

23

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH

Appellate Case No. 04-12354

Dwight York aka Malachi Z. York
Defendant-Appellant,

Vs.

United States of America
Plaintiff-Appelle,

Appeal from the United States District Court
For the Middle District of Georgia
Honorable C. Ashley Royal

AMICUS BRIEF
THE REPUBLIC OF LIBERIA, WEST AFRICA

PARTIES TO AMICUS CURIAE

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United States of America v. Dwight York

Appellate Case NO. 04-12354

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel certifies that the following individuals have an interest in the outcome of this case:

Richard S. Moultrie, Assistant U.S. Attorney

Verda Colvin, Assistant U.S. Attorney

Dean S. Daskal, Assistant U.S. Attorney

Maxwell Wood, U.S. Attorney

Honorable C. Ashley Royal, United States District Judge

Honorable Hugh Lawson, United States District Judge

Manubir S. Arora, Defense Attorney

Harry Jean Charles, Defense Attorney

Benjamin A. Davis, Defense Attorney

Edward T.M. Garland, Defense Attorney

Leroy R. Johnson, Defense Attorney

Jonathan Marks, Defense Attorney

Adrian L. Patrick, Defense Attorney

Matthew M. Robinson, Defense Attorney

The Republic of Liberia, West Africa

Frank A. Rubino, Defense Attorney

Stephanie Thacker, Dept. of Justice

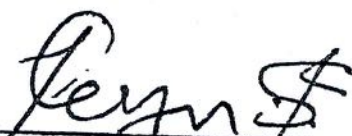
Kathy C. Johnson, Co-defendant

Dwight D. York, Defendant

Identifiable alleged victims exist in the instant matter, including: (Ha.E), (Hu.E), (S.E), (K.E.), (K.E.), (M.F.), (K.H.), (R.H), (E.H), (I.J.), (C.L.), (K.L.), (Sa.L.), (Sal. L.), (N.L.), (H.M.), (K.M.), (Q.M.), (A.N.), (D.N.), (S.P.), (A.T.), (S.T.), (H.W.), (Su.W.), (S.W.).

I hereby certify that, to the best of my knowledge, the preceding list is a complete list of all parties having an interest in the outcome of this case.

By:


Cllr. Francis Y.S. Garlawolu
Authorized Counsel for Dr. York
Opposite The DDRR Office
Capitol Hill
Monrovia, Liberia

011231-651-5306

NOTARIAL SUBSCRIBED TO BE FIDELITY MB
this 27th day of Feb. A.D. 2005



MARY MAMIE HOWE
NOTARY PUBLIC, MONTSERRADO CO
REPUBLIC OF LIBERIA

TABLE OF CITATIONS

Cases

- Blakely v. Washington, 124 S. Ct. 2531 (2004)
- United States v. Booker, Supreme Court Case No: 04-104 :
- United States v. Fanfan, Supreme Court Case No: 04-105.....

Statutes

- 8 USC 1101 (o) (43)
- 18 USC 2421,2422,2423
- Title 4 Section 440 of the 1996 Anti-Terrorism Act
- Article 27(b) of the Constitution of Liberia
- Article 11 of the Constitution of Liberia
- 3rd Am Jur 2nd Edition section 79 page 936
- 30 Am Jur 2nd Edition Section 1172 Page 352
- Title 14 of the Penal Code of Liberia
- Liberian Code of Law, Volume 1 Revised Section 2.1 Page 308

ARGUMENT/CITATIONS OF AUTHORITY

The instant case involves the criminal case charged against the Appellant, Dwight York, in the Middle District of Georgia, as discussed below, York was convicted and is currently incarcerated in Federal Prison.

I. Dwight York aka Malachi Z. York is a citizen of the Republic of Liberia, West Africa and is subject to Deportation and Repatriation according to the Anti-Terrorism Act of 1996 and a Bilateral Agreement signed between the United States of America and the Republic of Liberia, West Africa.

Prior to and at the time of his arrest, Dr. York was a citizen of the Republic of Liberia by Naturalization in keeping with Article 27(b) of the Constitution of Liberia.¹ Dr. York was also appointed as Counsel General in 1999 by the Government of Liberia and accredited near Atlanta, but the US Government did not grant him ex-quitter.

Consistent with Article 11 of the Constitution of Liberia, which devolves upon the Government of the Republic of Liberia the obligation and duty to protect its nationals within and without Liberia, the local Counsel for

¹ Article 27 (b) of the Constitution of Liberia : "In order to preserve foster and maintain the positive Liberian culture, values and character, only persons who are Negroes or Negro descent shall be qualified by birth or naturalization."

