

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

---

No. 1:92-CR-182-4, 5

---

IN RE  
GEORGE W. HIGH, SR. & VIRGINIA C. HIGH

---

PETITION FOR WRIT OF ERROR CORAM NOBIS

---

George W. High, Sr., Pro Se  
6715 Jojanne Lane.  
Lithonia, Ga. 30038  
770-484-5893

**CERTIFICATE OF INTERESTED PERSONS  
AND COPORATE DISCLOSURE STATEMENT**

1. C. Michael Abbott, Trial Counsel for Virginia C, High;
2. William S. Duffey, Jr., U.S. Attorney, Northern District of Georgia;
3. George W. High, Sr. Petitioner;
4. Virginia C. High, Petitioner;
5. William A Morrison, Trial Counsel for George W. High, Sr.
6. H. Allen Moye, Attorney for the United States
7. The Honorable Robert L. Vining, Jr., United States District Court  
Judge, Northern District of Georgia.

## **STATEMENT OF JURISDICTION**

This Court has jurisdiction to consider this case pursuant to 28 U.S.C. 1651 (a)

### **THE RELIEF SOUGHT**

That the District Court Vacate its Judgment of Conviction and Sentence

### **THE ISSUES PRESENTED**

1. The 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)
2. The Court Lacked jurisdiction to convict and sentence George High on Counts Three and Nine of the Indictment (weapons violations).
3. The Court lacked jurisdiction to order George High to pay a special Assessment of \$200.00 and to order Virginia C. High to pay a special assessment of \$350.00.
4. The Court lacked jurisdiction to conduct a criminal forfeiture proceeding against George and Virginia C. High pursuant to 21 USC § 853 and 18 USC § 982, and Lacked jurisdiction to issue a Judgment of forfeiture on June 30, 1994.

## Statement of the Case

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 8 U.S.C. §§ 841(a)(1) and 846, and conspiracy to launder money and structure currency transactions in violation of 8 U.S.C. §§ 2 and 371 and 31 U.S.C. § 5324 (R1-89; R4-89). 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 (R1-46; R4-110). Mr. and Mrs. High were tried by a jury with co-defendants Alex Gracia and Robert Ward in September of 1993 before the Honorable Robert L. Vining, Jr. United States District Judge. The jury returned guilty verdicts against Mr. High in count one (conspiracy to distribute cocaine); count thirteen (conspiracy to launder drug proceeds, to structure currency transactions and to defraud the United States); counts three and nine (weapons violations); and count fourteen (structuring currency transactions). The jury returned Guilty verdicts against Ms. High in count one; count thirteen; counts sixteen, nineteen, twenty-one and twenty-two (structuring currency transactions); and counts seventeen, eighteen, twenty, twenty-three and twenty-four (money laundering) (R2-348; R5-349). 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. Ninety-seven months was the top range of the applicable sentencing guidelines (R24-9). The court imposed a term of five years of supervised release to follow the term of imprisonment and a special assessment of \$200.00. (R24-11).

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 (R23-9). 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 (R23-10).

Timely motions for new trial were filed by both defendants 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 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 (R2-353; 401; R3-465; R5-393, 398; R6-466).

Mr. and Mrs. High both filed an appeal in the 11<sup>th</sup> 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 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 (R3-543; R6-544). 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 (R6-509, 510 and 513). On August 12, 1997, the government responded to Virginia High's 28 U.S.C. § 2255 (R6-514). On August 21, 1997, Mrs. High responded to the government's respond to her § 2255 (R6-516).

On September 22, 1997, George High filed a motion to vacate Pursuant to 28 U.S.C. § 2255 (R3-520). On September 30, the court entered an order denying motion pursuant to 28:255 without prejudice to renew motion when sentence becomes final (R3-524). On September 25, 1997, George High filed a motion to disqualify Judge Robert L. Vining, Jr. with brief in support (R3-523)

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 (R6-547), 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 (R3-559; R6-559). 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 (R6-560-2). The motion for appointment of counsel was accompanied by an affidavit executed by George High (R6-560-7-10). The district court denied the motions as to the High's (R3-561; R6-561).

