that despite not getting transcripts during the sentencing phase, "he will have an opportunity to request transcripts for purposes of appeal" (See 97a), Petitioner filed a motion for transcripts on appeal. (See p. 276a-293a). He also notified the court that the sentencing hearing transcript would be needed on appeal (See p. 293a-297a). Still that court waited (133) days before adjudicating that motion. (See p. 226a-227a). In addition to the transcripts supra, a motion for transcription of the August 2, 2024 Status Hearing was submitted to the district court. Both the Sentencing hearing and the Status Hearing motions have not been adjudicated by that court for over (373) and (249) days, respectively. (See p. 226a). Prior to that order, on November 21, 2024, a mandate was issued by the Eleventh Circuit. (see p. 387a). There, the Circuit opined that Petitioner "has requested and obtained transcripts as part of his appeal", but that conclusion was false. (See p. 368a, para. 2). The order clearly notes that the Petitioner received transcripts before sentencing, not after the filing of a notice of appeal. (see p. 333a-334a). That misrepresentation left the Petitioner without transcripts which was magnified after the issuance of the order. The Eleventh Circuit knew or should have known that the Petitioner did not obtain transcripts on appeal.

When the order was issued, the Petitioner found himself in a position of not only not having the required transcripts to file his appellate brief, but sparring with the district court regarding the requested transcriptions. This was prejudicial. United States v. Hitchmon, 602 F.2d 689, 692 (5th Cir. 1979) (holding that the district court is divested of jurisdiction to take any action with regard to the matter, except in aid of the appeal). Because one of the issues to be raised on appeal related to the Petitioner's "Emergency Motion For Transcripts (See p. 302a-312a), the magistrate judge ruling (See p. 314a-324a) as well as the chief judge referral (See p. 313a) were due to be raised before the Eleventh Circuit. (See p. 276a-293a). The emergency motion order (See p. 89a-99a), the Status Hearing (See p. 105a-112a) and the district court subsequent order (See p. 325a-328a) regarding that motion were one of the issues at hand for the now disputed mandate. The district court did not have

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jurisdiction to adjudicate any matter relating to the appeal. Due to the Order, petitioner was placed into a position of either waiving or protecting his rights on appeal. Having viewed his position through the lens of F.R.A.P. 10(b)(2) and the Supreme Court holding in Berman v. United States, the "petitioner stood a convicted felon and unless the judgment against him was vacated or reversed he was subjected to all the disabilities flowing from such a judgment. 302 U.S. 211, 213 (1937). In Berman, while the defendant was on appeal from his conviction, he requested that the district court resentence him. The first appeal was dismissed and he appealed from being re-sentenced. This Court took the position that the district court did not have jurisdiction to resentence that defendant. Id., at 213. That Court held that if a final judgment has been rendered, the Petitioner has the opportunity to seek by appeal a reversal of that judgment and secure an opportunity to vindication. Id. Here, Petitioner finds himself in the identical position. He asked the district court for transcripts, which that court had jurisdiction to aid in the appeal. Hitchmon, at 692. Just like the Berman Court, the district court did not have jurisdiction to adjudicate a motion on the merits while an appeal was pending. Because they did so, the Petitioner had to appeal the Order. That mandate was a final judgment regarding his transcript requests and he was obligated to appeal or waive his right to do so. It is here where the instant case is identical to the Berman Court. That petitioner filed two appeals from two separate and different final judgments and the instant Petitioner has done the same. According to Section 1291, the Petitioner had a right to appeal 1) from his sentence and 2) from the Order. Both were final judgments as noted by this Court in Berman v. United States. The rule of finality established there has stood the test of time.

Finally, the district court and the Eleventh Circuit knew that the November 19, 2018 PFA Hearing (hereinafter "PFA Hearing") as well as the January 23, 2019 and February 6, 2019 CAC Interviews (herinafter "1st and 2nd Interviews", respectively) were not only exhibits, but were testimony. There exist no contrary conclusion both courts could have rested upon that outweighs the Supreme Court holdings in two of it landmark cases. Crawford v. Washington, 541 U.S. 36, 51 (2004) (noting that testimony is given through a core-class of testimonial statements .....: "ex parte in-court testimony or its functional equivalent that is material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross examine, or similar pretrial statements that the declarants would reasonably expect to be used prosecutorially"); Melendez-Diaz v. Massachussetts, 557 U.S. 305, 310 (2009) (same). As a matter of law, the PFA Hearing as well as the 1st and 2nd Interviews were testimony, especially when viewed through the purpose established when creating the Child Advocacy Center. See Gates v.

Tex. Dep't Of Protective & Regulatory Sers, 537 F.3d 404, 413 (5th Cir. 2008). For both courts to overlook that the Order denied the Petitoner transcripts that were testimony or directly was related to that testimony was an abuse of discretion and a plain error.

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REASONS FOR GRANTING THE WRIT

I. This Court's review is needed to resolve whether a court of appeals can summarily affirm an appeal taken from a district court order denying transcripts for an indigent defendant on direct appeal based upon a failure to demonstrate a need within the shadow of Crawford v. Washington.

