

2. The Court abused its discretion by granting Marks withdraw request without an offer by Marks of any factual basis for withdrawal of said motion, or whether such withdrawal would be in the best interest of the Defendant's Appellate rights.

3. The Court abused its discretion by having no jurisdiction to grant such a request for a withdrawal of said motions by Marks because said motions contained probable trial errors by the Court which resulted in a verdict of guilty against the Defendant, and placed the maximum sentence of one hundred and thirty five years (135) against the Defendant's life.

4. The Defendant asserts, that the Court's granting of Marks withdraw request placed the Defendant's trial issues which would have been before the reviewing court, in limbo, and sanitized the prejudicial errors of the Court, and allowed the Court to shield itself from Appellate review.

5. The Defendant asserts that at no time did Marks present to the Defendant any information, strategy, logical or illogical rationale for his decision to undermine and destroy Defendants "initial" new trial motion, and in effect, destroyed any challenge against the trial Courts bias and prejudicial role during Defendant's trial.

6. The Defendant asserts at said hearing, Marks was approached by two witnesses that were in the Courtroom who question Marks about his withdrawal of said motions. Marks had told both of these witnesses that: *"I had to withdraw the New Trial Motions by Attorney Adrian Patrick because we do not want to allow the Judge to correct his errors on the record."* This ludicrous statement by Marks had no basis in fact or law, and has done serious injury to the Defendant's Appellate process. Mr. Marks had never indicated this reasoning or any other reasoning for the above action to the Defendant. Marks a Harvard trained Attorney, knew or should have known that the only ones that would benefit from having said motions withdrawn in this matter would be the Court, the prosecution and the jury. Marks' reasoning in this regard was faulty, in light of the fact

that the record had already been completed, and that Marks statements to said witnesses who have each made affidavits in support of the above caption motion, and who will be willing to testify to what was said by Marks to them before this Court.

7. The Defendant asserts, the Court, who reaps an “error free” trial windfall, by granting Marks motion without a basis or offer as to why Marks was waving a right of the Defendant, conflicts with a prior decision that was made by this Court to keep the Defendant’s former Attorney Adrian Patrick in this case in order to assist Marks in perfecting an Appeal before the Eleventh Circuit Court of Appeals. The Court, in affirming that the Defendant had the right of perfecting an appeal, kept the former Attorney on this case because his background in the case and at trial was required for the appeal briefs. Because of the trial record that the former Attorney created and which the former Attorney based his initial new trial motions, the Court should not have allowed itself to rule on such a request by Marks to withdraw the new trial motions, before in the “interest of justice”, to have allowed the Defendant to call his former attorney to the hearing to testify on the Defendant’s behalf. There were no apparent indications by Marks to the Court concerning whether the former Attorney had known that Marks was about to give said motions the “kiss of death.” Nor were there indications by Marks to the Court, that the Defendant and Marks saw eye to eye on this matter, in spite the fact that Marks had given the Court a false assertion when Marks had indicated to the Court that the Defendant only wanted one motion to be reinstated. The Former Attorney was effectively made non-existent by the Courts decision in withdrawing said motions. The Former Attorney was the architect and builder of said motions, and should have been given notice and opportunity to challenge Marks and the Courts’ position in this matter on behalf of the Defendant.

8. The Defendant asserts, pursuant to Federal Rule of Criminal Procedures Rule 33, which provides in part:

The court on motion of a defendant may grant a new trial to that defendant if required in the interest of justice.... A motion for a new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgment,

but if an appeal is pending the court may grant the motion only on remand of the case. A motion for new trial based on any other grounds shall be made within 7 days after verdict or finding of guilty or within such further time as the court may fix during the 7-day period.

A district court may not disregard the jurisdictional limitations imposed by the Federal Rules of Criminal Procedure in this manner.

9. The Defendant clearly understood the above seven day rule, placed a great burden on the Defendant former Attorney in insuring the Defendants right to effect a strong challenge against what can only be describe as a “Kangaroo” trial, with a hanging Judge and jury to match. The trial errors were substantial and far reaching. The Court was not an advocate for justice in the trial, but merely a drum major for the prosecution. An initial new trial motion and judgment of an acquittal was docket in the Court record with a noted reservation by the Defendants former Attorney to amend at a later time. (see docket entry below)

1/30/04 242 *MOTION by Dwight D. York for New Trial Response to*
motion
deadline set for 2/23/04 for USA Reply to response to
motion deadline set for 3/10/04 for Dwight D. York
(ans)
[Entry date 02/03/04]

1/30/04 243 *MOTION by Dwight D. York for Judgment of Acquittal*
Reply
Response to motion deadline set for 2/23/04 for USA
Dwight
to response to motion deadline set for 3/10/04 for
D. York (ans) [Entry date 02/03/04]

10. The Defendant would not under any condition or conditions, acquiesce to Marks apparent senseless decision to withdraw that which embodies the very foundation of the Defendant’s appeal, down the river. The Defendant clearly understood that the former Attorneys’ new trial motion was generic, and needed further additions for appellate review, in which could not have been done under the timing constrains of the above mention rule. Marks was instructed by the Defendant to:

1. Amend former Attorney new trial motions.
2. Supplement Marks discovery of new evidence motion.
3. Prepare to argue all motions at the above mentioned hearing before the Court.
4. Bring witness' video and audio testimony into evidence.
5. Bring witness' personal letters that she recently wrote to the Defendant declaring the Defendant innocent.
6. Subpoena Jacob York to be examined by Marks.

Marks violated Defendant's sixth amendment effective assistance of counsel clause by not bringing any of the above numerate issues to the attention of the Court.

11. The Defendant asserts, the Court abused its discretion, by suggesting to Marks that Marks should withdraw the Judgment for Acquittal motion, the Court, not satisfied with taking the Defendants sword, i.e. initial new trial motion, had also prompted Marks in taking the Defendant's shield i.e. Judgment for acquittal motion as well.

CONCLUSION

There exists a great degree of suspicion concerning Marks handling of the above mentioned matter. In addition to the apparent movement of the Court's position in hiding the real reasons for its willingness to grant such a bizarre request. Marks who had indicated that the reason for his withdraw was to prevent the Court from correcting its errors, did a greater injustice to the Defendant, Marks allowed the Court to hide its errors from being placed before the reviewing Courts and effectively rendered the Defendants appeal null and void.

WHEREFORE, Defendant request that this Court withhold its decision to grant or deny Defendants motions for new trial, provide the Defendant a hearing to **REINSTATE AND/OR RECONSIDER NEW TRIAL "INITIAL" MOTION**, and that the Court provide the Defendant with five subpoenas for the following witnesses to testify and be examined and reexamined by the Defendant, or Defendant Attorney before this Court:

1. Attorney Jonathan Marks, to testify
2. Attorney Adrian Patrick, to testify
3. Attorney Harry Charles, to testify
4. Jacob York, to be examined by the Defendant or Defendants Attorney.
5. Abigail Washington, to be reexamined by the Defendant or Defendants Attorney.

August 16, 2004



MALACHI Z. YORK, (PRO-SE)
PO BOX 874
Gray, GA 30132