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 11<sup>th</sup> Circuit Court of Appeals.

on April 11, 2001, after serving over 7 years, The Highs were released from federal prison and are now 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 (R-592-1), and Motion for Appointment of Counsel with brief in support (R-591-1), 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 (R-593).

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

On July 2002, the district court issued an 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 docketed as appeal number 02-14214-I.

On February 12, 2003, the 11<sup>th</sup> Circuit of Appeals AFFIRMED the orders of the district court.

### **ISSUE 1**

The 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).

**Prior to sentencing**, the probation officer prepared a Pre-sentencing-

Report, as follows: (Page 20, # 7) “Since the defendant's Involvement in the conspiracies outlined in Count's One and Thirteen of the indictment involves activities related to money laundering, these two counts will be treated as money laundering counts, pursuant to U.S.S.G. §1B1.2(a).”

**On January 20, 1994** (sentencing transcript, page 8, line7-19) THECOURT:

“The court adopts the factual statements and guideline applications made in the pre-sentence investigation report to which there has been no objections filed.”

United States v. High, 117 F.3d 464 (11<sup>th</sup> Cir. 1997). B. The district court's jury instruction regarding Count Thirteen required the government to prove beyond a reasonable doubt that appellants conspired to commit one of the offenses that was an object of the alleged conspiracy. These offenses included conspiracy to launder drug proceeds, in violation of 18 U.S.C. § 1956; structuring currency transactions to avoid the filing of currency transaction reports, in violation of 31 U.S.C. § 5324; and defrauding the United States, in violation of 18 U.S.C. § 981. The district court further instructed that the jury had to agree unanimously upon the offenses the appellants conspired to commit. Because the three offenses described in Count Thirteen are substantive offenses in their own right, the district court also separately instructed the jury on the essential elements of those offenses. The district court instructed the jury regarding the structuring currency transactions offense, 31 U.S.C. § 5324, in accordance with our holding in *United States v. Brown*, 954 F.2d 1563 (11th Cir.), *cert. denied*, [506 U.S. 900](#), 113 S.Ct. 284, 121 L.Ed.2d 210 (1992). The government concedes that this instruction was improper in the wake of the Supreme Court's decision in *Ratzlaf v. United States*, [510 U.S. 135](#), 114 S.Ct. 655, 126 L.Ed.2d 615 (1994), decided during the pendency of this case.

The district court then gave the following specific instruction regarding structuring currency transactions in violation of 31 U.S.C. § 5324(3): I charge you that the government need not prove the defendant was aware of the illegality of money structuring in order to convict the defendant of that offense under Title 31, United States Code, Section 5324(3).

This specific instruction was incorrect, as the Supreme Court held in *Ratzlaf* that a defendant may be convicted of violating section 5324 only upon a showing that the defendant "willfully" violated anti-structuring laws. [510 U.S. at 136](#) -38, 114 S.Ct. at 657. According to the Court, the

government must "prove that the defendant acted with knowledge that his conduct was unlawful" in order to prove a "willful" violation of section 5324. [510 U.S. at 137](#), 114 S.Ct. at 657. In other words, the Court's *Ratzlaf* opinion required the district court in this case to instruct the jury that the government *needed* to prove the defendant was aware that money structuring was illegal.

Accordingly, we must reverse the appellants' convictions on Count Thirteen of the indictment.

AFFIRMED in part; REVERSED and REMANDED in part.

---

As sentencing, the probation officer stated that counts one and thirteen will be treated as money laundering counts, pursuant to U.S.S.G. § 1b1.2(a) and the Court agreed. George and Virginia High was sentenced on Counts one and thirteen under U.S.S.G. 1B1.2(a). Count one was a class A felony that carries up to life in prison and the law mandates that drug offenders be sentenced under 2D1.1, so the court lacked jurisdiction to convict and sentence George and Virginia High on count one.

