

No _____

IN THE
SUPREME COURT OF THE UNITED STATES

GEORGE W. HIGH, SR. &
VIRGINIA C. HIGH --- PETITIONER(S)

Vs.

UNITED STATES OF AMERICA. --RESPONDENT(S)

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

PETITION FOR WRIT OF CERTIORARI

George W. High, Sr. &
Virginia C. High

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QUESTION(S) PRESENTED

1. WHETHER THE APPELLANT COURT ERRED IN AFFIRMING THE DISTRICT COURT'S DENIAL OF GEORGE AND VIRGINIA HIGH'S PETITION FOR WRIT OF ERROR CORAM NOBIS ?
2. WHETHER THE APPELLANT COURT ERRED IN TO AFFIRMING THE DISTRICT COURT'S DENIAL OF GEORGE AND VIRGINIA HIGH'S MOTION FOR RECUSAL OF THE DISTRICT COURT JUDGE ?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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**THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI**

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

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at -----; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

.JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case
Was October 20, 2004.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from state courts:

The date on which the highest state court decided my case was _____.
A Copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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Amendment 5 Due Process

STATEMENT OF THE CASE

George and Virginia High are husband and wife, having been married since 1968. At The time of their arrest and indictment, Mr. and Mrs. High owned real estate worth 3-4 Million dollars, and had an ownership interest in Georgia Home Improvement Company, Inc. (since 1981), High-Five, Ltd., (Since 1988) Shareholders in Bal, Inc. (since 1984), and former owner/operators of Highs Realty, Inc. (since 1988). Mrs. High, Eric High and George W. High, Jr. were also a license real estate agent. The second superseding indictment against the High's alleged that they used these businesses as "fronts" to structure currency transactions and laundry money that was illegally obtained through the trafficking of narcotics. Mr. and Mrs. High pled not guilty to the indictment and have maintained their innocence throughout the trial and subsequent proceedings...

On December 10, 1992, George and Virginia C. High were jointly indicted in a thirty-nine count second superseding indictment charging drug distribution in violation of 18 U.S.C. §§ 2 and 21 U.S.C. §§ 841(a)(1) and 846, and conspiracy to launder money and structure currency transactions in violation of 18 U.S.C. §§ 371 and 2 and 31 U.S.C. § 5324 . George High was also charged in the indictment with two counts of weapons charges in violation of 18 U.S.C. § 922 (Id.) both entered pleas of not guilty to all charges.

Mr. High was sentenced to 97 months on both counts one and nine, to Run concurrent. and to concurrent sentences of 60 months on both counts Three and thirteen, which were to run concurrent with the sentences on counts one and nine. The court imposed a term of five years of supervised release to follow the term of imprisonment and a special assessment of \$200.00.

The court sentenced Mrs. High to 97 months each on counts 1, 17, 18,20,23 and 24, all to run concurrently, and 60 months on count 13, to run concurrent with the other sentences. The court also

ordered Mrs. High to pay a \$350.00 special assessment and to serve a five-year period on supervised release following her sentence of incarceration.

The district court lacked jurisdiction to convict and sentence George and Virginia High on counts one, conspiracy to distribute and possess with intent to distribute cocaine, and aiding and abetting a conspiracy, and count thirteen, conspiracy to launder drug proceeds, structure currency transactions and defraud the United States, and Virginia High only on counts seventeen, eighteen, twenty, twenty-three and twenty-four (money laundering). Because the probation officer had recommended that Counts One and Thirteen (George & Virginia), Seventeen, Eighteen, Twenty, Twenty-Three and Twenty-Four (Virginia High only), be treated as money laundering counts as per U.S.S.G. § 2S1.1. The district court (at sentencing) adopted the factual statements and guideline applications made in the presentence investigation report to which there had been no objections filed. Any guideline issues had been resolved on the record.

Timely motions for new trial were filed by George and Virginia High following Sentencing. These motions were granted only as far as the substantive Structuring offenses based on the intervening Supreme Court decision in Ratzlaf v. United States, 510 U.S. 135 (1994), which held that a defendant may be convicted of violating 31 U.S.C. § 5324 only upon a showing that the defendant “Wilfully” violated anti-structuring laws.

