

Circuit Court of Alexandria Virginia

Judges
DONALD M. HADDOCK
LISA BONDAREFF KEMLER
NOLAN B. DAWKINS



Courthouse
520 King Street
Alexandria, Virginia
22314-3164
(703) 838-4123

June 26, 2009

Krista G. Boucher, Esquire
Deputy Commonwealth's Attorney
520 King Street, #301
Alexandria, VA 22314

Jennifer S. Varughese, Esquire
Livesay & Myers, PC
1308 Devil's Reach Road, #302
Woodbridge, VA 22192

Re: Commonwealth v. Emmanuel Morris
Docket No. CM970262

Dear Counsel,

As you will recall, this matter came before the Court on Thursday, June 18, 2009 on Mr. Morris' Motion for Writ of Error Coram Nobis or, in the Alternative, Writ of Audita Querela or Nunc Pro Tunc Order, the Commonwealth's Memorandum in Opposition thereto, various letters from each of you, the affidavits and exhibits attached to the motion for writ, and upon oral argument. The issue presently before the Court is whether Mr. Morris' motion requests a remedy available to the Court.

The operative facts as set forth in the motion are that Mr. Morris came to the United States in August 1993 as a refugee from Liberia, was married in 1994 in Maryland and then employed by Sears & Roebuck in Alexandria where he became involved in a ring of employees who were buying Sears items on sale and then returning them for credit at full price when they went off sale. By virtue of Mr. Morris' participation, he was charged with Grand Larceny but a deal was subsequently made with the Commonwealth to reduce the charge to Petit Larceny with the defendant to receive 12 months, all but 30 days suspended, restitution of \$15,000 and he was allowed to do the 30 days in modified work release. He was convicted and sentenced on July 15, 1997, served the active portion of his sentence in community service, paid the restitution, and on August 28, 1997 was terminated from probation early, having fulfilled all of his obligations. Since then, Mr. Morris has had several children and claims to have led a model life in North Carolina and currently serves as the pastor of a United Methodist Church in Charlotte.

According to Mr. Morris' affidavit, at the time of his arrest and conviction he was a Lawful Permanent Resident in the United States with a Green Card. His attorney was Amy Dillard, an Assistant Public Defender in Alexandria. While it is not as clear as one would hope, a fair reading of Mr. Morris' affidavit leads one to the conclusion that Ms. Dillard asked for and received his Green Card and his Driver's License and indicated to him that because of the Green Card "she can pursue [sic] the Judge to give me (Morris) a lesser sentence based upon pleading guilty to the charge instead of prolonging the trial". The clear implication of the affidavit is that at the time of entering his plea of guilty, Mr. Morris was under the impression created by his attorney that the conviction would not impact upon his immigration status. Ms. Dillard's affidavit indicates that she has no express recollection of the case, that she seldom handled cases involving immigrants, and that she probably did not know what an "aggravated felony" was at the time of these proceedings (counsel has represented to the court that the Federal provision creating the "aggravated felony" category had only been enacted in April 1997, approximately 3 months before the Defendant's plea).

At the hearing of June 18, argument of both counsel was devoted to the applicability and/or availability of the writ of coram nobis or, in the alternative, the writ of audita querela to the facts of this case. Numerous cases in Northern Virginia circuit courts have been confronted with this issue and my reading of them indicates that most if not all have recognized the availability of the writ of coram nobis, but have declined to grant the writ for various reasons, the most prevalent of which is the view that incompetent counsel claims should be presented in habeas corpus proceedings and failure to do so eliminates consideration even if the time for habeas proceedings has already expired. I am of the opinion that the previous availability of a habeas proceeding now expired should not eliminate the availability of the writ of coram nobis when the petitioner for the writ had no reason to be aware that his situation called for the filing of a writ of habeas corpus. According to Mr. Morris' affidavit, relying on representations by Ms. Dillard, he had no reason to suspect that his conviction had adverse immigration implications until long after his right to petition for habeas relief had expired. In a number of the cases cited by counsel, the Defendant knew immediately at the time of sentencing that he had received bad advice – as when the Defendant received far more time than his attorney had indicated was possible or received consecutive sentences – and thus should have sought habeas relief.

