

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

mandamus

Michael D. Smith (pro se)-PETITIONER

VS.

UNITED STATES of AMERICA-RESPONDENT

mandamus
ON PETITION FOR A WRIT OF ~~CERTIORARI~~ TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

mandamus
PETITION FOR WRIT OF ~~CERTIORARI~~

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AUG - 6 2018

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF ~~CERTIORARI~~ *mandamus*

Petitioner, Michael D. Smith, respectfully pray that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

The opinion of the United States Court of Appeals of my 28 USC 2255 motion denial, appears at Appendix(C) (Page ID# 13612-15). The opinion of the United States Court of Appeals of my 28 USC 2244 motion denial, appears at Appendix (B) (No. 17-6475).

The opinion of the US District Court 28 USC 2255 motion denial appears at Appendix (G) (Page ID# 13462-87).

JURISDICTION

The date the 6th Circuit Court of Appeals denied my 2255 was November 29, 2017. I then filed a 2244 and it was denied April 25, 2018. So I am filing this petition within the 90 days given in the rule of SC.

Also pursuant to Supreme Court Rule 10 (a) a US court of appeals has entered a decision that has so far departed from the accepted and usual course of judicial proceeding, as to call for an exercise of this Court's supervisory power:

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The US District Court and the 6th Circuit rulings were an abuse of discretion, when they denied my 2255 and 2244 in the 6th Circuit, when the record and the evidence shows there was no crime. Also these courts violated my Constitutional Rights, given below.

US Constitution 5th Amendment:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; or shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

US Constitution 6th Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Federal Rules of Criminal Procedure

Rule 7. The Indictment and the Information (c) Nature and Contents.

(1) In General. The indictment or information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged and must be signed by a attorney for the government.

CASES

Strickland v Washington 466 US 668 (1984)

Thomas v. Arn. 474, US 140 (1985)

APPENDIX A	FOIA for indictment/parts of the indictment
APPENDIX B	Order denying 2244 April 25, 2018
APPENDIX C	Order denying 2255 COA
APPENDIX D	Order from Magistrate Judge Wier telling prosecutors to work on producing copy of signed indictment. Order from trial judge Hood the next day telling prosecutors, they are not to produce a copy of the signed indictment.
APPENDIX E	Me asking for a hearing
APPENDIX F	Memorandum of law in support of COA 6th Cir.
APPENDIX G	Order from Hood denying 2255 and COA
APPENDIX H	Objection/Reply to R&R from Magistrate Judge Ingram
APPENDIX I	US Response to Smith's motion to vacate sentence
APPENDIX J	Report and Recommend to deny 2255, by Magistrate Judge Ingram
APPENDIX K	My original 2255 to vacate sentence
APPENDIX L	My 2244 motion for newly discovered evidence, I finally got a copy of the indictment that was not sign, thus there was no indictment
APPENDIX M	Copy of the indictment showing NO crime

ABOUT THIS CASE

This case is so outrageous one would think, this is not true, it could not have happened in the United States of American Federal Court room, the land of the free and Lady Justice with her blindfold on, but it did happen, everything in this petition is TRUE. Most of the proof is in the record, I welcome the opportunity to provide additional proof, if this court will grant me an evidential hearing, and getting permission to depose the grand jury and trial jury and the court reporter, and others, and force the trial judge to produce audio or video of the trial, that the court has refused to give us. I am completely innocent of the charges convicted on. The conviction was only gotten by fraud on the court by prosecutors, and the trial judge, with our defense attorneys helping them, after taking all of my money. Because I am innocent, it was very challenging on the prosecutors to prove a crime, when there was no crime, so they had to go to extreme measures to pretend there was a crime, using fraud on the court, misleading the jury, bullying it, forcing it to find guilty, to cover it all up. I will point out to the court, our appellant lawyer, Jeff Blum of Louisville was debarred by the Kentucky Bar, before he was able to finish the appeal. We feel trying to stop the appeal of this case, their reason for debarring was because the lawyer was, "filing too many motions". That is what lawyers do, FILE MOTIONS.