Mr. and Mrs. High both filed an appeal in the 11th Circuit that was consolidated for review with co-defendant Ward. The Highs contended that their convictions on count thirteen must be reversed because the structuring Currency transactions instruction was incorrect as a matter of law. The Appellate Court agreed and reversed the Highs' convictions (July 21, 1997) on count thirteen for conspiracy to launder drug proceeds, structure currency transactions and defraud the United States but affirm the appellants' convictions on count one for conspiracy to distribute and possess

with intent to distribute cocaine, and aiding and abetting a conspiracy, and remanded for further proceedings consistent with the ruling. United States v. High, 117 F. 3d 464,470-71 (11th Cir. 1997).

On February 4, 1998, the district court, without conducting a hearing, granted a motion by the government to dismiss counts thirteen against George and Virginia High. The Appellant Court saw fit to affirm that unjust conviction, and have maintained their posture thru 3 additional Appeals. Because the conviction and sentence on count one was imposed in violation of the Constitution and laws of the United States, and the district court was without jurisdiction to impose such and the appellant court lacked jurisdiction to affirm that unjust conviction.

The district court lacked jurisdiction to convict and sentence George High on counts three and nine (weapon violations). All of George High's rights were restored in 1962 when he was released from prison in Colorado, and the government withheld that information.

The district court lacked jurisdiction to order George High to pay a special assessment of \$200.00 and to order Virginia High to pay a special assessment of \$350.00, because the Highs sentences were imposed in violations of the constitution and laws of the United States.

The district court lacked jurisdiction to conduct a criminal forfeiture proceeding against Virginia and George High pursuant to 21 U.S.C. § 853 and 18 U.S.C. § 982, in the amount of One Million and Two Hundred Thousand Dollar and lacked jurisdiction to issue a judgment of forfeiture on 6/30/1994, as the Highs were framed by the government.

Shortly after the Court's ruling in United States v. High, Virginia High, on August 8, 1997, filed a *Pro Se* Motion for New Trial, Motion to Vacate Sentence Pursuant to 28 U.S.C. § 2255 and a Motion for Appointment of Counsel.

On August 12, 1997, the government responded to Virginia High's 28 U.S.C. § 2255 . On August 21, 1997, Mrs. High responded to the government's respond to her § 2255.

On September 22, 1997, George High filed a motion to vacate Pursuant to 28 U.S.C. § 2255. On September 30, the court entered an order denying motion pursuant to 28:255 without prejudice to renew motion when sentence becomes final. On September 25, 1997, George High filed a motion to disqualify Judge Robert L. Vining, Jr. with brief in support.

On February 26, 1998, after the issuance of the Appellate Court's opinion and mandate on direct appeal, the district court denied all three of these motion's as to Mrs. High, and also denied George High's motion to disqualify Judge Robert L. Vining, Jr. Mrs. High filed a notice of appeal which was ultimately docketed as case No. 98-8429.

On December 17, 1998, the High's filed a joint motion for new trial based on newly discovered evidence. The motions for new trial was accompanied by an affidavit executed by George High. On December 31, 1998, George and Virginia High filed a joint motion for appointment of counsel stating that each of them had be denied effective assistance of counsel from investigation of the criminal case through the post-conviction process. The motion for appointment of counsel was accompanied by an affidavit executed by George High. The district court denied the motions as to the High's; Mr. and Mrs. High filed a joint notice of appeal from this order which was docketed as appeal number 99-8169. The two cases. numbers 98-8429 and 99-8169. were consolidated for review by the 11th Circuit Court of Appeals.

on April 11, 2001, after serving over 7 years, The Highs were released from federal prison and was on 5 years supervised released.

On August 7, 2001, in an **unpublished opinion**, the Appellate Court AFFIRMED the orders of the district court denying the High's motions.

On May 22, 2002, the High's filed a joint Petition for Writ of Error Coram Nobis with brief in support, and Motion for Appointment of Counsel with brief in support with both being based on Constitutional violations.