Recognizing that a writ of coram nobis is not a substitute for habeas corpus relief, it is my view that when habeas relief is no longer available through no fault of the defendant, the writ of coram nobis may be employed in appropriate situations. See, United States v. Morgan, 346 U.S. 502 (1954) and United States v. Denedo, Supreme Court of the United States, slip opinion decided June 2, 2009. It is stated in United States v. Morgan, at page 512 "in the Mayer case, this Court said that coram nobis included errors 'of the most fundamental character'" and further "where it cannot be deduced from the record whether counsel was properly waived, we think, no other remedy being then (emphasis added) available and sound reasons existing for failure to seek appropriate earlier relief, this motion in the nature of the extraordinary writ of coram nobis must be heard ..." And, in United States v. Denedo it is stated that "An alleged error in the original judgment predicated on ineffective-assistance-of-counsel challenges the validity of a conviction." In Commonwealth v. Dobie, 198 Va. 762, 96 S.E.2d 747 (1957) and Blowe v. Peyton, 208 Va. 68, 155 S.E.2d 351 (1967),

both cases on which the Commonwealth relies, our Virginia Supreme Court considers ineffective assistance of counsel, the implication being that had counsel been ineffective coram nobis would lie.

I recognize the Commonwealth's reliance on Code of Virginia § 8.01-677 and the cases of Dobie and Blowe as limiting the scope of the writ of coram nobis in Virginia to "any clerical error or error of fact for which a judgment may be reversed or corrected."¹ Strictly speaking, § 8.01-677 does not attempt to limit the common law scope of coram nobis but merely indicates that in two classes of cases addressable by coram nobis, the action may be addressed by motion rather than by the independent action of the writ of coram nobis. The statute in no way limits the common law reach of the original writ of coram nobis if it is in fact broader than the class of matters which can be addressed by motion under § 8.01-677. As stated in United States v. Denedo, (slip opinion p. 5): "The writ of coram nobis is an ancient common-law remedy to correct errors of fact ... In American jurisprudence, the precise contours of coram nobis have not been well defined." And at page 6: "Any rationale confining the writ to technical errors, however, has been superseded; for in its modern iteration coram nobis is broader than its common-law predecessor. This is confirmed by our opinion in Morgan. In that case we found that a writ of coram nobis can issue to redress a fundamental error, there a deprivation of counsel in violation of the Sixth Amendment, as opposed to mere technical errors. 346 U.S. at 513." And at page 8: "Because coram nobis is but an extraordinary tool to correct a legal or (emphasis added) factual error ..." That being said, even if the statute does restrict the reach of coram nobis in Virginia, surely a conviction entered by the Court without full knowledge of the facts either by the Court or by the defendant at the time of his plea due to misadvice by his counsel would qualify as "an error of fact for which a judgment may be reversed or corrected." It is important to note that in Mr. Morris' case, the law had already been enacted at the time of his plea which made him deportable without exception – this was not a change in the law which occurred after his conviction. Both the Morgan case and the Denedo case make it clear that ineffective assistance cases are properly cognizable under the writ of coram nobis. It is my opinion that the state of the law in Virginia is the same. One might argue that the error herein alleged is one of law – misunderstanding of immigration law – not one of fact. In actuality, the error alleged is of fact - the fact of misinformation to the petitioner and failure to inform the Court would, if proven, render petitioner's guilty plea not knowingly, intelligently and voluntarily made and accordingly a nullity.²

The Commonwealth in its papers relies upon a case from this Circuit decided by the Honorable John E. Kloch, Asbun v. Commonwealth, CF980065; its facts were remarkably similar to those alleged by Mr. Morris. A review of the transcript indicates that Judge Kloch felt the matter should have been dealt with by gubernatorial pardon and denied relief stating: "I don't think that this particular writ applies in these cases and for that reason the motion will be denied ..." In Asbun's Motion for Reconsideration it is pointed out that only 12 absolute pardons have been granted between 1997 and 2007 by four different governors and only where the defendant was innocent. I

¹ In Blowe at p. 73, the Court states: "In Virginia, we have by statute provided for a proceeding by motion ... as a substitute for the common law writ of error coram vobis, sometimes called coram nobis."

