

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA.

GENERAL JURISDICTION DIVISION

CASE NO. 04-CA-000559

IN RE ASSIGNMENT OF CERTAIN
LOTTERY PAYMENTS OF
CARL DORELIEN

MARIE JEANNE JEAN, Plaintiff,

CASE NO. 04—CA-001525

v.

CARL DORELIEN, Defendant.
_____ /

AFFIDAVIT OF MARIO JOSEPH

STATE OF FLORIDA)

) SS:

COUNTY OF MIAMI-DADE)

BEFORE ME this day personally appeared Mario Joseph who, after first being duly sworn, deposes and says:

1. My name is Mario Joseph. I am over the age of 18 years old, and I have personal knowledge of the matters asserted herein.

2. I am a lawyer in Haiti, a member in good standing of the bars of Port-au-Prince and St. Marc. I have directed the Bureau des Avocats Internationaux (BAI) in Port-au-Prince, Haiti since 1996. The BAI was established by the Haitian government to help victims and to assist the judicial system in prosecuting human rights cases, mostly from Haiti's 1991-1994 military dictatorship. The office represents human rights victims in court. Prior to the ouster of President Aristide on February 29, 2004, the BAI worked closely with judges, prosecutors, police and government officials, providing legal, technical and material assistance, as well as policy advice.

I was the lead attorney in the BAI's most prominent case, representing the civil interests of the victims of the 1994 "Raboteau Massacre" in their prosecution of military and paramilitary perpetrators of the massacre. The Raboteau case is considered the most successful complex prosecution in Haiti's history. Before joining the BAI, I worked on human rights cases for the Catholic Church's Justice and Peace Commission. I have also held a variety of teaching and administrative posts. I am a graduate of the Ecole Normale Supérieure, Haiti's leading teaching college, and the Gonaïves Law School. I frequently speak on human rights issues in Haiti, both on radio and television, and at conferences in Europe and North America.

3. Under Haitian law the evidence portion of civil and criminal trials related to the same incident are conducted simultaneously. The criminal trial of defendants who were in custody for the Raboteau Massacre took place over six weeks from late September to November 10, 2000, before a jury. In December 2000, the judge who presided over the jury trial conducted the civil trial against the defendants who were present, using the evidence presented at the criminal trial.

4. On November 16, 2000, the same judge conducted separate proceedings for the *in absentia* defendants, who had been charged in the Raboteau case but not apprehended, including Carl Dorélien, a former colonel in the high command of the military dictatorship from 1991 to 1994. The jury did not participate in this proceeding. The judge found Dorélien and thirty-six other *in absentia* defendants criminally responsible, and Dorélien was sentenced to life in prison. The judge also entered a civil judgment against Dorélien and the other *in absentia* defendants, ordering them to pay, jointly and severally, the amount of one billion Haitian Gourdes to the victims of the Raboteau Massacre. Marie Jeanne Jean, a plaintiff in this case, is a named

recipient of the civil judgment for the unlawful killing of her husband, Michel Pierre, and she is therefore entitled to receive compensation from Dorélien.

5. Carl Dorélien was living in the United States when his conviction was handed down in 2000. Based on the conviction, the United States Immigration and Naturalization Service arrested Carl Dorélien in Florida in 2001 and deported him to Haiti on January 27, 2003.

6. Upon arrival in Haiti, Dorélien was taken into custody by Haitian authorities pursuant to Haitian Penal Code articles 366 and 367. In pertinent part, articles 366 and 367 state that a judgment entered *in absentia* is valid against an individual unless he exercises his right to request a new trial within 10 years of the original judgment. Failure to request a new trial signifies acceptance of the judgment. After the 10 year period expires, the defendant loses his right to ask for a new trial. Nonetheless, both the criminal and civil judgments are valid during the entire period.

7. On February 29, 2004, Carl Dorélien illegally broke out of prison in Port au Prince, Haiti. I believe that he is currently a fugitive.