Having determined that constitutional violations occurred during the pre-trial, trial and sentencing stages, transcriptions were sought to raise that the 1) Government withheld Verizon Wireless records for nearly (35) months; 2) February 6, 2019 CAC Interview was withheld from the defense for over (43) months; 3) Government, in bad faith, employed a Rule 48(a) motion to escape a position of disadvantage; 4) District Court erred when not providing funds for a forensic expert; 5) Jury was not presented exculpatory evidence; 6) Witness for the Government gave false testimony; 7) Prosecution knowingly used false testimony in its closing argument; 8) Prosecutor removed exculpatory transcripts from trial exhibits; 9) Prior witness testimony exonerated defendant; and 10) Magistrate judge disregarded prohibition of conducting fact finding during the sentencing phase. (hereinafter "constitutional violations"). Because the requested transcripts contain evidentiary support for those violations, the summary affirmance was not proper. When granting summary affirmance the court of appeals reasoned that the November 19, 2018 PFA Hearing (hereinafter "PFA Hearing") as well as the January 23, 2019 and February 6, 2019 CAC

Interviews (hereinafter "1st and 2nd Interview") were exhibits "which [were] not testimony" and thus, the Petitioner did not have a statutory right to their transcription. (See p. 334a-335a, 389a-390a). This was a plain error. In Crawford v. Washington, this Court clearly listed that materials such as affidavits, custodial examinations, prior testimony or statements reasonably expected to be used prosecutorially are considered testimony. 541 U.S. 36, 51 (2004). (See Melendez-Diaz v. Massachussetts, 557 U.S. 306, 310 (2009)). As reflected by the record, the following transcripts has been requested from the district court and the Eleventh Circuit, but not provided:

-November 19, 2018 Dale County PFA Hearing

-January 23, 2019 CAC Interview

-February 6, 2019 CAC Interview

-April 26, 2021 Faretta Hearing

-June 1, 2021 Motion Hearing

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-September 21, 2021 Pre-trial Conference
-September 27, 2021 Faretta Hearing
-October 13, 2021 Pre-trial Conference
-January 21, 2022 Motion Hearing
-January 22-23, 2024 Trial*
-August 2, 2024 Status Hearing
-August 8, 2024 Sentencing Hearing

*Portions of the trial trasnscrip has been provided to the Petitioner. (See p. 334a-335a, n.1).

(See p. 221a, 294a-297a, 333a). Five out of the twelve transcripts supra either contain exculpatory or favorable evidence which casts serious doubts regarding the conviction under the charged offense. Additionally, those evidentiary items within are testimonial statements. To not transcribe these statements and issue a mandate summarily affirming the appeal was not only not proper, but constituted a plain error.

In Coppedge v. United States, this Court confronted a summary affirmance of an application to proceed in forma pauperis on appeal. 369 U.S. 438 (1962). It was held that "1) the claims presented by the Petitioner required the allowance of an appeal in forma pauperis; 2) the request of an indigent for leave to appeal in forma pauperis must be allowed unless the issues which he seeks to raise are so frivolous that the appeal would be dismissed in the case of a non-indigent litigant; 3) the burden of proving that the issues are frivolous is on the government; 4) a court of appeals on such an application must hear argument, review the trial record and consider briefs if it does not dismiss paid appeals without the same procedural safeguards; and 5) a court of appeals decision on a petition for leave to appeal in forma pauperis is not a plenary review of the issues which the indigent seeks to present on appeal." (hereinafter "Standard"). Id., at 438. That standard became the law of the Eleventh Circuit in Groendyke Transport, Inc. v. Davis where it was held that:

"We can think of at least two circumstances under which summary disposition is necessary and proper. Both of them appear in this case. The first comprises those cases where time is truly of the essence. This includes situations where important public policy issues are involved or those where rights delayed are rights denied. Second, are those in which the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous. Without canvassing all other possible or likely situations, we hold that where either of these circumstances is found, summary disposition is proper."

Groendyke, 406 F.2d 1158, 2261 (5th Cir. 1969). On July 29, 2025, the Eleventh Circuit summarily affirmed the instant appeal due to transcripts, especially the PFA Hearing as well as the 1st and 2nd Interviews, not being testimony and thus not required to be transcribed by the court reporter. (See p. 389a-390a). That reasoning failed to suffice the Groendyke holding that "when a case is frivolous or its outcome so certain as a practical matter the appellate court is not compelled to sacrifice either

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the rights of other suitors, its own irreplaceable judge-time or administrative efficiency in judicial output by a traditional submission with all the trappings." The instant case did not meet this standard. Moreover, the instant appeal is correctly characterized as being akin to the Jensen v. Summitt County where the 10th Circuit explaining the following:

"An appellant that fails to provide essential materials in the appendix risks summary affirmance of the district court's decision. See Travelers Indem. Co. v. Accurate Autobody, Inc., 340 F.3d 1118, 1120-21 (10th Cir. 2003); 10th Cir. R. 10.3(B). Here, however, we have belatedly been provided the written materials, and in light of the parties' failure to dispute on appeal that any other issue relevant to the appeal arose during the district court hearing, we shall consider the merits of the appeal even without having the transcript of the hearing. We note, however, that the decision not to provide a transcript was risky. See, e.g. Questar Pipeline Co. v. Grynberg, 201 F.3d 1277, 1292 (10th Cir. 2000) ("We are reluctant to overturn a district court's ruling without being able to examine the evidence or arguments it heard in making its ruling."); McGinnis v. Gustafson, 978 F.2d 1199, 1201 (10th Cir. 1992) (dismissing appeal given impossibility of informed appellate review in absence of transcript). Further, we admonish Mr. Jensen's counsel for neglecting to provide any of the written materials initially, and we remind him of his duty to follow the appellate rules."