If it had been a fair trial there could have been nothing but a not

guilty verdict. Because it was a trial with no crime, prosecutors dragged out what a 2 hour hearing could have showed, that there was no crime, into a month long trial of nothing. Leaving the jury confused and probable thinging, they had to have done something, but I must have missed it because I still don't see anything they did wrong. Because of a month trial of nothing, this case has become a endless tangle of confusion and has become very hard for a non-lawyer to show the court he is innocent. It should not be that way, the jury should have the decision on errors too, 12 people having to find guilty beyond a reasonable doubt, not a 3 judge panel, if it is possible that just one juror could find guilty. How we got to that is beyond logic and our Constitution. After all we are entiltled to a jury trial, so it should make all decisions of fact, given the WHOLE story.

I ask this court to consider if my motions have failed because of some tiny mistake, to consider the huge errors of law my lawyers, the prosecutors, and the trial judge has done BEFORE my tiny mistakes, and that it was illegal for them to have a trial on me, by the law and the Constitution.

Because there were so many errors in trying to convince 12 jurors that there was a crime, when there was no crime, this case is full of questions for review for this court. So to save the court's time I have listed the questions for this court to consider with the proof and arguments so everything does not have to be repeated. After looking at the record, and seeing I am telling the

truth, I respectfully ask this court to set me free, I did not do anything wrong in this case. To save from repeating everything again that has already been repeated, I ask this court to adopt all prior filings into this petition. My original 2255, also include my Expand the Record, Reply to Recommendation Disposition, Reply to the Government's Response in Opposition to COA, and Memorandum of Law in Support of Request for Certificate of Appealability, and any other filings I have filed to the court for support of my 2255 motion to vacate my conviction and sentence.

With everything that has happened in this trial, I am asking this court to grant me another District Judge other than Judge Hood. In a different district. I also welcome the opportunity to prepare a brief in support to show the court additional errors of the trial.

On May 4, 2015 Magistrate Judge Wier signed an Order that the government was to Respond by May 7, 2015, to produce a copy of the indictment, on May 5, 2015 Judge Hood signed an Order that said the government does not have to produce it. There was no signed indictment and Hood had a trial on it, that's why he keeps it sealed. See Appendix D in this petition or in the record. (Page ID# 12716-12717) and (Page ID#12727-12729)

Questions for the Supreme Court

- 1) Will this court Reverse the district and circuit court's denial of my Habeas Corpus, 2255 motion, vacating my conviction and sentence, setting me free and paying damages owed me? Because prosecutorial and judicial, misconduct, and ineffective counsel, and my 5th Amendment right to "due process" has been violated, 6th Amendment right to counsel and abuse of discretion by the judges.
- 2) Will this court Reverse the 6th Circuit denial of my 2244 motion, for newly discovered evidence, and a miscarriage of justice, whereby the 6th circuit clerk did not file to the record my newly discovered copy of the indictment showing it was not signed by an attorney of the government, gotten by a FOIA that was received long after the trial? The 6th Circuit just ignored my proof. This was a violation of my 5th Amendment right to "due process". And abuse of discretion by the judges. Will this court vacate my conviction and sentence and send me home?
- 3) Will this court vacate my conviction and sentence, because there was NO indictment by the Grand Jury, Defense attorney Gordon's paralegal Mary Moore, read me a letter AFTER the trial from the prosecutors that said in essence, "Grand Jury declined to return an indictment". Did they get another indictment after this? I don't know. It is just about sure they did not, what

they did was fraud on the court, done with malice, spite. The 5th Amendment, "*no person shall be held to answer for capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury*". It is so abundantly clear, prosecutors can not do that, it does not matter how long you wait it is still illegal. If some one is kidnapped and locked in chains and force to do work, and keep them from filling a complaint within 1 year, there is nothing the law can do. That is hog wash. It does not matter how long they are locked up, worked against their will it is still illegal and can not be made legal. Any time limits should extend until at least 1 year after being set free after the crime is over, and if it is not filed then, I agree it could be dismissed, I am still suffering from this illegal detention. So the court could not have a trial and when they did they are guilty of a crime, violating my civil rights, 5th Amendment right to due process and equal protection of the law, and right to a grand jury, to decide to indict. Without this indictment from the grand jury the trial is still illegal and can not be waived by a little past ruling by a judge, I contend the Constitution trump's a judges ruling, especialy when it is denying justice, and the law. I don't think they even had an indictment when they had a trial on us, but at the time I did not know.