² Unknown ineffective assistance of counsel is never waived by a plea of guilty. Tollett, Warden v. Henderson, 411 U.S. 258 (1973).

do not believe the remote possibility of a pardon should control the Court's determination of the availability of relief under a writ of coram nobis. The Asbun case was appealed to the Court of Appeals which granted an appeal but then transferred the case to the Supreme Court of Virginia for lack of jurisdiction. The Supreme Court of Virginia ultimately refused the petition for appeal (Aug. 19, 2008). Sheets v. Castle, 263 Va. 407 (2002) tells us that unless the grounds upon which the refusal of a petition for appeal is based are discernable from the four corners of the Supreme Court's order, the denial carries no precedential value.

The question then is whether this case presents a showing of ineffective assistance of counsel which constitutes "fundamental error" and whether the facts of this case put it in the class of "extraordinary cases" which should be addressed by the extraordinary writ of coram nobis. The Court of Appeals of Virginia has told us that a defendant does not need to be advised of the many collateral consequences of a guilty plea unless otherwise mandated and that there is presently no mandate that a defendant be advised of immigration consequences that may result. Zigta v. Commonwealth, 38 Va. App. 149, 155, 562 S.E.2d 347 (2002). The failure to give advice, however, has been distinguished by a number of courts from the volunteering of inaccurate advice. See the discussion of this distinction and cases cited by Judge Ney in Commonwealth v. Tahmas, 19 Cir. CR 105254, 2005 Va. Cir. LEXIS 132, and by Judge Newman in Commonwealth v. Mohamed, 17 Cir. CR001059, 71 Va. Cir. 383 (2006). Also see Ostrander v. Green, 146 F.3d 347 (4th Cir. 1995) wherein the Fourth Circuit Court of Appeals held that, ordinarily, an attorney need not advise his client of collateral consequences of a guilty plea, but if his client asks for advice and relies on the advice in deciding to plead guilty, then the attorney must not grossly misadvise him/her. [Sitting en banc the 4th Circuit subsequently overruled the Ostrander panel's interpretation of the "new rule" doctrine but not its discussion of ineffective assistance. O'Dell v. Netherland, 95 F.3d 1214 (4th Cir. 1996), aff'd. 521 U.S. 151, 138 L.Ed 351, 117 S.Ct. 1969 (1997) – it is to be noted that Ostrander did not address immigration advice.]

Based on the foregoing considerations, it is my view that the writ of coram nobis is an appropriate vehicle by which to mount an assault upon a conviction/sentence as alleged in the Motion for Writ of Error Coram Nobis or, in the Alternative, Writ of Audita Querela or Nunc Pro Tunc Order. If I am mistaken in this conclusion, I am satisfied that the matter should be addressed by the lesser known Writ of Audita Querela. As stated in U.S. v. Morgan in the coram nobis context: "Otherwise a wrong may stand uncorrected which the available remedy would correct." A Writ of Audita Querela is a common law writ "constituting the initial process in an action brought by a judgment defendant to obtain relief against the consequences of the judgment on account of some matter of defense or discharge, arising since its rendition and which could not be taken advantage of otherwise." Black's Law Dictionary 120 (5th Ed.). While it is no longer available in Virginia in civil cases, courts have held that it is available to defendants in criminal cases. See Fajardo v. Comm., 19 Va. Cir. 162 (1990); Comm. v. Sharma, 2002 WL 3/43/556; Comm. v. Mubarak, 68 Va. Cir. 422 (2005) U.S. v. Salgado, 692 F.Supp. 1265 (E.D. Washington 1988); and U.S. v. Ghebreziabher, 701 F.Supp. 115 (E.D.La. 1988).