Precisely, this exactly the situation the Petitioner found himself in when he did appeal and now finds himself in at the filing of this petition. Because of this forthcoming injury, he bow seeks certiorari for the following reasons: 1) mandate conflicts with this Court's holding in Crawford v. Washington, 541 U.S. 36, 51 (2004); 2) mandate conflicts with this Court's holding in Coppedge v. United States, 369 U.S. 438 (1962); 3) mandate sanctions a lower court's departure from the accepted and usual course of judicial proceedings as held within Griffin v. illinois, 351 U.S. 12 (1956); and 4) mandate sanctions a lower court's departure from the accepted and usual course of judicial proceedings as held within Griggs v. Provident Consumer Discount Co., 459 U.S. 56 (1982).

The petitioner in the Coppedge Court claimed he was unable to prove his charge that perjured testimony was presented because of the refusal of the courts below to permit him to examine the transcript of proceedings. That court believed this alone would have warranted the allowance of an appeal. It met the test of being sufficiently reasonable to withstand a claim that its frivolty was not so manifest that it merited further argument or consideration, and that dismissal of petitioner's case was not in order. Based upon that holding, the judgment of the court of appeals was vacated and the case was remanded to that court for further proceedings not inconsistent with that opinion. The instant petition is equally situated with the Coppedge Court holding as Petitioner claimed he is unable to prove constitutional violations. Because the district court's refusal to permit him to examine the transcriptions of specific proceedings. To grant summary affirmance the mandate not only contradicted the Coppedge Court ruling to vacate and remand the case back to the cour of appeals, but further

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contradicted Coppedge by considering the appeal "so patently frivolous as to require a dismissal of petitioner's case without full briefing or argument. Coppedge, at 453. In step with that defendant, Petitioner identified perjured testimony and sought to examine specific transcripts. Not only is the district court and the Eleventh Circuit aware of this constitutional violation within the sentencing hearing transcript (See Doc. 14; p. 69:7-74:3), but the mandate conceals its existence. This exact scenario has been discouraged by Coppedge and cases its like. Under appellate review, it is well established that "summary affirmance is proper where there is a clear indication that the conduct of an indigent appellant amounts to a deliberate harassment of the courts or an intentional abuse of the judicial process"). See Liles v. South Carolina Dep't of Corrections, 414 F.2d 612, 614, n.1 (4th Cir. 1969); Groendyke Transport, Inc. v. Davis, 406 F.2d 1158, 1162 (5th Cir. 1969) (noting that summary disposition is necessary and proper where 1) time is truly of the essence and 2) position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case or the appeal is frivolous). A misuse of summary disposition powers were forecasted by one court and weighed against its importance within the judicial process. United States v. Gregg, 393 F.2d 722, 723 (4th Cir. 1968) (suggesting that "eventhough not inviting frivolous motions to dismiss meritorious appeals, but it might be helpful if United States Attorneys would call to our attention these appeals which appear to be frivolous on their face and presented no question worthy of debate"). When identifying frivolty, "an issue is frivolous whenit appears the legal theories are indisputably meritless ...., thus, not brought in good faith if it is without arguable merit either in law or fact." The issues presented on appeal related to the district court denial of a motion for transcripts. (See p. 333a-336a, 343a-353a). There, the trial court denied that motion despite having full knowledge of the constitutional violations. (See p. 337a-342a, 370a-383a). At least four months before the denial, the district court knew that the jury never heard exculpatory testimony within the PFA Hearing and 2nd Interview. (See p. 116a, para. 5). Nonetheless, the district court disregarded clear and convincing evidence that exculpatory support existed within the PFA Hearing and the 2nd Interview transcripts. It was known that these transcripts were the primary subject discussed at those proceedings. (See p. 333a, para. 4-9). Nevertheless, in an abuse of discretion, the district court denied those transcriptions which reflect that exculpatory evidence was not only withheld from the Petitioner, but was not presented to the jury. Without the April 26, 2021 Faretta Hearing, the Petitioner can not demonstrate that the Government denied the existence of additional

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Verizon Wireless ("VZW") records as well as the 2nd Interview. (See p. 204a-206a). The issue was raised with the court as the primary reason why self-representation was being exercised. It can not be demonstrated that VZW records were missing nor defense counsels ignored this fact. Additionally, the Petitioner can not show that the Government willfully misrepresented their Rule 16 obligation in regards to the Protective Order. (See p. 204a-205a, para. 1-2). Also, Petitioner can not exhibited that defense counsels during the hearing did not represent to the court that additional VZW records existed nor that the defense was in possession of the 2nd Interview. (See p. 167a, para. 2). It must be noted that the June 11, 2020 protective order never stated that the Petitioner could not possess the 1st and 2nd Interviews outside of a jail. (See p. 205a, para. 2). In bad faith, the Government sought to have the court issue a second protective order in an attempt to prevent him from viewing the 2nd Interview exculpatory testimony. (See p. 207a-209a). These issues did not constitute the appearance of frivolty.