On June 24, 2002 George High filed a Motion to Disqualify Judge Robert L. Vining, Jr. with brief in support .

On June 26, 2002, Virginia C. High filed a Motion to join in Motion to disqualify Judge Robert L. Vining Jr. with brief in support.

On July 2002, the district court issued and order as follows: As to defendants George High and Virginia C. High DENYING [594-1] motion to join in motion to disqualify judge, DENYING (593-11 motion to disqualify Judge Robert L. Vining Jr., DENYING [592-1] motion for writ of error coram nobis, and DENYING [591-11 motion for appointment of counsel.

On July 24, 2002, the High's filed a joint Notice of Appeal from this order which was docket As appeal number 02-14214-I.

On February 12, 2003, the Appellant court, in an **unpublished opinion** AFFIRMED the orders of the district court.

On December 17, 2003, The High's filed a 2nd Petition For Writ of Error Coram Nobis with brief in support .

On January 2, 2004 the High's filed a Motion to disqualify Judge Vining, with brief in support.

On March 4, 2004, The District Court denied the motion to disqualify himself and denied the Motion for writ of error coram nobis.

On March 12, 2004 , the High's filed a joint NOTICE OF APPEAL from this order which was docketed as appeal number 04-11612-JJ. On October 20, 2004, in an **unpublished opinion**, the 11th Circuit Court of Appeals AFFIRMED the district court's order denying the High's petition for writ of error *coram nobis* and the denial of the High's recusal motion.

George and Virginia Has filed 4 Appeals in the 11th Circuit, and JUSTICE HAS NOT PREVAILED

REASONS FOR GRANTING THE PETITION

1. THE APPELLANT COURT ERRED IN AFFIRMING THE DISTRICT COURT'S DENIAL OF GEORGE AND VIRGINIA HIGH'S PETITION FOR WRIT OF ERROR CORAM NOBIS.

USA v PETERS, # 01-16982 (11th Cir. 2002).... **A writ of error coram nobis is a remedy available to vacate a conviction when the petitioner has served his sentence and is no longer in custody, as is required for post-conviction relief under 28 U.S.C. § 2255. As the Supreme Court explained in, coram nobis relief is available after sentence has been served because "the results of the conviction may persist. Subsequent convictions may carry heavier penalties, civil rights may be affected."....**

The petition for Writ of error coram nobis to the district court was based on the three (3)

Jurisdictional Errors as follows, and they will be addressed in that order.

1. THE DISTRICT COURT LACKED JURISDICTION TO CONVICT AND SENTENCE GEORGE AND VIRGINIA HIGH ON COUNT ONE, CONSPIRACY TO DISTRIBUTE AND POSSESS WITH INTENT TO DISTRIBUTE COCAINE, AND AIDING AND ABETTING A CONSPIRACY, AND COUNT THIRTEEN, CONSPIRACY TO LAUNDRY DRUG PROCEEDS, STRUCTURE CURRENCY TRANSACTION AND DEFRAUD THE UNITED STATES, AND VIRGINIA HIGH ONLY ON COUNTS SEVENTEEN, EIGHTEEN, TWENTY, TWENTY THREE AND TWENTY FOUR (MONEY LAUNDERING).
2. THE DISTRICT COURT LACKED JURISDICTION TO CONVICT AND SENTENCE GEORGE HIGH ON COUNTS THREE AND NINE (weapons violations).
3. THE DISTRICT COURT LACKED JURISDICTION TO CONDUCT A CRIMINAL FORFEITURE PROCEEDING AGAINST VIRGINIA AND GEORGE HIGH PURSUANT TO 21 USC § 853 AND 18 USC § 982, AND LACKED JURISDICTION TO ISSUE A JUDGEMENT OF FORFEITURE ON 6/30/1994.

THE DISTRICT COURT LACKED JURISDICTION TO CONVICT AND SENTENCE GEORGE AND VIRGINIA HIGH ON COUNT ONE, CONSPIRACY TO DISTRIBUTE AND POSSESS WITH INTENT TO DISTRIBUTE COCAINE, AND AIDING AND ABETTING A CONSPIRACY, AND COUNT THIRTEEN, CONSPIRACY TO LAUNDRY DRUG PROCEEDS, STRUCTURE CURRENCY TRANSACTION AND DEFRAUD THE UNITED STATES , AND VIRGINIA HIGH ONLY ON COUNTS SEVENTEEN, EIGHTEEN, TWENTY, TWENTY THREE AND TWENTY FOUR (MONEY LAUNDERING).