That would explain why the indictment was not signed by the prosecutors, and why Judge Hood had the indictment sealed, so no one could see it, why Chief Judge Jennifer Coffman changed the law that the original

indictment no longer has to be shown to the public as we were trying to get a copy of it. This also explains why at least 2 or 3 federal judges stepped aside and would not touch the case and at least 1 magistrate judge. Even then there was no crime listed in the indictment shown at the trial, and what was listed were civil violations that we proved were NOT TRUE either, so because there was nothing criminal in this indictment, it was unlawful to have the trial? My case is more than a mere oversight or technicality that meant nothing, it was a willful, deliberate, malicious, miscarriage of justice, that was unlawful to have a trial on me. This fake indictment was used as an excuse to have a trial, planning to force us to plead guilty to something we did not do. William Hayes one of our lawyers threatened to kill me and my family if I did not plead guilty. My case is so outrageous that it is not to be considered with a common defective indictment that the courts would normally be asked to rule on, where there are still crimes listed, after removing mistakes. We only got proof the indictment was not signed in 2015 by a Freedom of Information Act, so it was impossible to bring this up before, during, or immediately after the trial. This was a violation of my 5th Amendment right to "due process". And abuse of discretion by the judges. This was also an ineffective counsel charge, given in the 6th Amendment, and prosecutorial misconduct, violation to 5th Amendment right to due process, this indictment is no good and can not be made good for a trial in the

future, which requires the conviction and sentence be vacated.

4) Will this court Reverse lower court rulings, that any prosecutorial misconduct charge must be filed before the trial? Will it rule this is unconstitutional, because bad, unethical, defense attorneys can take all of the defendant's money, but instead of working for the defendant, they are working for the prosecutors and the judge, they are allowed to forfeit an innocent person's life by purposely failing to file to stop a trial, when there is an illegal indictment, no crime whatsoever, destroying lives and snickering and laughing about it, because there is no recourse, no way to make them whole again. I contend the "due process" clause in the Bill of Rights, trumps a lower courts ruling on this. And my case is different than the cases where the lower courts ruled this. This trial judge knew very well the indictment was no good, but he still had a trial and forced a jury to find us guilty. This judge turned the heat on in the jury room, in July and told it the A/C was not working and that no one was leaving until there was a verdict. It took about 17 hours at the court house before the last juror was FORCED to vote guilty so they could go home.

5) Will this court rule district court and the 6th circuit were wrong when they did not vacate my conviction and sentence and release me from prison and pay me damages for what the government has done to me, because of the judicial and prosecutorial misconduct, it was really a, " travesty of justice-

the malicious, willful, deliberate miscarriage of justice", described in the record and as follows? It was also a violation to my 5th Amendment right to a "due process", described in detail below.

6) Will this court let stand, the district and circuit court ruling, Rule 7, of the Federal Rules of Criminal Procedure; indictment must be signed by a government lawyer, does not have to be done anymore, government can do anything it wants, by not signing the indictment no one may be accountable for it? This is in violation of my 5th Amendment right to due process, and an abuse of discretion.

7) Will this court let stand, the district and circuit court ruling, the 5th Amendment is no longer in effect, "a crime must be presented before a grand jury", without a signed indictment, there is no limit to abuses the prosecutors will do, as in my case? Also will this court rule the part of the 5th Amendment giving "due process of law", will no longer be enforced, prosecutors can do anything, as in my case?