June 26, 2009

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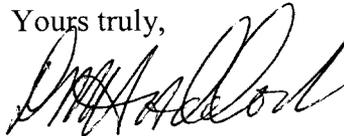
In remanding the Denedo case, the U.S. Supreme Court said at pages 12-13 of its slip opinion:

“We do not prejudge the merits of respondent’s petition. To be sure, the writ of error coram nobis is an extraordinary writ; and ‘an extraordinary remedy ... should not be granted in the ordinary case.’ Nken v. Holder, ante, at 1 (Kennedy, Jr., concurring). The relative strength of respondent’s ineffective-assistance claim, his delay in lodging his petition, when he learned or should have learned of his counsel’s alleged deficiencies, and the effect of the rule of judgment finality ... are all factors [the Court] can explore on remand.”

Additionally, the Dobie case makes it clear that in order for the petitioner to prevail he must establish (1) an error of fact not apparent on the record (2) not attributable to his negligence, and which if known to the court would have prevented rendition of the judgment.

I thank counsel for their very excellent briefs in this matter and request that they present an order reflecting this ruling and incorporating this letter opinion on or before July 2, 2009. Do the parties wish to present live testimony or have me decide the matter on the submissions currently before me?

Yours truly,



Donald M. Haddock

Circuit Court of Alexandria Virginia

Judges
DONALD M. HADDOCK
LISA BONDAREFF KEMLER
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July 27, 2009

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Re: Commonwealth v. Emmanuel Morris
Docket No. CM970262

Dear Counsel,

For purposes of my ruling in this case, I adopt my letter opinion of June 26, 2009 on the availability of the remedies of coram nobis/audita querela with the exception noted at our hearing on July 15, 2009 that Virginia case law limits the reach of the common law writ of coram nobis/vobis to the two categories set forth in Code of Virginia § 8.01-677 -- clerical errors and errors of fact. While § 8.01-677 does not specifically so state, I have no intention of trying to reinvent the wheel at this time.

That said, there can be no serious contention that the writs are not available to redress the results of ineffective assistance of counsel in an appropriate case. The most recent Virginia Supreme Court case discussing coram nobis (though not in the immigration context) is Neighbors v. Commonwealth, 274 Va. 503, 650 S.E.2d 514 (2007). In Neighbors, the defendant claimed to have suffered from "some undefined lack of capacity due to medication" when he entered an "Alford plea" – a claim that most certainly could have been addressed on direct appeal or later by habeas corpus since the defendant was aware of his condition at the time of his plea. While not factually similar to our case, the Supreme Court in Neighbors does an excellent job of discussing the parameters of the writ of coram nobis/vobis. The guiding principles are as follows:

1. The principal function of the writ of coram nobis is to afford to the court in which an action was tried an opportunity to correct its own record with reference to a vital fact not known when the judgment was rendered, and which could not have been presented by a motion for a new trial, appeal or other existing statutory proceeding. It lies for an

error of fact not apparent on the record, not attributable to the applicant's negligence, and which if known by the court would have prevented rendition of the judgment.

2. The writ does not lie for newly-discovered evidence or newly-arising facts, or facts adjudicated at the trial. It is not available where advantage could have been taken of the alleged error at the trial, as where the facts complained of were known before or at the trial, or where at the trial the accused or his attorney knew of the existence of such facts but failed to present them.
3. The coram nobis/vobis statute is in simple, clear and unambiguous language, and it is read to mean what it says. It does not provide that it may be used to obtain a writ of error, or an appeal, or for any purpose other than to correct a "clerical error or error in fact." It does not supplant the writ of habeas corpus.