Dr. York in Liberia, Counsellor Francis Y.S. Garlawolu, filed a Petition of Declaratory Judgment before the Civil Law Court, sitting in its Law Division of the June Term of Court, A.D. 2004, requesting the Court to declare Dr. York's right under the laws of Liberia. A hearing was held on the 13th day of July, A.D. 2004, and a Final Judgment consequently rendered on the 21st day of July A.D. 2004, thus ordering the Government of Liberia to immediately protect the rights of Dr. York by pursuing every legal and diplomatic course or means available to it (Government) for the repatriation of said Dr. York.

The 6th Judicial Circuit Court of the Republic of Liberia Montserrado County, Yussif D. Kaba (Assigned Judge) issued an order to the Government of Liberia by and thru the Minister of Justice to repatriate Dr. York to the Republic of Liberia. Therefore, in reliance upon the Judgment of the aforementioned Court's Declaratory Judgment,² the Ministry of Justice of the Republic of Liberia apprised the Ministry of Foreign Affairs of the same and accordingly advised the former to give effect to said judgment by effecting the repatriation of the subject Defendant.³

² See Attachment "A" Petition for Declaratory Judgment and Attachment "B" Order of Declaratory Judgment, Sixth Circuit Judicial Court, Montserrado County, Republic of Liberia West Africa.

³ See Attachment "C" Letter dated July 30, 2004 from Ministry of Justice of the Republic of Liberia to the Ministry of Foreign Affairs apprising of Declaratory Judgment.

Based upon the communication quoted supra, the Ministry of Foreign Affairs of the Republic of Liberia wrote a diplomatic note to the Government of the United States of America on August 17, 2004 A.D.⁴

The crime charged being one involving moral turpitude or sexual offense, and the Defendant being a citizen and denizen of Liberia, he is entitled to repatriation and banishment to the country of his citizenship and/or origin, same being the Republic of Liberia.

It may be well taken that the Government of the United States of America and Liberia made and entered into a Bilateral Agreement wherein both Countries mutually agreed inter-alia, to transfer or deport the national of either country who may be involved in criminal activities to his or her country of citizenship and/or origin.

In the instant case, the Defendant is being charged with a crime involving moral turpitude or to be specific, SEXUAL MOLESTATION. This is what 3am Jur 2nd Edition Section 79 Page 936 says on the issue:

⁴ See Attachment "D" Diplomatic Note sent August 17, 2004 A.D. to the Government of the United States of America the Ministry of Foreign Affairs, Republic of Liberia, West Africa.

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"It is provided by statute that any alien in the United States who is convicted of a crime involving moral turpitude committed within 5 years of entry and either sentenced to confinement or confined therefore in prison or corrective institution for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal conduct, regardless of whether confined therefore and regardless of whether the convictions were in a single trial, shall be taken into custody and deported".

In furtherance, of the foregoing provision of law Title 4 Section 440 of the 1996 Anti Terrorism Act provides, inter alia:

Section 440 provides for more expeditious deportation of certain criminal aliens. It adds to the list of aggravated felon (ies) 8 U.S.C. 1101 (o) (43), conviction for which constitutes grounds for deportation...18 U.S.C. 2421, 2422, 2423 (relating to transportation in interstate or foreign commerce, for purpose of criminal sexual activity) for commercial purposes."

In consonance with the provisions of law quoted supra, Dr. York persistently desires his repatriation to Liberia, same being his country of citizenship and/or origin.

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II. The verdict of the empanelled jury is against the weight of the evidence adduced at trial and in the instant case there is an element of reasonable doubt that entitles the defendant to an acquittal.

Coupled with the numerous contradictions with which the testimonies of the prosecutor's witnesses are fraught, witness Habiba Washington, the prosecution's most indispensable witness whose testimony was sine qua non to establishing the guilt or innocence of Defendant York, voluntarily admitted that she falsely testified against Dr. York under threat and intimidation.⁵

This declaration, though subsequently retracted, casts reasonable doubt on the veracity and credibility of the testimony of witness Washington.

30 Am Jur 2nd Edition 1172 page 352 has this to say:

"ELEMENTS OR MATTERS THAT MUST BE PROVED"

The law imposes upon the prosecution in a criminal case the burden of proving the case set forth in the indictment or information in all its material parts, beyond a reasonable doubt, and the jury in their analysis of the evidence must find, in order to convict, that all the elements of the crime charged have been established by a degree of proof, otherwise it is their duty to acquit the defendant. Each and every material and necessary fact upon which a conviction depends must be proved beyond a reasonable doubt.

⁵ See Attachment "B" Abigail Washington aka Habiba Washington's sworn Affidavit

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It is therefore patently clear that the credibility of witness Habiba Washington is doubtful and therefore operates in favor of Appellant, to its intent and purposes.