8) Will this court vacate my conviction and sentence, because the prosecutors lied to the jury and told it the C and D's I recieved from about 5 states stating for me not to be calling investors in their states without first filling out paper work and paying a fee, were a "material omission" and so fraud? Our lawyers agreed to seal these C and D's so the jury was never

allowed to read what they said. But the prosecutors told the jury these C and D's were proof of wrongdoing and that I had been run out of these states. These C and D's were no more than a warning parking tickets, would a company need to report to all it's investors and banks, when they receive a parking ticket? Will this court rule these and other prosecutorial misconduct, and ineffective counsel, and an abuse of discretion, and violation to my right to "due process", given in the 5th and 6th Amendments. This requires the conviction and sentence to be vacated?

9) Will this court vacate my conviction and sentence for all of the mistakes our lawyers made, amounting to ineffective counsel, that fell below the minimum given in the Constitution, 6th Amendment? By not filing against the indictment, and many more things they did not do, that will be gone into detail later in this petition, that shows they conspired with the other members of the court, intentionally sending innocent people to prison. By looking at the record and trial as a whole it was so outrageous, will this court vacate the conviction, not grant a new trial with this district judge or in his district, because it is unreasonable to expect District Judge Hood and his court to do anything different next time, other than give me 20 years instead of the 10 years I am getting close to finishing? I also ask this court to grant me another judge not Judge Hood to be over my parole, I dad died just last month, and I was told the prison oked me to go to his funeral, but Hood

denied it. I was supposed to be railroaded to prison for no crime and bow before him and not file anything when my life and my family's lives are destroyed.

10) Will this court grant me an evidentiary hearing in a different district, with a different judge? Questioning the jury individually and the court reporter. Or giving me permission to depose the jury and court reporter? To prove additional Judicial and Prosecutorial Misconduct. Just before the jury made it's decision, there was another meeting with the judge and the lawyers, but we were not allowed back there, was the jury present? Did the judge threaten them again, it was just a short while after this meeting, the time 1:00 AM the next day, that the jury found us guilty? My family reads a lot, I have been told the court reporter for our trial, Ann Banta, is no longer listed on the Eastern District of the US Federal Court, court schedule as a reporter, after I filed about the jury asking for a fan, proving the jury room was very hot. Could it be Banta was not supposed to let that note be put in the record. The trial judge threatened the jury when he read the jury instruction to it, he said, "do not vote sypathy if you vote sypathy you can be punished". It is not in the record. (see Greg Smith affidavit, in the back. I will assure you he would never sign such a paper against a federal judge without being SURE. Lets ask the jury if they remember, or make Hood produce the audio or vidio of the trial, which we have been denied from getting.) This is a

violation of my 5th Amendment right to due process. Make our courts open, as the saying goes, sunshine is the best disinfectant.

11) Will this court Reverse District Court and the 6th Circuit Court ignored the issue, when it found; when a defendant files a Response to/or objection to a Magistrate's Judges Report and Recommendation to deny a habeus corpus, 2255 motion, only words repeated from the original 2255 are permitted, no explanation of detail is allowed? The District Court and the 6th Circuit did not allow my Response to/or objection to be considered, even though it was an explanation of the issue of ineffective counsel, that had already been brought up in the original 2255 motion. (Page ID# 13462) (Page ID# 13612) It has been court procedure for hundreds of years that each side gets to respond to and object to up until there is an order. The R and R from Magistrate Judge stated I could object within 14 days of the R and R., so why was it not allowed? (Page ID# 13387-88) This is a violation of my 5th Amendment right to due process, and an abuse of descretion.

12) Will this court Reverse the district court and the 6th Circuit ignored, when it ruled I did not object with specificity, to magistrate judge's report and recommendation, then it listed several cases in support, *Thomas v. Arn*, 474, U.S. 140 (1985)? (Page ID# 13463) However these cases are misplaced here, they are noted because the prisoner did NOT bring up an issue for appeal. I DID bring the issues up for appeal with specificity. Will this court

let my Objections to / Response to Magistrate Judge Ingrams Report and Recommendation be put back into the record for proof of the injustice I have been dealt? This is an abuse of descretion and the 5th Amendment right to due process.