Prior to sentencing, the probation officer prepared a Pre-sentencing Report (Virginia # 119 and George # 116) as follows: Since the defendant's Involvement in the conspiracies outlined in Count's One and Thirteen of the indictment involves activities related to money laundering and structuring transactions to evade reporting requirements, U.S.S.G. § 251.1 is the most analogous guideline to be applied with respect to Count One and Count Thirteen.

On January 20,1994, (sentencing transcript, 15 pages).

THE COURT: (page 8, lines 17-19) "The court adopts the factual statements and guideline applications made in the presentence investigation report to which there has been no objections filed" George and Virginia High was sentenced to 97 months on Count One and 60 months on Count Thirteen by Judge Vining. Count One was (is) a Class A Felony, and the Law mandates that offenders be sentenced under 2D 1.1, but the Highs were sentenced under 2S1.1 money laundering) which is a Class D Felony. This lends credence to the fact that the government, the alleged defense attorneys and Judge Vining all participated in a frame-up against Virginia and George High. Furthermore The Highs were found guilty on October 13, 1993 and The Supreme Courts decision in Ratzlaf v. United States, 510 U.S. 135 was on January 11, 1994., and the Highs were sentenced on January 20,1994. Counts 1 and 13 should have been

dismissed and the Highs, should have never went to prison, because under Ratzlaf, The Highs sentences were imposed unlawfully and in violation of the United States Constitution.

The district court also erred in failing to state a reason for imposing a sentence of 97 months on Mr. High. This Court has noted that "as a general rule, a sentencing court need not explain why a particular sentence was imposed so long as the sentence was within the range as specified by the guidelines. ." United States v. Veteto, 920 F.2d 823, 826 (11 th. Cir. 1991). The Court further noted, that Congress has imposed a specific mandate on sentencing courts to "state the reason for imposing a sentence at a particular point within the range when the range exceeds 24 months. Should a district court fail to comply with 3553(c)(I)'s mandate, "the sentence is imposed in violation of the law and is reviewable on appeal." At the close of Mr. High's sentencing proceeding, the district court found that his custody guideline range was from 78-97 months and imposed a sentence of 97 months. The district court failed, however, to state on the record the reason or reasons for imposing a sentence at that point in the particular guideline range. Although it appears the court was aware of the requirement in certain, circumstances that the reasons for a particular sentence must be stated on the record, the court apparently believed, incorrectly, that requirement was only when sentences exceeded *the recommended guidelines* by twenty- four months rather than simply exceeded twenty-four months. Specifically, the court noted. The sentence imposed is within a guideline range that does not exceed twenty-four months and the court has found no cause to depart from the guidelines (R24-12).

This mandate is clearly announced in 18 U.S.C. 3553(c)(I) which states in pertinent part:

The Court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and if the sentence -- (I) is of the kind, and within the range, described in subsection (a)(4) and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range It is clear that Mr. High was entitled to have the district court state a reason or reasons for imposing a sentence of 97 months. The only prerequisite needed to engage §3553(c)(I)'s mandate is that the sentencing range exceed 24 months. Mr. High's guideline range and ultimate sentence both exceeded 24 months. Thus he was entitled to a reason for the sentence Because the district court utterly failed to satisfy the requirements of §3553(c)(I), and the Court of appeals should have remand the case for resentencing on count one.

2. THE DISTRICT COURT LACKED JURISDICTION TO CONVICT AND SENTENCE GEORGE HIGH ON COUNTS THREE AND NINE

Count Three charges that on or about February 2, 1990, the defendant, in connection, with the acquisition of a firearm, that is, an Excam .25 caliber model GT27B semi-automatic pistol, serial number MI99728, *from Joe's Loan office*, a licensed dealer in firearms, willfully and knowingly made a false fictitious written statement likely to deceive said dealer with respect to a material fact as to the lawfulness of the sale of such firearm, in that on an ATF Form 4473, George W. High stated that he had not been convicted in any court of a crime punishable by imprisonment *for* a term exceeding one year, when in truth and fact he had been convicted of an offense punishable by imprisonment for a term exceeding one year, in violation of 18 U.S.C. § 922(a)(6).