The facts before the Court gleaned from the testimony of Mr. Morris, his wife and two of his four children, from the assistant public defender and the detective presented by the Commonwealth, and the exhibits admitted into evidence, are basically the following: Mr. Morris came to the United States in August 1993 as a refugee from Liberia during a civil war there; he was married in 1994 in Maryland to his present wife, also a Liberian; a year later he obtained employment at Sears Roebuck in Alexandria; in March 1997, while an employee of Sears, in various transactions, he stole upwards of \$15,000¹; upon discovery, Mr. Morris was charged with Grand Larceny; he was represented by a court-appointed assistant public defender who, according to Mr. Morris' testimony, only met with him one time; a plea agreement was reached wherein Mr. Morris pled guilty to the reduced charge of Petit Larceny and received 12 months, all but 30 days suspended, restitution of \$15,000, and was allowed to serve the 30 days in modified work release; he was convicted and sentenced on July 15, 1997, served the active portion of his sentence in community service, paid the restitution, and slightly over one month later was terminated from probation having fulfilled all of his obligations; since that time, Mr. Morris has continued to reside with his wife, has had four children, three boys and a girl, and has led a model life in North Carolina, having had no further brushes with the law; since his conviction he has devoted his life to the ministry and is presently Senior Pastor at Spencer Memorial/St. James United Methodist Church; Director, Youthquest Enrichment Center (a non-profit high-risk teenage counseling center); Founder and Director of "Second Chance Ministry" (a prison ministry, ministering to male inmates, especially teenagers); and Chairman, Board of Directors Concern for Humanity, Inc.; Mr. Morris first became aware of possible immigration consequences seven years later when he applied for U.S. citizenship; beginning in January of 2005, he received an order to appear before the Immigration Court in Atlanta, Georgia for a hearing for removal proceedings; not until December 15, 2008 during a hearing before an immigration judge was he advised that he was an

¹ Mr. Morris' version of the thefts was that he was one of a number of employees who were buying Sears' items on sale with their Sears credit card and then returning the items for credit at full price when they went off sale. The Commonwealth's detective indicated that the scheme may have been even broader, including ringing up returns when no merchandise was in fact returned.

“aggravated felon” and must be deported; this decision is currently on appeal to an immigration appellate court with virtually no likelihood of success without adjustment by one day of Mr. Morris’ 1997 sentence (twelve months on a petit larceny charge, although not required to be served, constitutes Mr. Morris an “aggravated felon”; whereas 364 days would take him out of that category and presumably entitle him to remain in the United States and achieve citizenship).

The attendant facts with regard to Mr. Morris’ 1997 conviction are as follows: Mr. Morris met with his court appointed attorney on only one occasion prior to entering his guilty plea; he now has, and had then, a very pronounced foreign accent; presumably based upon the accent, his attorney inquired of him whether he was a United States citizen; he responded that he was not, but that he was a lawful permanent resident with a green card; his attorney asked him to produce his green card and driver’s license, photocopied them, and advised Mr. Morris “good, then she can pursue the judge to give me a lesser sentence based upon my pleading guilty to the charge instead of prolonging the trial”; Mr. Morris understood this to be a representation that there would be no adverse immigration consequences since he had a green card; he testified at the hearing that he would not have pled guilty if he had known of potential immigration problems and that if he had suspected any problem he would have obtained advice from an immigration attorney; he was candid in acknowledging that there was no express discussion with his court appointed counsel about immigration, since he felt based on her statement that there was no such problem; Mr. Morris’ court-appointed attorney testified that she currently has no recollection whatsoever of Mr. Morris or his case; that her file from the public defender’s office on Mr. Morris cannot be currently located; and that she had virtually no knowledge of potential immigration consequences to Mr. Morris at the time she represented him.

The Commonwealth in its argument relies heavily on the Virginia Court of Appeals case Zigta v. Commonwealth, 38 Va. App. 149, 155, 562 S.E.2d 347, 349 (2002), for the proposition that “[a] defendant need not be advised of the collateral consequences of a guilty plea unless otherwise mandated.” The Zigta case specifically dealt with the immigration scenario. Importantly, however, the issue addressed by the Court of Appeals in Zigta was not counsel’s responsibility to a defendant, but rather the court’s duty to advise a defendant at the time of taking a plea. Zigta holds that the court has no such duty and does not address the question of counsel’s duty to a known non-U.S. citizen. In fact, there is no discussion whatsoever of whether or not Zigta’s counsel was aware of his non-citizenship. By contrast, most courts which have dealt with the issue of counsel’s duty have taken the position that counsel has no duty in the abstract to advise a defendant of the collateral immigration consequences of a guilty plea. However, the 4th Circuit has recognized that if a client asks for advice and relies on the advice in deciding to plead guilty, then the attorney must not misadvise him. See, Ostrander v. Green, 146 F.3d 347 (4th Cir. 1995). [Sitting en banc the 4th Circuit subsequently overruled the Ostrander panel’s interpretation of the “new rule” doctrine but not its discussion of ineffective assistance. O’Dell v. Netherland, 95 F.3d 1214 (4th Cir. 1996), aff’d. 521 U.S. 151, 138 L.Ed 351, 117 S.Ct. 1969 (1997), Ostrander did not address immigration advice.] See also Alam v. United States of America, 2009 U.S. Dist. LEXIS 53106, Commonwealth v. Tahmas, 2005 Va. Cir. LEXIS 132 and Commonwealth v. Mohamed, 71 Va. Cir. 383 (2006), which do address immigration consequences. As stated in United States of America v. Kwan, 407 F.3d 1005, 1015-16 (2005), “where as here counsel has not merely failed to inform, but has effectively misled, his client about immigration consequences (emphasis added) of

