

August 1, 2018

Honorable Jose L. Linares, U.S. D. J.
Chief, United States District Court Judge
U.S. District Court, D. N. J.
Martin Luther King, Jr.
Federal Building and Courthouse
50 Walnut Street, P.O. Box 999
Newark, N.J. 07101-0999

Re: Bergin v. United States,
Civil No. 16-3040

Dear Honorable Chief Judge Linares:

Please accept this brief memo in reference to the Government's letter dated July 24, 2018 and in their response to Ground 3 of my motion to vacate sentence under 28 U.S.C. § 2255.

I most respectfully plead that you forgive the handwritten nature of this memo, but as you are already cognizant, I am confined at the United States Penitentiary Max, ADX, Florence, Colorado and being held in solitary confinement. I do not have a word processor nor

typewriter available to me.

Additionally, I am unable to receive submissions or filings via ECF, as the government wrongfully averred I was served. I also learned today that the government is renewing my Special Administrative Measures (SAM) so I will remain in this concentration camp. Henceforth, I beg for an imminent determination of my motions.

Consistent with their flagrant misconduct in the past, the government continues to make deliberate misrepresentations and flawed arguments to this Honorable Court. I submit that their motive is their fear that the Curry recordings unequivocally and categorically prove my absolute and actual innocence, to an certainty; and that their critical witness in the seminal charges against me perjured himself. The recordings establish Anthony Young knowingly and purposely fabricated and contrived material and incriminatory evidence against me and that the government either knew or should have known THIS FACT. (Emphasis added).

The recordings are extraordinarily

powerful evidence and proof that I never informed Young nor anyone else that William Baskerville would receive life in prison, that I could win the case without Kemo, that I ever intended to go to trial and that Curry was ever concerned Will was going to be sentenced to life in prison.

This crucial and vital evidence undermines, underscores and wholly eviscerates the entirety of the government's case. They also prove Young fabricated and perjured his entire testimony pertaining to material facts surrounding the date of Will's arrest on November 25, 2003 and a multitude of other dates.

As I copiously argued in my motion and replies, the recordings are "newly discovered" in accord with Supreme Court precedent, The Due Process Clause of our Constitution and case law.

The government continually misleads, misrepresents and presents half-truths as it pertains to my consequential arguments in Ground

3 of my 2255 motion.

The government was fully aware of the substance of the recordings and even possessed verbatim transcripts; which they purposefully failed to provide. They also had summaries of these fervently important, even monumental recordings which they concealed.

The government was cognizant of their Brady and Giglio mandates, yet they knowingly, intentionally and with malice aforethought denied (emphasis added) that they possessed or knew of any such evidence. They even went further when presented with a written motion for such evidence and denied any existed.

In bold, conspicuous contravention of their professional responsibilities, Constitutional and Statutory obligations they premeditatedly advised me and my attorney's that there are "no recordings of any substance that will assist me in my defense, provide exculpatory or impeachment evidence for me and that I should not waste my time reviewing-listening to them." The government further threatened me with extremely incriminatory recordings, they never possessed nor had, if I was to even consider

using a recording.

In further usurpation of their Constitutional responsibilities, the government clandestinely secreted the recordings amongst approximately 20,000 plus pieces of other CDs and discows and formatted the recordings in an acrimoniously, tedious and over burdening manner. All in derivation of their inherent responsibilities. They never sought the truth or justice, but to win this case at all costs and by any means. In their depraved minds, they had to convict, even if unjust.

The government's ardent and vociferous misrepresentations to the trial Judge, that they possessed incriminatory-inculpatory recordings against me, was the decisive factor in an erroneous ruling; that I chose not to use the tapes, when the government knew this representation was baseless. More than that it was a bold faced lie.

The government cannot be permitted to violate their Constitutional charges through misconduct and assert procedural bars.

In the case of, Mc Quiggin v. Perkins, 569 U.S. 383 (2013), the Supreme Court held that the preeminent consideration of Our Highest Court, when determining procedural issues, is "to prevent a fundamental miscarriage of justice." When a petitioner makes a "credible showing of actual innocence" he must be provided a gateway to federal review. Mc Quiggin, 569 U.S. at 386, 392.

The Curry recordings exceed this burden and establish my "actual innocence."

In Schlup v. Dela, 513 U.S. 298 (1995), the Court had precedentially established that "new evidence which is reliable and shows that it is more likely than not that no reasonable juror would have voted to convict" requires reversal of the conviction. This is exactly what the recordings do for me.