Count Nine charges that on or about July 27, 1992, the defendant, having previously been convicted of crimes punishable by imprisonment *for* a term exceeding one year, to wit: on or about February 3,

1960, the said defendant was convicted of aggravated robbery, in the El Paso County District Court, Colorado Springs, Colorado; did, possess in and affecting commerce, a firearm, to wit; one Excam model GT27B, .25 caliber pistol, serial number M199728, in violation of 18 U.S.C. §§ 2, 921(3) and 922(g)(1). George High avers that the government only added the false firearm counts solely to buttress its weak case on the other counts, and The Court Lacked jurisdiction to convict and sentence George High on Counts Three and Nine of the Indictment (weapons violations).

George High was not guilty of 18 U.S.C. § 922(a)(6), false statement in acquiring a firearm and 18 U.S.C. §§ 2, 921(3) and 922(g)(1), convicted felon in possession of a firearm, as his rights were automatically restored when he was released from the Colorado State Prison in 1960, see *Beecham v. U.S.* No. 93-455

5/6/94 and *U.S. v. Hall* (CA 10, No. 93-1079 3/22/94). George High avers that his conviction on the firearms charges was obtained by use of evidence (the firearm) gained pursuant to an unconstitutional search and seizure, So the court lacked jurisdiction to convict and sentence George High on counts three and nine.

2. THE DISTRICT COURT LACKED JURISDICTION TO CONDUCT A CRIMINAL FORFITURE PROCEEDING AGAINST VIRGINIA AND GEORGE HIGH PURSUANT TO 21 USC § 853 AND 18 USC § 982, AND LACKED JURISDICTION TO ISSUE A JUDGEMENT OF FORFITURE ON 6/30/1994.

With violations of **Title 21, United States Code §§ 841(a) (1) and 846**, said violations constituting a felony violations of subchapter I, chapter 13, Title 21, United States Code,

Pursuant to Title 21, United States Code §853, upon conviction of any such violation, such convicted defendant shall forfeit to the United State:

(1) any property, real or personal, tangible or intangible, constituting, or derived from, proceeds the person obtained, directly or indirectly, as a result of such violation; and (2) any of the person's property used, or intended to be used, in any manner or part, to commit or to facilitate the commission of such violations.

Title 21, United States Code §§ 841(a) (1) and 846, was Count One, conspiracy to distribute and possess with intent to distribute cocaine, and aiding and abetting a conspiracy. The Highs sentences were imposed unlawfully and in violation of the United States Constitution.

The indictment further charge the defendants George & Virginia High , with violations of Title 18, United States Code §1956, and. **Title 18, United states Code §982** provides in pertinent part that in imposing a sentence on a person convicted of an offense in violation of Title 18, United States Code §1956, or Title 31, United States Code §5324, the Court shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property. The type of property which may be forfeited to satisfy this claim includes, but is not limited to, all property, real and personal, tangible and intangible, including choses-in-action, as described herein, and any property, real or personal, traceable to the foregoing property and any "substitute" property, as defined in Title 21, United States Code §853, of a value equal to any and all assets identified specifically, which has or have been transferred, sold or deposited with a third party; which cannot be located by due diligence; which has or have been placed beyond the jurisdiction of this court; which has or have been substantially diminished in

value, or which have or have been commingled with other property and cannot be divided without difficulty. Title 18, United States Code §1956, was counts 17, 18, 20, 23 and 24 (Virginia High only). Title 31, United States Code §5324, was count 14 for George High and counts 16, 19, 21 and 22 For Virginia High. The High's were granted a new trial on those counts and the government dismissed all of those charges.