It may be well noted that the retraction of the first incriminatory testimony and second exculpatory testimony of witness Washington and the subsequent retraction of the same as contained in the Affidavit, renders the entire testimony of witness Washington not only questionable but impeachable and reasonably doubtful, to all intents and purposes, under the doctrine of *falsus in uno, falsus in omnibus*.

The Liberian Code of Law, Volume 1 Revised, Section 2.1, Page 308 under the caption Reasonable Doubt, unequivocally provides that the defendant in a criminal case is presumed innocent until his guilt is satisfactorily sworn, and in case of reasonable doubt he is entitled to acquittal.

In the instant case, every reasonable mind may conclude that the confession made by witness Habiba Washington in her affidavit to the effect that she was induced to lie against Dr. York was influenced by her moral

conscience and therefore contains an unimpeachable fact which this Court should not ignore.

III. A. The sentence of 135 years imprisonment is disproportionate with the penalty of such offense under Liberian Law.


B. The defendant was sentenced under Federal Sentencing Guidelines that have been Ruled Unconstitutional as Applied in this case.

A.

The Defendant being a citizen of the Republic of Liberia by naturalization may be equally subject to the law relating to sexual offenses such as the one charged, which complimentarily or correspondently exists under the Penal Code of Liberia. The correspondent sexual offense under Liberian Law entitled "An Act amending the Penal Code of Liberia, Title 14, for Sexual Molestation" as it exists under American law reads, thus:

CORRUPTION OF MINORS

1 OFFENSE *a male who has sexual intercourse with a female not, his wife or any person who engages in deviant sexual intercourse with another has committed an offense if the other person is under sixteen years and the actor is at least five years older, than the other person*


JAMES A. DOUGLAS

//

2 GRADING *the offense is a third degree felony, except when actor is less than twenty-one years old, in which it is a first-degree misdemeanor*

Under Liberian Law this is a third degree felony punishable by not more than five years imprisonment.

B.

In furtherance of our argument, the government of Liberia takes notice that the United States Supreme Court ruled in the Booker and Fanfan⁶ cases and validity of the U.S. Sentencing Guidelines.

"The Court held in these two cases that both courts correctly concluded that the Sixth Amendment as construed in Blakely does apply to the Sentencing Guidelines. In a separate opinion authored by Justice Breyer, the Court concludes that in light of this holding, two provisions of the Sentencing Reform Act of 1984 (SRA) that have the effect of making the Guidelines mandatory must be 56 invalidated in order to allow the statute to operate in a manner consistent with congressional intent." U.S. v. Booker, Supreme Court Case No.: 04-104 and U.S. v. Fanfan, Supreme Court Case No: 04-105."

Dr. York, a citizen of the Republic of Liberia, has been sentenced to 135 years imprisonment, which falls into the variance of unconstitutionality according to the Sixth Amendment as ruled by the United States Supreme Court.

⁶ U.S. v. Booker, Supreme Court Case No.: 04-104 and U.S. v. Fanfan, Supreme Court Case No: 04-105

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Further, coupled with the fact that Dr. York, whose maternal grandparents hailed from Liberia, is a naturalized citizen of Liberia, his wife Madam Fahtima Senosi is a Sudanese National who will join her husband to the Republic of Liberia should he be repatriated.

Conclusion


Wherefore and Whereas, in view of the foregoing, we hereby request the reversal of Judgment rendered against Dr. Malachi Z. York aka Dwight York and further request that this Honorable Court render such a judgment conducive to the fair administration of justice and further grant Dr. York such relief, including repatriation, and whatever equitable this Honorable Court deems necessary and proper.

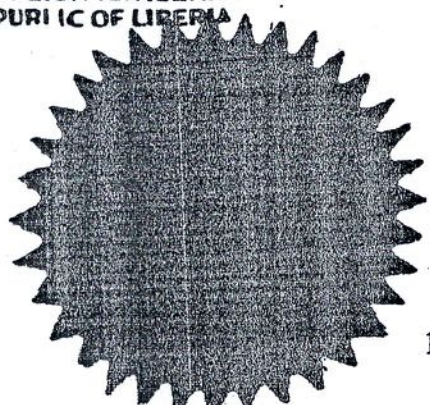
Respectfully submitted:
The Republic of Liberia,

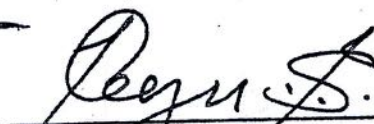



Ministry of Foreign Affairs
Cllr. Jenkins K.Z.B. Scott
Republic of Liberia, West Africa
Seal

