

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

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UNITED STATES OF AMERICA

CASE NO: 5:02-CR-27-CAR

U.S. DISTRICT COURT  
MIDDLE DIST. OF GEORGIA  
MACON, GEORGIA

VS.

MALACHI Z. YORK  
DEFENDANT

**AMENDED MOTION TO REINSTATE AND/OR RECONSIDER NEW TRIAL  
"INITIAL" MOTION AND JUDGMENT OF ACQUITTAL**

COMES NOW, Defendant Malachi Z. York, by and through his now lead counsel in the above-referenced case, Attorney Adrian L. Patrick and hereby files the following Motion:

**AMENDED MOTION TO REINSTATE AND/OR RECONSIDER NEW TRIAL  
"INITIAL" MOTION AND JUDGMENT OF ACQUITTAL**

and moves this Court for a rehearing **AS SOON AS PRACTICAL SO THAT THE ABOVE REFERENCED CASE CAN BE HEARD.** In support of this motion, we show the following:

1. That this Motion shall act as an amended Motion to the "PRO SE" Motion filed by Defendant, Malachi Z. York on August 17, 2004. That "PRO SE" Motion was entitled: **MOTION TO THE COURT FOR A HEARING TO REINSTATE AND/OR RECONSIDER NEW TRIAL "INITIAL" MOTION, JUDGMENT OF ACQUITTAL, TO AMEND ALL NEW TRIAL MOTIONS OF THE DEFENDANT, DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL, AND UNAUTHORIZED WITHDRAWAL OF DEFENDANT'S NEW TRIAL "INITIAL" MOTION, SUSPEND JUDGMENT OF NEW TRIAL, UNTIL AFTER THE ABOVE-REFERENCED MATTER IS HEARD BY THE COURT.**
2. That this Court issued an Order on August 31, 2004, which did not deny the Motion on the "substantive merits" of the Motion, but rather improperly dismissed the Motion on the

erroneous basis that the Motion was "procedurally improper." The Court stated on page 2 of its Order the following " . . . Defendant is represented by counsel, the Court will not entertain pro se motions from him . . . Any motions must come through counsel . . ."

The Defendant asserts that he can constitutionally file whatever "pro se" motions he wants at anytime he wants. However, while the Defendant does not agree with the Court's ruling on the pro se issue and the Defendant does not waive his constitutionally protected pro se rights, the Defendant has taken affirmative steps to simply remove/resolve the court's basis for dismissing his Motions. The Defendant has taken the following affirmative steps:

a. The Defendant has expressly terminated his previous Attorney Jonathan Marks and informed Jonathan Marks that he must notify the Court of his termination immediately;

b. The Defendant has informed Attorney Harry Charles that he is terminated from representation in this federal matter;

c. The Defendant has rehired and reinstated Attorney Adrian L. Patrick as lead counsel in the District Court criminal matter and the 11th Circuit Court of Appeals Appellate case. The Defendant's new lead counsel has now filed the above-referenced Amended Motion and has incorporated the previously dismissed motion by reference. All of these affirmative steps were taken in accordance with the Court's articulated reasons for dismissing the above-referenced Motion.

3. Now that the Defendant has removed all the courts objections to conducting a hearing and making a ruling on the above-referenced motions, it is now incumbent upon this Court to hold a hearing on the above-referenced motions as soon as possible in order to preserve all of the Defendant's appellate rights.

4. Additionally, the Defendant has acquired new evidence that further strengthens this Motion. The new evidence is as follows:

a. After the Court's Order dismissing this Motion and within the last couple of weeks, Attorney Jonathan Marks affirmatively stated that he did not get the express permission from Defendant to withdraw any Motions;

b. As a matter of fact, the Defendant expressly stated to Attorney Jonathan Marks not to withdraw any motions;

c. After the Court's Order dismissing this Motion and within the last couple of weeks, Attorney Jonathan Marks affirmatively stated that he was unaware that he had withdrawn the Defendant's Federal Rules of Criminal Procedure - Rule 29 "Motion for Judgment of Acquittal" and that he did not have the Defendant's permission to withdraw said Motion.

5. The Defendant shows that the withdrawal of these Motions and the subsequent Court's dismissal of his Motion to Reinstate these Motions have a substantial adverse/negative impact on his appellate rights;

6. The Defendant shows that he has constitutional and statutory rights to a full and effective appeal, these rights have been denied by the actions of his previous counsel Jonathan Marks and the actions/rulings of this Court;

7. Additionally, the Defendant adopts and incorporates the original context of the original Motion as follows:

#### **FACTUAL BASIS OF THIS MOTION**

1. At a NEW TRIAL MOTIONS HEARING, on August 13, 2004, on or about 11:30a.m., the Attorney for the Defendant, move this Court for a withdraw of Defendant's "Initial" NEW TRIAL MOTION, which contained over three weeks of trial issues of judicial errors and misconduct, in addition to jury and prosecution errors that Defendant's Attorney Jonathan Marks herein (Marks,) by the neglect of informing the Defendant of Marks, intention for the withdraw of said motion, moved the Court for a withdraw of the Initial NEW TRIAL MOTION and JUDGMENT FOR ACQUITTAL MOTION, without the consent and authorization of the Defendant.