a conviction, counsel's performance is objectively unreasonable under contemporary standards for attorney competence That counsel may have misled Kwan out of ignorance is no excuse. It is a basic rule of professional conduct that a lawyer must maintain competence by keeping abreast of changes in the law and its practice."² Ineffective assistance of counsel is not waived by a guilty plea. Tollett v. Henderson, 411 U.S. 258 (1973).

It is well settled that a two pronged test applies to claims that a guilty plea was induced by ineffective assistance of counsel. First, the petitioner must show that counsel's performance fell below an objective standard of reasonableness and second, a petitioner must show prejudice – that there is a reasonable probability that but for counsel's misguidance he would not have pled guilty and would have insisted on going to trial. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

Recognizing that Mr. Morris' case is the closest of cases, it is my view that, in the context in which it arose, Mr. Morris' counsel did make an affirmative misrepresentation to Mr. Morris that there would be no adverse immigration consequences to him by virtue of his plea of guilty to a misdemeanor and receiving 12 months, mostly suspended. The conclusion is inescapable in the context of the situation. Mr. Morris presented himself with a heavy foreign accent leaving no doubt that he was foreign. Accordingly, she inquired into his citizenship status, and having been advised that he was a green card holder, assumed inaccurately that the plea did not raise immigration issues and by her words led Mr. Morris to believe that to be the case. It is my belief that this affirmative misguidance constitutes ineffective assistance of counsel and that Mr. Morris was in fact prejudiced thereby, he having testified in open court that he would have not have pled guilty and would have sought advice of an immigration expert.³ It is common practice in cases of this nature for the Commonwealth's Attorney to recommend less than a full 12 months and/or for the presiding Judge to give a sentence less than a full 12 months when immigration consequences exist and the case is appropriate.

Considering the basic principles of coram nobis as set forth in the Neighbors case, Mr. Morris' case is not a case of "newly discovered evidence or newly arising facts or facts adjudicated on the trial." The immigration law ("aggravated felon") was on the books before Mr. Morris' plea. It is not a case "where the facts complained of were known before or at trial or where at trial the accused or his attorney knew of the existence of such facts but failed to present them." Mr. Morris, of course, knew he was not a U.S. citizen, but he had no idea until 8 years later that his plea might have immigration consequences. It is not a case wherein Mr. Morris seeks to "supplant the writ of habeas corpus", as Mr. Morris, because of failure of his counsel, was not

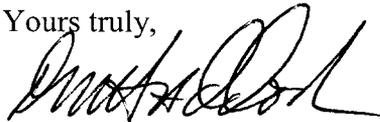
² It is to be noted that the "aggravated felony" category including sentences of 12 months or more had only been enacted three months before Mr. Morris' plea. While this fact may help to explain his counsel's unfamiliarity with the concept, it does not eliminate her ineffectiveness in this regard.