The purpose of a criminal law is to punish the violator, and criminal forfeiture is imposed as part of that punishment following conviction. Criminal forfeiture is *in personam* or against the individual and requires that the government indict the property used in or obtained with proceeds from the crime.

Upon completion of a criminal trial, if the defendant is found guilty, criminal forfeiture proceedings are conducted in the court before a judge. The proceedings may result in a verdict forfeiting property used in the crime or obtained with proceeds from the crime. The High's property, real and personal, was illegally forfeited after unjust conviction and without due process of law.

Pursuant to 21 USC S 853 and 18 USC § 982, The conspirators, William Silinski, Shelia Whipple, Barbara Brown Joe D. Whitley, Allen Moye, Judge Vining, Michael Abbott, William Morrison and others known and unknown, acting under the claim of Federal Authority seized in excess of one million two hundred thousand Dollars from the Highs, \$12,000 from bank account and a \$15,000 insurance check and caused the High's to Lose an additional 3 + million dollars in real estate. The U.S, Marshall, in the person of Wes Johnson refused to allow Mrs. High to remove \$200,000 in furnishings from the Cascade Rd. property that was in fact titled in her name. Wes Johnson, acting in collusion with the conspirators was negligent and allowed (if not assisted), the property to be stolen and Mrs.

High was not notified until a month later by the Atlanta Police. West Johnson never notified Mrs. High. The High's property, real and personal, was illegally forfeited after fraudulent conviction and without due process of law. Final ORDER & JUDGEMENT OF FORFEITURE as to defendant George High, defendant Virginian C. High by Judge Robert L. Vining Jr. (R-469) Entry Date 11/30/94.

When a court without jurisdiction convicts and sentences a defendant, the conviction and sentence are void from their inception and remain void long after a defendant has fully suffered their direct force. Moreover, as the Supreme Court reiterated in Spencer v. Kemna, [523 U.S. 1](#) (1998), "it is an obvious fact of life that most criminal convictions do in fact entail adverse collateral legal consequences." Id. at 12 (internal quotation marks omitted). See also Wolfe v. Coleman, 681 F.2d 1302, 1305 (11th Cir. 1982); Minor v. Dugger, 864 F.2d 124, 126 (11th Cir. 1989).

Accordingly, a writ of error coram nobis must issue to correct the judgment that the court never had power to enter. Since coram nobis relief is available in this circumstance as a matter of law, the district court abused its discretion in summarily dismissing Peter's petition.

Since jurisdictional error implicates a court's power to adjudicate the matter before it, such error can never be waived by parties to litigation. See Louisville & Nashville Railroad Co. v. Mottley, [211 U.S. 149, 152](#) (1908) (ordering case dismissed for lack of jurisdiction despite absence of objection from either party to trial court's previous adjudication of merits). In other words, the doctrine of procedural default does not apply.

The Appellants, George and Virginia High has established that the above jurisdiction errors constituted a 'fundamental defect which inherently resulted in a complete miscarriage of justice [or] an omission inconsistent with the rudimentary demands of fair procedure.' " Burke v. United States, 152 F.3d 1329, 1331 (11th Cir. 1998) (quoting Reed v. Farley, 512 U.S. 339, 348 (1994)).

THE APPELLANT COURT ERRED IN AFFIRMING THE DISTRICT COURT'S DENIAL OF GEORGE AND VIRGINIA HIGH'S PETITION FOR WRIT OF ERROR CORAM NOBIS ?

THE APPELLANT COURT ERRED IN TO AFFIRMING THE DISTRICT COURT'S DENIAL OF GEORGE AND VIRGINIA HIGH'S MOTION FOR RECUSAL OF THE DISTRICT COURT JUDGE.

THE DISTRICT JUDGE ABUSED HIS DISCRETION WHEN HE FAILED TO RECUSE HIMSELF FROM THIS CASE UNDER 28 USC § 455 (a) (b)

28 U.S.C. § 455. Disqualification of justice, judge, or magistrate

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.

United States V CERCEDA,

Nos. 94-5017, 95-4610 to 95-4613, 95-4617, 95-4618, 95-4626, 95-4628 to 95-4635, 95-4659, 95-5244, 95-5298, 95-5369, 95-5566, 96-4584, 96-5043 and 96-5067 April 23, 1998. (11th Cir.)