WORN AND SUBSCRIBED TO BEFORE ME
this 29th day of February, A.D. 2005



MARY MAMIE HOWE
NOTARY PUBLIC, MONTSERRADO CO
REPUBLIC OF LIBERIA

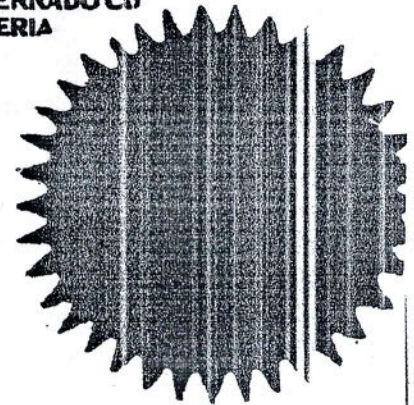



Cllr. Francis Y.S. Garlawolu
Authorized Counsel for Dr. York


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Republic of Liberia, West Africa
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SWORN and SUBSCRIBED TO BEFORE ME
this 28 day of Feb., A D 2005

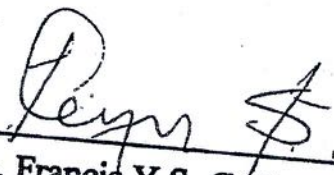

MARY MAMIE HOWE
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REPUBLIC OF LIBERIA




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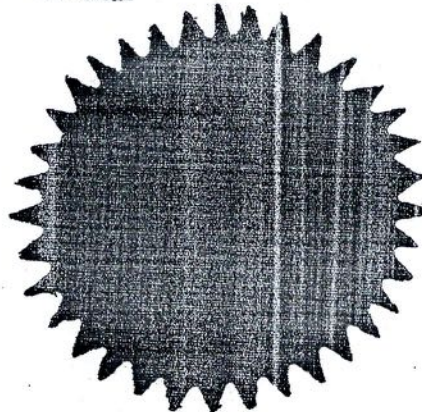
CERTIFICATE OF COMPLIANCE

I CERTIFY THAT THIS BRIEF COMPLIES WITH THE TYPE-VOLUME LIMITATIONS SET FORTH IN FRAP 32(A)(7)(B). THIS BRIEF CONTAINS 2,252 WORDS IN 14 POINT TIMES NEW ROMAN FONT.


Cllr. Francis Y.S. Garlawolu
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SWORN and SUBSCRIBED TO BEFORE ME
this 22nd day of Feb. A D 2009


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NOTARY PUBLIC, MONTSERRADO CO
REPUBLIC OF LIBERIA





The United States Court of Appeal
Eleventh Circuit
Atlanta, GA

P/6 7

Dwight York aka Malachi Z. York

Defendant-Appellant,

Vs.

United States of America

Plaintiff-Appelle,

Appellate Case No. 04-12354

Motion For Leave of Court to File Amicus Curiae Brief

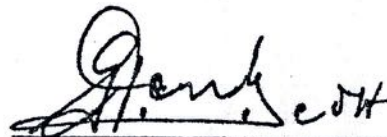
And now comes the Government of the Republic of Liberia, by and thru its authorized authority and most respectfully praying this Honorable Court for a leave to file an Amicus Curiae Brief on behalf of Appellant, Dwight York aka Malachi Z. York in the above entitled cause, shows reasons, therefore, to wit:

1. That Dwight York aka Malachi Z. York, Appellant in these proceedings, is a naturalized citizen of the Republic of Liberia; by which the Government of Liberia, under Article 11 of the Constitution of Liberia, owes duty to protect and defend him with and without the borders of Liberia, as will evidentially appear from the attached several communications from the Ministries of Foreign Affairs and Justice, Republic of Liberia, marked "A" & "B" bulk.

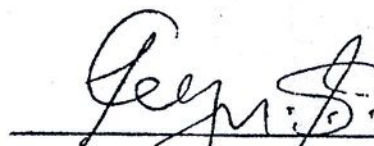
2. That the Civil Law Court, Sixth Judicial Circuit, Monsterrado County, Republic of Liberia, sitting in its June, A.D. Term, confirmed Dwight York aka Malachi Z. York's status as a Liberia citizen further ordered the Government of Liberia to effect the repatriation of Dr. York to Liberia, as will evidentially appear from photocopy of said Court Final Judgment hereto appended and marked exhibit "C" forming a cogent part of this Motion.

Wherefore, Movant prays that this Honorable Court will grant it leave to file an Amicus Curiae Brief in defense of Appellant, and to further grant unto Movant such relief and right may demand in the premises.

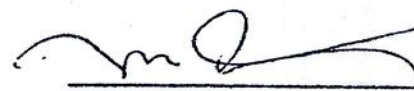
Respectfully submitted:
The Republic of Liberia,



Ministry of Foreign Affairs
Cllr. K.Z.B. Scott
Republic of Liberia, West Africa
Seal



Cllr. Francis Y.S. Garlawolu
Authorized Counsel for Dr. York



Ministry of Justice
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