2. The Court abused its discretion by granting Marks withdraw request without an offer by Marks of any factual basis for withdraw of said motion, or whether such withdraw would be in the best interest of the Defendants 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 motion 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 Defendants 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 represent to the Defendant any information, strategy, logical or illogical rational 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 Defendants trial.

6. The Defendant asserts, at said hearing Marks was approach by two witnesses that were in the Courtroom who question Marks about his withdraw 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, known 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 Arian Patrick in this case in order to assist Marks in perfecting an Appeal before the eleven 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 had build and had base his initial new trial motions, the Court should not have allowed itself to had ruled on such a request by Marks to withdraw the new trial motions, before in the "interest of justice" allowed the

Defendant to call his former attorney to the hearing to testify on the Defendants behalf. There were no apparent indications by Marks to the Court concerning whither the former Attorney had known that Marks was about to give said motions the "kiss of death." Nor were there indications by the Marks to the Court 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 a 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

MOTION by Dwight D. York for New Trial Response to  
deadline set for 2/23/04 for USA Reply to response to



(ans) motion deadline set for 3/10/04 for Dwight D. York  
[Entry date 02/03/04]

1/30/04 243 MOTION by Dwight D. York for Judgment of Acquittal  
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]

10. The Defendant would not under any condition or conditions acquiesced to Marks apparent senseless decision to withdraw that which embodies the very foundation of the Defendants appeal, down the river. The Defendant clearly understood that the former Attorneys' new trial motion was generic, and had needed further additions for appellate review, in which could not have been done under the timing constrains of the above mention rule. Marks were 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 witnesses video and audio testimony into evidence.
5. Bring witnesses personal letters that she recently wrote to the Defendant declaring the Defendant innocents.
6. Subpoena Jacob York to be examined by Marks.

Marks violated the 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 mention

matter. In addition to the apparent movement of the Court 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.

#### **AMENDED CONCLUSION**

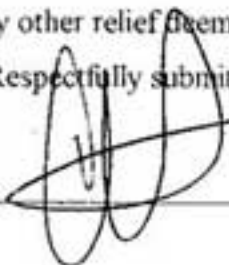
It is extremely important to the Defendant's Appeal Rights that the Defendant's original Motion for New Trial and Motion for Judgment of Acquittal be reinstated and a proper hearing be held before this Court. Now that the Defendant has removed all of the Court's objections to hearing this Motion and resolved all of the issues the Court stated for its reason for "procedurally" dismissing the Motion, this Court is now compelled to have the hearing on these Motions in order to guarantee that the Defendant's constitutional and statutory appellate rights are protected and not destroyed.

*(It shall be noted that Attorney Adrian L. Patrick shall be acting as lead counsel in this case and not as a witness. Also, it shall be noted that the original "Pro Se" Motion to Reinstate is hereby incorporated and made a part hereof by reference and attachment as Exhibit "A")*

WHEREFORE, the Defendant by and through counsel of record moves this court, in the name of justice, as follows:

- a. to hold a hearing as soon as practical on all issues raised in the above-referenced motions;
- b. to issue a production order producing the Defendant "in person" to be transported back to Georgia as a necessary participant and necessary witness in this Court matter;
- c. to vacate its judgment withdrawing the original Motion for New Trial and Motion for Judgment of Acquittal;
- d. to vacate its judgment dismissing the original Motion to Reinstate;
- e. for any other relief deemed necessary and proper.

Respectfully submitted this 9th day of Novemeber, 2004 by:



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Attorney Adrian L. Patrick Bar #: 565945

1044 Baxter Street Athens, Georgia 30606 (706) 546-6631 Fax: (706) 546-0644

**CERTIFICATE OF SERVICE**

I, Attorney Adrian L. Patrick, have this 9th day of November, 2004 served the attached and above-referenced Motion:

**AMENDED MOTION TO REINSTATE AND/OR RECONSIDER NEW TRIAL  
"INITIAL" MOTION AND JUDGMENT OF ACQUITTAL**

by hand delivery and 1st Class Mail to the following address:

United States Attorney's Office

Middle District of Georgia

433 Cherry Street Galleria

P.O. Box 1702

Macon, Georgia 31202-1702



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