The Need for Recusal Section 455(a) states: "Any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). The standard under § 455(a) is an objective one, focusing on a hypothetical reasonable observer. The test of whether to recuse is one of objective reasonableness, that is, whether "an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality." *United States v. Torkington*, 874 F.2d 1441, 1446 (11th Cir.1989); *see also Liljeberg v. Health Servs. Acquisition Corp.*, [486 U.S. 847, 859-60](#), 108 S.Ct. 2194, 2202-03, 100 L.Ed.2d 855 (1988). A judge is under an "affirmative, self-enforcing obligation to recuse himself *sua sponte* whenever the proper grounds exist," and is required to resolve any doubts in favor of disqualification. *United States v. Kelly*, 888 F.2d 732, 744 (11th Cir.1989).

On June 3, 1992, Arraignment held for Sims Jinks, Elmer Adkins Jr. and Willie Lawrence Wyatt, Case assigned to Judge Horace T. Ward.

On July 22, 1992, Arraignment held for George High and Virginia C. High, Case assigned to Judge Horace T. Ward.

On August 26, 1992, This case was reassigned to Judge Robert L. Vining Jr. The Highs avers that this was a case of prosecutorial manipulation of the Assignment process. The 5 named defendants cases were initially assigned to Judge Horace T. Ward, (a black Judge). The government would later obtain a second superseding indictment against the defendants. The case should have been assigned to the judge who was assigned the case of the defendant's whose name appears first on the superseding indictment. Sims Jinks name appeared first on the first indictment, the superseding Indictment and... the current Docket Sheet. The Highs contended that the government manipulated the order the defendants' names on the superseding indictment to obtain the assignment of the cases to a particular judge (Judge Robert L. Vining Jr., (white), which gave the prosecution a subtle advantage. The Highs were deprived of their right under the Fifth amendment's Due Process Clause to an impartial method of assigning cases to judges and that the prosecution deprived the defendant of that right by manipulating the assignment of the defendant's case, and George and Virginia High suffered "grave prejudice" and a "Gross miscarriage of justice". The government, i.e. Joe D. Whitley & Allen Moye, hatched a plan with the high's counterfeit defense attorneys, the FBI, (Barbara Brown) The IRS, (Bill Silinski & Shelia Whipple), Judge Vining and others known and unknown to "railroad" the Highs because they would not "cut-a-deal". The government manipulated the order the defendants' names on the superseding indictment to obtain the assignment of the cases to Judge Robert L. Vining Jr., Because they knew they could not depend on Judge ward

to knowingly “frame” his own folks....After all Judge Vining already “had the noose” around a number of the potential witnesses neck who had already pled guilty before him, thanks to Allen Moyer, so there would not be any problem getting them to testi-lie against the High’s.

1. **Kyle Henry (white boy)** The government agreed not to prosecute him on money laundering and drug conspiracy (count 1), and he had contract with the IRS to receive 25% of the 1st million collected and 10% of net taxes and penalties, up to one million dollars. Kyle Henry also had a contract with the U. S. Attorneys office to get 25% of all they seized, and he also went in the witness protection after testifying
2. Anna Grazette (David Wallace's mother). She sold and stored drugs at her home, and witnessed her son David Wallace murder Bruce Low in her home. She received a Statutory Immunity letter from the prosecutor stating that nothing she said at trial could be used against her. She also went in the witness program. **Judge Vining**, sentenced her to 5 years probation.
3. David Wallace (Anna Grazette's Son). Facing life and pled guilty Before **Judge Vining** to count # 1. Played Supervisory role. He murdered Bruce Low at his mother's house. Government filed a 5K-1 and rule 35, and he too will go in the witness protection program, and the government would not prosecute him for the murder, or counts # 10, 12, 13, 16, 17, and count # 25.
4. Kelvin King: Sentenced to 17 year, and 8 month, after pleading guilty before **Judge Vining**. The government recommended sentence reduction by virtue of His testimony at trial.
5. Sims Jink: Facing Life and pled guilty before **Judge Vining**. Government filed rule 35 and agreed to just prosecute him on count # 1, and forget about counts 7, 13, 14, 15, 20 and 21. The government would also not prosecute him on the pending assault charge (shooting), or the murder.
6. Joe Harper, Sentenced to 87 month, by **Judge Vining** after the government filed a rule 35. Government agreed to recommend additional sentence reduction for his testimony at trial.
7. Ladaris Patrick: Facing Life, and pled guilty before **Judge Vining**. Government filed a rule 35 and a 5K-1, and he too will be in the witness protection program.