13) Will this court Reverse the District Court and the 6th Circuit Court ignored, when it ruled my response to Magistrate Judge, saying the indictment and search warrant were lies, they ruled I did not show how I was damaged by these lies? (Page ID# 13471) If all lies were taken out there would have not been an indictment. There was no crime listed that was true, We proved this to the defense attorneys and the prosecutors BEFORE the trial.

Judge Hood rules, "improper indictment", was not raised on direct appeal "A federal prisoner's failure to raise a claim on direct appeal, excepting a claim of ineffective assistance counsel, results in a procedural default on that claim. *Bousley v. united States. 523 U.S. 614, 621 (1998)*.

28 U.S.Code 2255, states. "A prisoner in custody under sentence claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States". It is so clear, an improper indictment is a violation of the Constitution and Federal Law. So Judge Hood or the 6th Circuit do not have the power to change the

Federal Law, or the Constitution. It did not have to be raised on direct appeal, my Constitutional Rights were violated by not having an indictment, which was illegal, which makes the trial illegal. Anyone who would rule violations of the Constitution have to be raised on the direct appeal, there is just one reason, to protect evil injustice by the court and prosecutors. There is no reason to do this in the name of justice. When a prisoner reads the 2255 Federal Law, it is clear it means what it says it means, the 2255 is used to file against violations of the Constitution and Federal Law. Just read the Constitution, and 28 USC 2255 it says any violation of Constitution, not just ineffective counsel. And anyone arguing I was not prejudiced, my motion is about as basic as anyone can go, without an indictment there can not be a trial and there can not be a prison sentence. The lower courts are saying if someone is shot, but did not show how they were damaged, they did not prove prejudice, that is ludicrous. I went to prison, so I was damaged and prejudiced.

14) Will this court let stand, that a district judge, prosecutors, federal agents and defense attorneys can break the law, have sham trials and then change our laws and Constitution that has been in effect for over 200 years, to make good and sure the innocent people have to stay in prison, destroying lives to cover up wrong doing by federal agents, I was told the FBI and SEC looked the case over before the trial and said they did not see a crime, as far

as I know they did not come to trial, it was the US Postal Inspector who pursued the case, the one who kept asking my accountant where was the \$100,000,000 I had, he kept telling her, "there is no \$100,000,000", she would then say, "I can put you and him both in prison until you tell me, she was looking for forfeiture money to keep?"

15) Will this court Reverse the 6th Circuit's ruling denying my motion for change of venue for being biased and unfair with me, when the clerk refused to file parts of my motion, it was not on PACER, after I mailed it to the clerk's office? Violating the 5 Amendment, due process and an abuse of discretion.

16) Will this court Reverse the 6th Circuit's ruling denying my motion to strike parts of the prosecutors response, stating I was guilty of wrongdoing, by saying an investor testified that we did not tell him when we moved a well from Texas? Every investor was told and asked their permission before we did it. We have read and read the record and that testimony of this investor is not there, so the only proper thing to do was to have it stricken from the record. This is a violation of my 5th Amendment right to due process and an abuse of discretion.

17) Also will this court Reverse just about every opinion of the district and 6th circuit courts stating how we mislead and lied to investors about the

amount a well would pay out, among other things? First of all we did NOT do that and second, the jury voted NOT GUILTY on every wire fraud charge, for every defendant. Meaning everything anyone said on the phone to anyone is NOT to be considered. Yet the prosecutors, district court and the 6th Circuit all keep repeating that we were guilty of this. Will this court rule every motion and opinion with this in it is to be removed and not considered, there was no crime? This is a violation to 5th Amendment right to due process and an abuse of discretion.

18) Will this Court Rule it was prosecutorial misconduct for doing the following and ineffective counsel when our appellate lawyers failed to file to the courts to strike the 61 false citations of the record the prosecutors used to make it appear to the district court and the circuit court that we were guilty of crimes we did not do? violation of my 5th Amendment right to due process and 6th Amendmen right to counsel, and an abuse of descretion.