³ Mr. Morris' testimony is rendered most believable because, even knowing his court-appointed counsel has no recollection of him, he has not embellished his recollection in ways which would greatly improve his case. Presumably, Mr. Morris' long association with the ministry compels him to be truthful even when less candor would be helpful to him.

even aware that any problem existed until he sought U.S. citizenship long, long after any habeas corpus relief would have been available. For the same reason, he could not avail himself of a “motion for a new trial, appeal or other existing statutory proceeding.” This is a case “for an error of fact not apparent on the record, not attributable to the applicant’s negligence and which if known by the court would have prevented rendition of the judgment.” The error in fact was that Mr. Morris was inaccurately assured, albeit indirectly, that there would be no immigration consequences and the Court was never advised of his non-citizenship status. The error is not attributable to Mr. Morris’ negligence – he has acted with haste once apprised of the true situation. If the true situation had been known to the Court, it would have “prevented” the judgment in two ways: (1) a plea tendered under misadvice due to ineffective assistance of counsel is a nullity,⁴ it not being knowingly, intelligently and voluntarily made, and (2) in that I was the judge who presided over Mr. Morris’ conviction and sentencing, I am confident that if his immigration status had been made known to me by either him or his attorney, I would have most assuredly sentenced him to the 364 days which he is requesting in his petition for writ of coram nobis. It is obvious that neither Mr. Morris, his counsel nor the Commonwealth’s Attorney nor the Court had any knowledge of Mr. Morris’ true situation at the time of his sentencing. It is clear to me that the Commonwealth would not have held out for the full 12 months versus a 364 day sentence so as to ensure Mr. Morris’ deportation 12 years later. I understand that the writ of coram nobis is an extraordinary writ only to be granted in extraordinary cases. In my view, Mr. Morris’ situation is such an extraordinary case. His exemplary life, his wife and four children, all U.S. citizens, and justice demand the granting of Mr. Morris’ petition. I am well aware of the importance of finality of judgments. In my view to allow the desire for finality to trump the need for justice in this case would be a travesty – we are only talking one day which was never to be served anyway.⁵ Accordingly, Mr. Morris’ original sentence will be reduced to 364 days, all other conditions remaining as originally ordered.⁶

I will appreciate Mrs. Boucher and Ms. Varughese collaborating on an appropriate order reflecting this ruling to be presented to the Court no later than Thursday, July 31st.

Yours truly,



Donald M. Haddock

⁴ As stated in United States v. Denedo, 556 U.S. ____ (2009) at Slip Opinion p. 10, 129 S.Ct. 2213, 2222 (2009), “An alleged error in the original judgment predicated on ineffective-assistance-of-counsel challenges the validity of a conviction.”

⁵ As stated in United States v. Denedo, 556 U.S. ____ (2009) at Slip Opinion p. 11, 129 S.Ct. 2213, 2223 (2009): “... the long-recognized authority of a court to protect the integrity of its earlier judgments impels the conclusion that the finality rule is not so inflexible that it trumps each and every competing consideration.”

⁶ This is the relief requested on oral argument by Mr. Morris’ counsel.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

COMMONWEALTH OF VIRGINIA)
VERSUS) **CM970262**
EMMANUEL S. MORRIS)

ORDER

This case came on June 18 and July 15, 2009, on the defendant's Motion for Writ of Error Coram Nobis or, in the alternative, Writ of Audita Querela or Nunc Pro Tunc Order, and,

Having considered argument of counsel and testimony presented to the Court, and for the reasons set forth in the Court's written opinion letter of June 26, 2009 and the Court's written opinion letter of July 27, 2009, which are incorporated herein by reference, it is

ORDERED the sentence imposed on July 15, 1997 upon the defendant's conviction for the offense of petit larceny be vacated and modified and reduced to a total term of three hundred sixty-four (364) days, and the Court hereby imposes a sentence of three hundred sixty-four (364) days and it is

FURTHER ORDERED that all other terms and conditions set forth in the Court's Sentencing Order of July 15, 1997 shall remain in full force and effect.

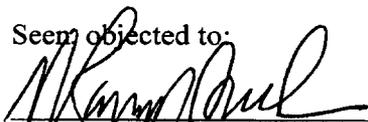
Entered on July 28, 2009.



Judge Donald M. Haddock

I ask for this:


Counsel for Defendant

Seen/ objected to:


Commonwealth's Attorney