Absent the June 1, 2021 Motion Hearing, the Petitioner can not demonstrate that VZW records as well as the 2nd Interview non-disclosures were raised at that hearing. Further, it can not be illustrated that the magistrate judge specifically questioned the Government as to the alleged victim's VZW records only containing two reports. They denied their existence. Moreover, the Petitioner is unable to point out their bad faith attempt to conceal exculpatory evidence within the 2nd Interview. The Government knew that the victim had stated and implied that transportation across state lines were "just for tennis." It is here where their bad faith is most visible. (See p. 168a, para. 3) ("... evidence suggesting that Joyner's rights or privileges were violated by the prosecution's collection and handling of evidence is not relevant to his guilt. Evidence is relevant if "it has any tendency to make a fact more or less probable than it would be without the evidence" and "the fact is of consequence in determining the action"). See Fed. R. Evid. 401. Because the charged offense, Section 2423(a) require proof of intent to engae in unlawful sexual activity across state lines, exculpatory testimony challenging any attempt to establish that intent not heard by the jury, is relevant to Petitioner's guilt. Those issues did not constitute frivolty.

Outside the September 21, 2021 Pretrial Conference being accessible to the Petitioner, there is no way to identify the continued denial and misrepresentation of the Government nor display defense counsels' inactivity on securing missing VZW records and the non-disclosed 2nd interview. As it relates to the September 27, 2021 Faretta Hearing, the Petitioner can not highlight the magistrates refusal to discuss the missing VZW records and an associated subpoena as well as the non-disclosed

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2nd Interview. There, an order was issued laying the guardrails on how the items raised should be adjudicated. Parties all took notice of the directives and proceeded accordingly. In regards to the October 13, 2021 Pretrial Conference, the magistrate judge did not allow the Petitioner to raise the non-production of the VZW records nor the 2nd Interview. Without these transcriptions, Petitioner can not demonstrate the concealing of the 2nd Interview, especially the requesting of a 2nd protective order for the sole purpose of expanding paragraph (2). (See p. 207a-208a, para. 2); Compare to p. 204a-205a, para. 2).

Finally, not being able to rely on the January 23, 2022 Motion hearing not only deprives the Petitioner of showing the Government's continued denial and misrepresentation of exculpatory evidence, but their insufficient explanation for charging, dismissing, re-charging and then seeking a dismissal of that indictment by way of a Rule 48(a) motion. Also, there will be no way to show the district court specific question to the Government asking "How many times does the Government plan on re-indicting this defendant?" The Government's response displays what the "leave of court" requirement was intended to do. See Rinaldi v. United States, 434 U.S. 22, 29, n.15 (noting that "leave of the court" requirement protects a defendant against prosecutorial harassment, e.g., charging, dismissing and re-charging). Under the deprivation of the transcriptions supra, Petitioner can not get meaningful appellate review which demonstrates that the summary affirmance of his appeal does not contain frivolous arguments nor is unclear as a matter of law. Petitioner issues are not only clear and right as a matter of law, but did not appear to be frivolous.

II. This Court's review is needed to resolve whether a court of appeals can summarily affirm an appeal taken from a district court order for an indigent defendant where transcripts requested were provided to the Government at a cost unable to be paid by that party within the shadow of Crawford v. Washington.

The substantial question here is whether two federal courts properly determined that the transcript requested in this case was not needed for an effective appeal. Griffin v. Illinois and its progeny established the principle that the vourts must, as a matter of due process, provide indigent prisoners with the basic tools of an adequate defense or appeal when those tools are available for price to others. While the outer limits of that principle remain unclear, there can be no doubt that the courts must provide an indigent prisoner with a transcript of prior proceedings when those transcriptions are needed for an effective defense or appeal. In prior cases involving an indigent defendant's claim of right to a free transcript, this Court has identified two factors that are relevant to the determination of need: 1) the value of the transcript to the defendant in connection with

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the appeal or trial for which it is sought and 2) the availability of alternative devices that would fulfill the same functions as a transcript. See Britt v. North Carolina, 404 U.S. 226, 227 (1971). Neither of these two factors were considered by the district court. (See p. 334a-335a). There, it was erroneously represented that the requested transcripts, specifically the PFA Hearing as well as the 1st and 2nd Interview were not testimony. Had the value of those transcriptions been considered, it would have been discovered that the statements within were testimonial. Their contents dealt specifically with an element of the convicted offense; to wit: "A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, with the intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense ...." (See Section 2423(a)). Those statements have the ability to negate any intent to engage in any unlawful sexual activity. Further, had the availability of alternative devices that would fulfill the same functions as a transcript was either provided or considered, the district court and the Eleventh Circuit could have not only established that the requested transcripts contained testimonial statements, but that no alternative devices existed that would fulfill the same functions as the transcripts.

As noted supra, the district court reasoned that it was refusing to order transcripts because Petitioner failed to make a particularized showing of need. (See p. 334a-335a). The Supreme Court has been consistent in holding that "there would be serious doubts about the decision if it rested on petitioner's failure to specify how the transcript might have been useful to him." See Britt, at 228. Their cases have consistently recognized the value to a defendant of a transcript of prior proceedings without requiring a showing of need tailored to the facts of the particular case. Id. Even in the absence of specific allegations it can ordinarily be assumed that a transcript would be valuable to the defendant in at least two ways: 1) as a discovery device in preparation for an appeal and 2) as a tool on appeal for impeachment of prosecution witnesses. See Britt, at 228. Eventhough the district court did not use the language of "particularized need", it rested the decision on Petitioner not "sufficiently explain[ing] why he requires written transcripts of this evidence under the circumstances of this case." (See p. 146a-147a, para. 2). This type of discrimination as it relates to cases of indigent defendants has long been discouraged by this Court. Id. (noting that Supreme Court cases recognize the value of a transcript without showing a need based upon the facts); United States v. Smith, 605 F.2d 839, 842-43 (5th Cir. 1979); United States v. Dixon, 330 Fed. App'x 805, 808-09 (11th Cir. 2009); United States v. MacCollum, 426 U.S. 317, 323 (1976).