8. Joel Peavey, Facing Life and pled guilty before **Judge Vining** to count # Government filed a rule 35 and 5K-1 and would not prosecute him on counts 13 and 38.

In this case, the government had quite simply purchased the testimony of the above (8) witnesses through Promises of Leniency and in one case (Kyle Henry) a million dollars. Each witness" therefore has every reason to fabricate" falsify or exaggerate their testimony in order to curry favour with the government...

Murray v Scott, 99-12194, (11th Cit. June 13, 2001), .

...Plaintiff says that these facts implicate the federal recusal statute. 28 U.S.C. §455. Section 455(b) requires disqualification under certain circumstances, for example, when a judge has "personal knowledge of disputed evidentiary facts," §455(b)(1) . . . concerning the proceeding...Under this provision, recusal is mandatory. In such situations, "the potential for conflicts of interest are readily apparent." State of Alabama, 828 F.2d at 1541. Congress has directed federal judges to recuse themselves in certain situations, and we accept that guidance. Judges must not recuse themselves for imaginary reasons; judge shopping should not be encouraged. Still, federal judges must early and often consider potential conflicts that may arise in a case and, in close cases, must err on the side of recusal.⁸ And if a judge must step aside, it is better to do it sooner instead of later.

THE APPELLANT COURT ERRED IN TO AFFIRMING THE DISTRICT COURT'S DENIAL OF GEORGE AND VIRGINIA HIGH'S MOTION FOR RECUSAL OF THE DISTRICT COURT JUDGE.

George and Virginia High, (since 1992), has been the victims of a campaign of Discrimination, Injustice, Threats, Intimidation, Harassment, unfair-ness, Unlawfulness, Inexcusability, racism, Prejudice, Unjust conviction, False Imprisonment and Framing, which is Shocking and Deplorable, by "Rogue Agents" within the FBI, IRS, the U.S. Attorneys office, two counterfeit defence attorneys and a District Judge. These false charges brought against George and Virginia High by the United States of America are of the most outrageous conduct which transcends all possible bounds of decency so as to be regarded as "atrocious and utterly intolerable in a civilized society". George and Virginia had a "sham trial" before a Kangaroo Tribunal, which was tantamount to a "Judicial Lynching"...

USA v SINGLETON. 97-3178 (10 Cir.)

One of the very oldest principles of our legal heritage is that the king is subject to the law. See Romans 13. King John was taught this principle at Runnymede in A.D. 1215, when his barons forced him to submit to Magna Carta, the great charter that imposed limits on the exercise of sovereign power. (See) William Sharp McKechnie, Magna Carta,36-42 (1914). One of the first modern expositions of this hallowed principle is found in Lex Rex, whose title indicated the fundamental shift in our legal heritage toward the primacy of the law and the subordinate position of the king. Justice Brandeis expounded as follows on the principle: Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means-to declare that the Government may commit crimes in order to secure the conviction of a private criminal-would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

George W. High, Sr.

Virginia C. High

Date: January 18, 2005

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

GEORGE W. HIGH, SR. &
VIRGINIA C. HIGH ---- PETITIONER(S)
(Your Name)

VS.

UNITED STATES OF AMERICA ---RESPONDENT(S)

PROOF OF SERVICE

I, George W. High, Sr., do swear or declare that on this date, January 18, 2005, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

H.Allen Moye
Assistant U. S. Attorney
600 United States Courthouse
75 Spring Street, S.W.
Atlanta, Georgia 30335

Solicitor General Of the United States
Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 18, 2005

George W. High, Sr.