The High's were found guilty on October 13, 1993, the Supreme Court's Decision in Ratzlaf v. United States, 510 U.S. 135 was on January 11, 1994 And the High's were sentenced on January 20, 1994 and the district court lacked jurisdiction to adjudicate the petitioners guilty and the court lacked jurisdiction to sentence George and Virginia on count thirteen, and Virginia High on counts seventeen, eighteen, twenty, twenty three, and twenty four.

## ISSUE 2

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, 92193)* 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.

## ISSUE 3

The Court lacked jurisdiction to order George High to pay a special Assessment of \$200.00 and to order Virginia C. High to pay a special assessment of \$350.00. Because the above convictions and sentences were imposed in violation of the U.S. Constitution, so the court lacked jurisdiction to order George and Virginia to pay assessments in any amounts.

## ISSUE 4

The Court lacked jurisdiction to conduct a criminal forfeiture proceeding

against George and Virginia C. High pursuant to 21 USC § 853 and 18 USC § 982, and Lacked jurisdiction to issue a Judgment of forfeiture on June 30, 1994.

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, so the court lacked jurisdiction to conduct a criminal forfeiture proceeding against George and Virginia C. High pursuant to 21 USC § 853 and 18 USC § 982, and Lacked jurisdiction to issue a Judgment of forfeiture on June 30, 1994.

### **SUMMATION OF THE ISSUES**

USA v PETERS, # 01-16982 (11<sup>th</sup> Cir. 2002)... At the same time, the law recognizes that there must be a vehicle to correct errors "of the most fundamental character; that is, such as rendered the proceeding itself irregular and invalid." Morgan, 346 U.S. at 509 n.15 (quoting United States v. Mayer, 235 U.S. 55, 69 (1914)); see also United States v. Mills, 221 F.3d 1201, 1204 (11<sup>th</sup> Cir. 2000). In essence, the writ of error coram nobis acts as an assurance that deserved relief will

not be denied as a result of the technical limitations of other post-conviction remedies. See Romualdo P. Esclavea, Availability, Under 28 U.S.C.A. § 1651, Of Writ of Error Coram Nobis to Vacate Federal Conviction Where Sentence Has Been Served, 38 A.L.R. Fed 617, §2(a) (1978). ...One type of claim that has historically been recognized as fundamental, and for which collateral relief has accordingly been available, is that of "jurisdictional" error. See, e.g., United States v. Addonizio, 442 U.S. 178, 185 (1979) ("Habeas corpus has long been available to attack convictions and sentences entered by a court without jurisdiction."); Keel v. United States, 585 F.2d 110, 114 (5th Cir. 1978) (en banc) (distinguishing, in challenge to conviction resting on guilty plea, "jurisdictional" errors from those which may not be raised via collateral attack). **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.

### **REASONS WHY THE WRIT SHOULD ISSUE**

USA v PETERS, # 01-16982 (11<sup>th</sup> 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 United States v. Morgan, 346 U.S. 502 (1954), **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."** Id. at 512-13. Routine grant of coram nobis relief, however, would undermine the finality of criminal convictions, a

In Alikhani v. United States, 200 F.3d 732 (2000), we stated that a "genuine claim that the district court lacked jurisdiction to adjudicate the petitioner guilty may well be a proper ground for coram nobis relief as a matter of law." Id. at 734. Indeed, **jurisdictional error is by its nature of such a "fundamental character" as to render proceedings "irregular and invalid,"** Morgan, 346 U.S. at 509 n.15, and coram nobis relief affords a procedural vehicle through which such error may be corrected. **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.

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

Executed on the 17 day of December, 2003

---

Virginia C. High

---

George W. High Sr. Pro Se Litigant

CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the forgoing

PETITION FOR WRIT OF ERROR CORAM NOBIS and a copy

Of the RECORD EXCERPTS AND EXHIBITS upon:

H. Allen Moye  
Assistant United States Attorney  
400 Richard B. Russell Building  
75 Spring Street, S. W.  
Atlanta, Georgia 30335

By depositing same in the United States Mail with adequate postage Affixed to ensure delivery of the same.

Dated: This the 17<sup>th</sup> day of December, 2003

---

George W. High, Sr., Pro Se