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In the MacCollum Court, justices established that an indigent defendant has a statutory right to appeal and pursuant to Section 753(f) he has a statutory right to public funds to furnish him any transcript on his part. See MacCollum, at 323. This holding and the value of that statutory right has been expounded upon by the lower courts. See Smith, at 842-43 ("transcript ..... valuable help to the defense in preparing for trial and challenging discrepancies in testimony of prosecution witnesses"); Dixon, at 808-09 ("transcript ..... valuable to the defense in preparing for trial and an indigent [defendant] is entitled to a complete transcript free of charge without showing a particular need for the transcript"). Because the Petitioner's requested transcripts had a value of helping the defense at trial and on appeal, to deny him transcripts was in violation of his rights to due process, including a right to exercise all afforded by the Sixth Amendment. According to this Court in Britt v. North Carolina, two factors are relevant when determining a need for a transcript. Britt, at 227. In the instant case, the Petitioner has demonstrated in the section supra the value of the denied transcripts. As it relates to the PFA Hearing as well as the 1st and 2nd Interviews, the Petitioner raised their value with the district court when he mentioned their contents in motion for transcripts. (See p. 254a-255a, n.1, 309a, 334a, 337a-342a). The district court knew that those hearing and interview transcripts contained exculpatory evidence reflecting that no sexual contact or acts occurred between the Petitioner and the alleged victim according to her testimonial statements. (See Doc. 14; p. I-6:5-I-7:2; I-11:11-24; I-178:15-I-180:9; p. 84:1-87:3). Additionally, in regards to the August 2, 2024 Status Hearing and the August 8, 2024 Sentencing Hearing, their value were expressed in motion for transcripts also. (See p. 254a-265a, 100a-104a). There does not exist any alternatives to neither of these non-disclosed transcripts. Furthermore, as set forth in the Griffin line of cases, for the Petitioner to not be in possession of his sentencing transcript for over (425) days, runs afoul of the standard set by this Court, especially when the Government had possession of it no later than September 19, 2024. (See p. 25a). To provide the Government a transcript of that hearing, but deny the Petitioner access to the same transcript is clearly a violation of his constitutional rights. See Jones v. Rivers, 338 F.2d 862, 876 (4th Cir. 1964) (citing Coppedge along with other in the Griffin progeny by holding "in unmistakable languange ..... that it will not sanction discrimination between indigents and those who possess the means to protect their rights"). When the district court provided the sentencing hearing and status conference transcripts to the Government, but denied access to the Petitioner, (See p. 28a-29a) that ruling mirrored the holding in Perry v. Ralston explaining the difficulties an indigent faces requesting transcripts. 635 F.2d 740, 742 (8th Cir 1970) (distinguishing between

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paid and indigent appeals in that "we have no procedure to screen paid cases before briefing stage ... all paid cases ... come before us with a complete record and plenary briefing"). It is well established that a defendant's inability to pay can discourage his ability to defend himself. See jacob v. United States, 350 F.2d 571, 573 (4th Cir. 1965) ("unquestionably in the proceedings below the defendant, if financially able would have had the right to call a ... witness .. [and] ... his inability to pay .... prevented presentation of his case"). The Petitioner by being deprived of a defense tool was not only unable to exercise his right to self-representation, but was prevented from enjoying the judicial process on appeal as a matter of right. See Rinaldi v. Yeager, 384 U.S. 305, 310 (1966) (ruling that judicial mechanisms like appellate review must be kept free of unreasoned distinctions that can only impede open and equal access to the courts); United States v. DeBright, 730 F.2d 1255, 1259-60 (9th Cir. 1984) ("present law has made an appeal from a ..... conviction ... what is, in effect, a matter of right"). Because the district court continues to deny the Petitioner access to the PFA Hearing as well as the 1st and 2nd Interviews, he is unable to show that the alleged victim not only testified to not having sexual contact with him, but in a clear and intelligent manner denied that any intent existed for her to engage in unlawful Sexual activity when traveling within interstate commerce. It was represented to the jury by the Government that she gave testimonial statements that illicit intent existed. That was false testimony. Moreover, for the district court to grant transcripts from proceedings that occurred after August 16, 2022 and still deny Petitioner access to the Auguast 2, 2024 Status Hearing and the August 8, 2024 Sentencing Hearing displays

sinister intent. The district court knew that according to United States v. Ruiz-Rodriguez, 277 F.3d 1281 (11th Cir. 2002), the Federal Magistrate Act prohibits magistrates from conducting an evidentiary hearing or making a finding of facts during the sentencing phase in a felony case. (See p. 100a-101a, para. 2). At the Status Hearing, as the district court knows, the Government admitted to removing the 1st and 2nd Interview transcript from the exhibits given to the jury. Also, that court knows that the standby counsel admitted to not responding for over six months to Petitioner's request for specific transcripts. (See p. 325a, n.1; 327a, n.4).

Under these case facts, among others, the district court not the Eleventh Circuit, in good faith can establish that the Petitioner's appeal of his denial of these transcripts was frivolous. As a matter of right, his position of being due the transcripts pursuant to Griffin v. illinois and its progeny is clearly right as a matter of law. See Id., 351 U.S. 12, 18 (1956) (holding that "appellate review has now become an integral part of the .... trial system .... at all stages ... the due process ...