This Honorable Court must be concerned with the equitable decisive factors that caused Our Highest Court to conclude that "federal constitutional errors must not result in the incarceration of innocent persons." Id. at 392-393

The Third Circuit has opined that actual innocence was demonstrated where new evidence showed that the crime could not have happened in the way the prosecution alleged and provides an alternative and more appropriate understanding of the facts; exactly as the recordings Sub Judge do. Munchinski v. Wilson, 694 F.3d 308, 338 (3d Cir. 2012). The "actual innocence" standard does not (emphasis added) require absolute certainty about the petitioner's guilt or innocence. House v. Bell, 547 U.S. 518, 538 (2006); although the Curry recordings do just that.

Supreme Court opinions wholeheartedly define "new evidence" to include evidence not presented at trial. It is clearly a gateway to an actual innocence claim. (Emphasis added). Moreover and more importantly, the Court in Schlup used the phrase "newly presented evidence" to include evidence which effects a witnesses credibility as part of an actual innocence gateway analysis. Schlup at 324.

The recordings in my case not only conclusively prove my actual-factual innocence, but

literally destroys any credibility Anthony Jung had. This evidence must never be precluded. It is instrumental to prevent AND extp, this fundamental miscarriage of justice. (Emphasis added).

The Schlup Court in an opinion written by Justice Stevens and joined by Justices O'Connor, Souter, Ginsberg and Breyer was ardent in its position as to what constitutes "newly discovered evidence" and my arguments and claims are consistent with this holding. Even the concurring opinion of the distinguished Justice O'Connor vehemently supports my claims; and requires admission of the recordings.

To be a credible claim of actual innocence the recordings in my case must only be reliable and have not been presented at trial. Exactly what happened in my case. Although as vociferously asserted supra, they would meet any definition of what actually constitutes "new evidence." Calderon v. Thompson, 523 U.S. 538, 559 (1998) (quoting Schlup, 513 U.S. at 334). (Emphasis added).

The Third Circuit has NEVER (emphasis added), resolved, decided

nor opined as to their interpretation of what constitutes "new" evidence in the gateway to an "actual innocence" claim.

It would be repugnant to our entire system of justice, fundamental fairness and The Founding Fathers of the United States Constitution to submit that the wrongful conviction and imprisonment of an innocent man would remain to stand; when there exists reliable and credible evidence of his "actual innocence" and further evidence undermining the entire credibility of the government's sole and exclusive witness.

It would never occur in a democratic society and although the government's desire is that this occur, it must never be permitted.

The Reeves v. Fayette SCI, No. 17-1043, ___ F.3d. ___ (3d Cir. July 23, 2018), opinion cited by the government is wrongfully and inaccurately characterized by them.

The Third Circuit made it absolutely clear that, they are consistent with Schlop. The Court emphatically held

that they are following Schlup analysis and dictates in "that the injustice that results from the conviction of an innocent person has long been at the core of our criminal justice system." Schlup, 513 U.S. at 325. In citing this monumental phrase, the Reeves Court further opined ~~on~~ that "the conviction of an innocent person is perhaps the most grievous mistake our judicial system can commit," and thus, the contours of the actual innocence gateway must be determined with consideration for correcting "such an affront to liberty." Reeves at 19, citing Sattenfield v. Dist. Atty Phila., 872 F.3d 152, 154 (3d Cir. 2017).

Consequently, in accord with the Supreme Court's rationale, the predominant consideration must be the entire essence of our criminal justice system. To ensure that an "innocent person" does not remain imprisoned when there is evidence of his innocence. This Court possesses this evidence.

The Reeves Court merely suggested, in dicta, none the less, what may constitute "newly discovered" evidence. The Reeves Court never answered this question. Then again,

how could they ever be inconsistent nor fail to follow Supreme Court precedent.

Furthermore, all Reeves did was recognize a single exception for defining "new evidence." That being a 6th Amendment claim of ineffective assistance of counsel. The Third Circuit never precluded Schlups "newly presented" evidence conscription.

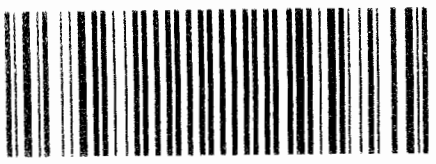
In any event the magnanimity of the Curry recordings to Bergin's cause and vindication should be admitted and considered under any and all definitions of "new" evidence.

The Brady, Giglio, Statutory and Constitutional arguments by Bergin, in conjunction with the conduct of the government requires that the recordings be accepted as evidence. They should also result in reversal of his convictions.

Most respectfully submitted,

Paul W. Bergin
PAUL W. BERGIN

4 Bergin did also submit a 6th Amendment ineffective assistance of investigator claim, that would fall into this exception.



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