8. On May 3, 2005, the *Cour de Cassation*, Haiti's highest court, issued an order vacating the convictions of those defendants who were physically present at the jury trial for the Raboteau Massacre in 2000. A copy of the order and a certified translation prepared at the request of Marie Jeanne Jean is attached as Exhibit A. The court ruled that the case had been inappropriately submitted to a jury. The Court's decision, by its own terms, applies only to the sixteen convicts who were present at the trial, not to the defendants who were convicted *in absentia*, like Dorélien.

9. The *in absentia* defendants, including Dorélien, did not participate in the appeal (and did not have the right to do so), and therefore were not parties to the *Cour de Cassation's* ruling.

Neither they nor their trial were mentioned in the May 3, 2005 decision. Furthermore, the issue raised in the appeal - improper referral to a jury- had nothing to do with Dorélien, because he was not, in fact, tried by a jury, but by a judge.

10. Under Haitian law, Dorélien does not have a right to appeal. Instead, his legal recourse was to request a new trial. He has not done so. Since he has failed to do so, both the criminal and civil judgments against him remain in effect. Those people named as victims, including Marie Jeanne Jean, may presently enforce their civil judgment against Dorélien.

11. I have reviewed a document purporting to be an order by the chief judge of the trial court of Gonaives, dated June 7, 2005. A copy of the order and a translation proffered by Carl Dorélien is attached as Exhibit B. When court orders and judgments in our cases are presented to foreign courts, we typically have them authenticated, by the Minister of Justice, the Ministry of Foreign Affairs and the Consulate of the country where the documents will be presented. I have not seen any authentication of the June 7 order, so I cannot opine as to its authenticity.

12. The June 7 order concerns criminal charges against Carl Dorélien. My study of it does not reveal any reference to the civil case against him. Although the civil and criminal cases are, as discussed above, related and decided at the same time, they are analytically different. They are distinct and independently enforceable judgments.

13. Beyond the fact that the June 7 order does not treat the civil case, it is not clear exactly what it does do. It does say, in the first full paragraph of page 5, that Dorélien is “part of the defendants mentioned in” the May 3, 2005 *Cour de Cassation* ruling. The opinion does not say what this means, and it does not state that the charges against Dorélien are dismissed.

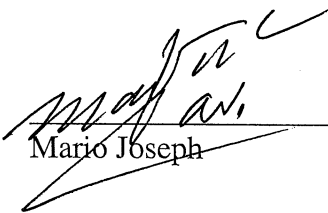
14. The June 7 order itself carries several serious flaws. First, the type of procedure used - direct appeal to the Chief Judge - is a *habeas corpus* proceeding, used to challenge an

unjustified detention. But Dorélien was not, in fact, detained at the time of the hearings and order. The prosecutor mentioned this, to which Dorélien's Haitian lawyer replied that he was in "psychological detention." There is no such category under Haitian law. Dorélien was, and is, a fugitive, and had no right to employ a *habeas corpus* proceeding.

15. Second, as discussed in paragraphs 8 and 9 above, the May 3 2005 *Cour de Cassation* decision could not have had anything to do with Dorélien. He did not participate in the appeal, and he did not have the right to do so, as he was an *in absentia* convict. The *Cour de Cassation* did not mention his name. The issue on which the May 3 order rested - improper referral to a jury - did not concern Dorélien, as he was tried by a judge. Therefore, there is no basis under Haitian law for Dorélien to be considered part of the defendants affected by the May 3 decision.

I declare under penalty of perjury under the laws of the United States that the foregoing Affidavit is true and correct.

Dated this 21st day of June, 2005.

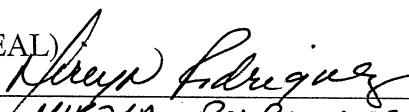


Mario Joseph

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 21st day of June, 2005, by Mario Joseph, who produced his Florida Driver License No. J210-540-60-026-0, expiration date 01/26/08, as Identification.

(SEAL)


MIREYA RODRIGUEZ

Notary Public - State of FLORIDA
Commission Number: MIREYA RODRIGUEZ