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clauses protect persons ... from invidious discrimination"). The court of appeals summary affirmance not only discriminated against the Petitioner, but violated his Sixth Amendment right to effective assistance at every stage, including on appeal.

III. This court's review is needed to resolve whether the timely filing of a notice of appeal precludes a district court from denying a defendant access to transcripts on appeal which were an exhibit during the government's case-in-chief or material to his guilt or innocence and within the shadow of Crawford v. Washington.

Had the district court considere4d the holding within the Shewchun and Mahone Courts, it would have been discovered that the contents of the requested transcripts raised issues 1) Government concealment of Verizon Wireless records for nearly (35) months; 2) Government non-disclosure of 2nd Interview for over (43) months; 3) Government bad faith employment of a Rule 48(a) motion and 4) various other alleged pretrial violations. (See p. 149a-203a). That discovery would have reflected that the contents of the PFA Hearing as well as the 1st and 2nd Interviews were testimony. The trial record reflects that the district court and the Eleventh Circuit were aware of this fact. (See Doc. 14; p. I-5:1-I-7:25). It also was known by them that those transcripts as well as others were the subject of adversary rulings within the single prosecution. (See p. 117a-118a, para. 10-12). The record clearly establishes that those transcripts were not only exhibits, but testimony offered by the Government at trial. Based upon the ruling set forth in the December 19, 2024 order, the district court actions constituted a plain error. (See p. 333a-335a). For the district court to have jurisdiction after the filing of notice of appeal, the matters before it 1) must not be the issues on appeal, 2) must be a request to aid the appeal or 3) must be a motion that is in accordance with Rule 37. See Shewchun v. United States, 797 F.2d 941, 942 (11th Cir. 1986); Mahone v. Ray, 326 F.3d 1176, 1180 (11th Cir. 2003). Here, the district court asserted jurisdiction when denying transcription of proceedings prior to August 16, 2022 and granting it for those proceedings that were held after that date (hereinafter "Order"). (See p. 333a-336a).

The Fifth Amendment question presented by this petition is whether the district court may deny a defendant access to transcripts of testimony which were an exhibit during the Government's case-in-chief or material to his guilt or innocence and holds discussions regarding the subject matter of those testimonial statements. See Griggs v. Provident Consumer Discount Co., 459 U.S. 56 (1982) (holding that an appellate and district court cannot entertain simultaneous challenges to the same conviction); United States v. Wadsworth, 830 F.2d 1500, 1503-04 (9th Cir. 1987); Lucas v. United States, 423 F.2d 683, 685 (6th Cir. 1970). Because this question is important and of jurisdictional significance, Petitioner respectfully requests this court's review. it is particularly warranted here because this substantial and jurisdictional-significant question rises to

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constitutional proportions. In respect to the order, the Eleventh Circuit afirmed the district court's denial of transcripts on appeal without establishing an acceptable jurisdictional basis for them adjudicating that motion. The Fifth Amendment problem arises because a notice of appeal filed in the district court places that court on notice that the defendant has elected to appeal as a right. (See Rule 4); United States v. Pineda-Arrellano, 492 F.3d 624, 625 (5th cir. 2007); United States v. Moskow, 588 F.2d 882, 889 (3rd Cir. 1978). This Court position is that an indigent defendant has a substantive right to use public funds to furnish him a transcription of a proceeding without any further showing on his part. See United States v. MacCollom, 426 U.S. 317, 323 (1976) ("respondent was granted a statutory right of appeal without payment costs if he were an indigent and had he pursued that right, Section 753(f) would have authorized the use of public funds to furnich him a transcript of the trial proceedings without any further showing on his part). See Shiflett v. Virginia, 447 F.2d 50, 60 (4th Cir. 1971).

Moreover, the eleventh Circuit not only denied a request to compel the district court to produce the requested transcripts (see p. 239a-240a), but failed to issue a mandate ordering that court to have the court reporter transmit transcripts creating a presumption that those evidentiary items were in their possession. The evidence supporting that conclusion (See p. 105a-112a) noted that it was UNNECESSARY. It also appears that the district court has transcribed the August 2, 2024 Status Hearing, but it was not only not sent to the Petitioner, but the Eleventh Circuit seems to be in possession of it. (See p. 221a). Under Rule 10(b)(1)(A), the Petitioner had a duty to order transcripts on appeal. More specifically, pursuant to Federal Rule of Appellate Procedure 10(b)(2), he had a duty to include in the record a transcript of all evidence relevant to any finding raised on appeal. Failure to do so was established by the Eleventh Circuit in the Allen Court. See Allen v. General Motors Corporation, 186 Fed. Appx. 869, 870 (11th Cir. 2006) ("because Allen failed to submit the trial transcript, this court is unable to evaluate the basis of the district court's judgment .... Accordingly, the decision of the district court is affirmed"). Multiple circuits and even the Supreme Court has noted that petitoner "must brief the reasons for the requested relief, including citation to the record." Erickson v. Pardus, 551 U.S. 89 (2007); Clokely v. United States Parole Board, 310 F.3d 86, 88 (4th Cir. 1962); Merriam v. Potter, 251 Fed. Appx. 960, 965 (5th Cir. 2007); Birchler v. Gehl Co., 88 F.3d 518, 519-20 (7th Cir. 1996). In Boze v. Branstetter, the Fifth Circuit held "dismissing the appeal for failure to provide a complete transcript of the record on appeal is within the discretion of the court. 912 F.2d 801, 803, n.1 (5th cir. 1990). Thus, based upon well established

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precedent regarding the mandatory compliance to Rule 10(b)(1)(A) and the resultant effects of not complying, the district court nor the Eleventh Circuit should have denied the Petitioner access to transcripts on appeal. See Worcester v. Commissioner, 370 F.2d 715 (1st Cir. 1966); United States v. Tajeddni, 945 F.2d 458, 467 (1st Cir. 1991); United States v. Bonneau, 961 F.2d 17, 21 (1st Cir. 1962).

The law is settled as it relates to a notice of appeal divesting the trial court of jurisdiction over matters at issue in the appeal, but unsettled as to whether a district court may deny a defendant access to transcripts on appeal. See Ennis v. LeFevre, 560 F.2d 1072, 1074 (2nd Cir. 1977). This Court has considered the issue of whether the poor should have the same access to transcripts on appeal as it relates to financial considerations. Griffin, at 18-19. However, this Court has never considered whether a district court may deny an indigent defendant access to transcripts that are testimony when the petitioner qualifies for tools at monies paid by the United States. Petitioner, therefore, presents the ideal vehicle to resolve this Fifth Amendment question where defendants on appeal are denied transcripts based upon the district court's determination that the transcription is not needed when compared to the trial evidence. United States v. Shoaf, 341 F.2d 832 (4th Cir. 1964).

A. The Fifth Amendment Question is important and of Jurisdictional Significance.

As this Court has held "an unsuccessful litigant in a federal district court may take an appeal, as a matter of right from a final decision of the district court." See Gelboim v. Bank of Am. Corp., 574 U.S. 405 (2015). To avoid the Fifth Amendment violation of subjecting a defendant to defending himself simultaneously in the trial and appellate courts, Section 1291, "gives the court of appeals jurisdiction over appeals from all final decisions of the district courts of the United States. Gelboim, at 408; Accord Swint v. Chambers County Comm'n, 514 U.S. 35, 42 (1995) (a final decision is one by which a district court dissociates itself from a case). This Court has thus made clear that "the filing of a notice of appeal is an event of jurisdictional significance - it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal. Griggs, at 58.

This court has also made clear that defendants are granted a statutory right of appeal without payment of costs if indigent and when exercised Section 753(f) would authorize the use of public funds to furnish them a transcript of trial proceedings without any further showing on their part. MacCollom, at 323. Pursuaant to Section 753(f), a statutory right to free transcripts exist 1) if a criminal defendant proceeds under the Criminal Justice Act, Section 3006A, or appeal in forma pauperis; 2) if a criminal

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defendant proceeds under Section 2255 via in forma pauperis after having a trial judge or circuit judge certify that the appeal is not frivolous and the transcript is needed to decide the issues on appeal, and 3) if a civil defendant proceeds in forma pauperis after having a trial judge or circuit judge certify that the appeal is not frivolous, but presents a substantial question. A judge cannot conflate the statutory right of a criminal defendant by misapplying whether or not he is 1) on direct appeal; 2) under a Section 2255 motion; or 3) a civil defendant on appeal. He can do no more consistent with the Fifth Amendment than determine the defendant's action status, whether or not he is proceeding under Section 3006A or appealing in forma pauperis on a civil appeal and if applicable, determine if the action is frivolous, transcripts are needed on appeal or presents a substantial question. See Section 753(f). The determination on whether any additional showing is required will necessarily, in cases like the Petitioner, turn on whether the defendant is proceeding under a criminal or civil action and whether he is on direct or a subsequent appeal. In the instant case, the district and appellate court did not dispute that he was proceeding under Section 3006A nor that he was appealing in forma pauperis, but conflated the frivolous requirement of a criminal defendant under Section 2255 motion with that of a criminal defendant on direct appeal. (See p. 334a-335a, 387a-390a). Making matters worse, some of the transcripts denied for the Petitioner were produced for the appellee when they paid with monies from the United States. This Court has held that for a federal court to provide tranascripts of trial court proceedings to those appellants who can afford to pay for them, it violates due process if it fails to provide or unnecessarily delays providing such transcripts to an indigent defendant. Griffin, at 18-19. Petitioner has been denied access to the 2nd Interview since February 12, 2020 as well as both the Status and Sentencing Hearing since August 8, 2024.

The Fifth Amendment concerns that this Court sufficiently articulated in Griffin v. Illinois as it related to free transcripts on appeal has risen to constitutional proportions within orders issued by the Middle District of Alabama and the Eleventh Circuit. This question is important and of jurisdictional significance. Seven panels of the Eleventh Circuit would have granted Petitioner's request to compel the district court to produce transcripts on appeal. See Francis v. McBride, 2024 U.S. App. Lexis 27828, No. 23-14037 (11th Cir. 2024); Moore v. Pooches of Largo, Inc., 2024 U.S. App. Lexis 9244, No. 23-13568 (11th Cir. 2024); United States v. Jackson, 2023 U.S. App. Lexis 34267, No. 23-30683 (5th Cir. 2023); United States v. Walker, 2023 U.S. App. Lexis 13335, No. 21-12407 (11th Cir. 2023); United States v. McRae, 2022 U.S. App. Lexis 11556 (11th cir. 2022); United States v. Hyde, 2022 U.S. App. Lexis 22788 (11th Cir. 2022); Tejeda v. united States, 2019 U.S. App. Lexis 10707 (11th Cir.

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2019). Moreover, panels of the Second, Fourth, Sixth, Ninth and Tenth Circuits would have granted that motion to compel. See Smolen v. menard, 398 Fed. Appx. 684 (2nd Cir. 2010); Watson v. England, 2023 U.S. App. Lexis 23349, No. 236384 (4th Cir. 2023); Hardrick v. McLaren, 2020 U.S. App. Lexis 9804, No. 19-1577 (6th Cir. 2020); Arellano v. Melton, 2022 U.S. App. Lexis 6653, No. 22-55072 (9th Cir. 2022); Stevenson v. Cordona, 773 Fed. Appx. 939 (10th Cir. 2018). Petitioner, therefore asks for this Court's review of his case, which will provide clarity across the federal courts regarding this issue where an appellate decision is not only contrary to its circuit's precedent, but contrary to clearly established federal law as determined by the Supreme Court and would set a dangerous precedent for criminal defendants seeking to appeal. See Williams v. Taylor, 529 U.S. 362 (2000).

B. This Important and Substantial Question Rises To Constitutional Proportions.

In the decision below, the Eleventh Circuit denied the Petitioner's motion to compel the district court to produce transcripts on apppeal. (See p. 387a-390a). That decision is not only contrary to well established law, but contrary to the Eleventh Circuit standing precedent on the issue. Additionally, that denial is in conflict with other circuit's decision granting transcripts to a criminal defendant on appeal pursuant to Section 753(f). Overwhelming decisions in that circuit as well as others holding that on direct appeal, a defendant "does not need additional authorization to request a transcript at government expense", demonstrates the need for this Court's review. See Jackson, at 2; Moore, at 3 (given the lengthy procedural history and the necessity of the transcripts for proper resolution of Ms. Moore's potential trial error claims, the motion for transcripts at government expense is granted ...."); Bundy v. Wilson, 815 F.2d 125, 133 (1st Cir. 1987); Menzies v. Powell, 52 F.4th 1178 (10th Cir. 2022); Stokes v. Peyton, 437 F.2d 131, 134-35 (4th Cir. 1970).

This Court has recognized that if a court provides transcripts of trial proceedings to those appellants who can afford to pay for them, it violates due process if it fails to provide or unnecessarily delays providing such transcripts to an indigent defendant. Griffin, at 18-19. An Eleventh Circuit panel in the Moore Court followed that holding and concluded that due to the length of the procedural history, the transcriptions were required. That conclusion considered the petitioner's right to due process. Likewise, the instant Petitioner should be afforded the identical consideration as the length of his case spanning four indictments (See p. 316a, n.1) and the necessity of transcripts to challenge pretrial and trial errors within, places his case on all fours when compared with the Moore Court holding. Moore, at 2. Pursuant to Griffin v. Illinois, because the Government

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has been afforded transcripts at request (See p. 29a) to deny the Petitioner transcripts on appeal are nothing more than a violation of his Fifth Amendment rights. Nonetheless, the Eleventh Circuit issued a mandate contrary to clearly established Section 753(f) case law. "The Suprem Court has never held that a petitioner has a constitutional right to receive a trial transcript in a timely manner." Morrison v. Warden, 828 Fed. Appx. 547, 550-51 (11th Cir. 2020). However, this Court has held that "at all stages of the proceedings due process ..... protect defendants from invidious discriminations." See Cole v. Arkansas, 333 U.S. 196, 201 (1948); Dowd v. United States, 390 U.S. 206, 208 (1951); Cochran v. Kansas, 316 U.S. 255, 257 (1942); Frank v. Mangum, 237 U.S. 309, 327 (1915). The Constitution affords the Petitioner an opportunity to appeal his conviction and sentence as a right contesting his Fifth and Sixth Amendment rights. He intends to present issues on appeal that demonstrates that these rights were violated at the investigation, pretrial, trial and sentencing stages. "that statutory conditions established in Section 753(f) with respect to furnishing a free transcript to movants are consistent with the due process requirements of the Fifth Amendment." MacCollom, at 324. As noted by this Court, the Equal Protection Clause of the Fourteenth Amendment, nor the counterpart .... embodied in the Fifth Amendment, guarantees "absolute equality or precisely equal advantages, but in the context of a criminal proceeding they require only "an adequate opportunity to present [one's] claims fairly." San Antonio School Dist. v. Rodriguez, 411 U.S. 1, 24 (1973); Ross, at 616.

The Eleventh Circuit summary affirmance is an ideal vehicle to resolve the Fifth Amendment question whether a federal court may deny a defendant access to transcripts on appeal which were testimony and hold discussions regarding the subject matter of those testimonial statements. Petitioner's Fifth Amendment problem that this Court resolved in Griffin v. Illinois has been disregarded by the Eleventh Circuit affirming the Order. See Robinson v. United States, 327 F.2d 618, 620 (8th Cir. 1964) (executing Supreme Court directive after their summary affirmance was reversed because it was an error to deny transcripts after appeal determined to be frivolous). Because both rulings were contrary to the first clause of Section 753(f), this Court should review the case to ensure that criminal defendants are afforded due process. Resolution of this issue would be outcome determinative. Petitioner, therefore seeks this Court's review.

CONCLUSION

FOR THE FOREGOING REASONS, the petition should be granted and this Court should grant access to transcripts on appeal within appellate case no. 24-12605 as well as stay of that case until the Petitioner has been afforded adequate time to review

those evidentiary items.

Respectfully Submitted,

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