19) Will this court Rule the lower federal courts will no longer be allowed to use false information claiming it to be fact, or part of the record, when it is not, being shown it was not true but still ruling as if it was, knowing better, this is fraud on the court. Will this court make execptions to the precedent that the appellant courts do not consider the facts, just law, to put a stop to the above, by having someone read the record to verify who is telling the truth, If the prosecutors are lying then they should be forced to stop or

punished. This is a violation to my 5th Amendment right to due process and an abuse of descretion.

20) Will this court rule we had ineffective counsel when our lawyers, did not put on the expert witness list, our Geoligist Jack Wheat, he would have proven to the jury and the court that the 3 new charges added at the last of the trial was nothing, he was standing outside the court room, but was not allowed to testify, because Judge Hood said he was not on the expert witness list? We learned after the trial that 6 Geoligist were contacted by the prosecutors but none would say what she needed said, that we had committed a crime, so she just filled in for the court testifying herself, which is not allowed, she also talked as if witness had testified that they said other things when no one said this, using it as if it was evidence, another prosecutorial misconduct, this too was not objected to and appealed, so will this court also find this was another ineffective counsel charge that warrants a vacation of my conviction and sentence. This was a violation of my 5th Amendment right to due process and 6th Amendment right to counsel. and an abuse of descretion.

21) Will this court Rule it was ineffective counsel when our lawyers did not show to the court that the many violations we received for Improper Abandoned Wells and we had to start getting permits to drill in my other company, Kentucky Indiana Oil and Gas, was because about 15 gas wells we

could not get them hooked up to the main gas transmission lines, (by federal law they were required to hook them up), it was either keep getting violations hoping to get them hooked up later, or plug the wells and some were very good wells? 6th Circuit Judge Gilman, wrote this was a show of dishonesty. By Kentucky law, "KRS 353.550 IMPROPER ABANDONED WELLS---Gas wells shut in due to market conditions are not included". So we should have not gotten any violations for this, Our lawyers didn't show this to the court. Violation to the 5th Amendment right to due process and 6th Amendment right to counsel, and an abuse of discretion.

22) If everything else in this petition is not enough for this court to vacate my conviction and sentence, then I respectfully ask this court to Reverse the district and circuit courts when they denied my COA, (certificate of appealability), and grant me a new trial to clear my name. I am not even asking for a new trial before Judge Hood or in his district, or close to his district. The 6th Circuit has ruled against justice, what is fair and our laws and our Constitution. I am respectfully asking this court to give me a new trial in the 9th Circuit, or the one that is on the east coast, at least one far from the 6th Circuit if it is possible, far away from the buddy system or military brotherhood, or what ever that would cause federal judges, guardians of our free country and Constitutions, to do what they have done to me and my family.

23) Will this court Rule it was prosecutorial, judicial misconduct and ineffective counsel and I was denied a fair trial when my lawyers did not object to the trial judge or appeal all of the accused crimes that the prosecutors, trial judge, and the 6th Circuit, have wrote in their filings and opinions. None of these questions were decided by the jury, NONE. I was entitled to a jury trial, and in a jury trial I was entitled to the jury deciding guilt and innocence not the court, this is given in the 6th Amendment, and the 5th Amendment the right to due process, an abuse of descretion. What happened was the entire federal court has said the maps had a black dot on them that was deceiving investors and so fraud, that black dot was nothing more and a spot where we intended to drill a well, no one was deceived, no one testified that they were misled in any way, the one who started it all was the judge, in open court and our lawyers did not object to him. This black dot should have been a question for the jury to decide if it was some type of fraud, not the court or the prosecutors.

24) Will this court Rule it was prosecutorial and/or judicial misconduct and/or ineffective counsel when the courts said I had so many violations that I had to use my other company to get permits and by 6th Circuit Judge Gilman who said that was a show of dishonstly, I was entitled to a jury deciding that question not Judge Hood or any of the 6th Circuit Judges. I was entitled to due process given in the 5th Amendment and right to a jury trial

in the 6th Amendment.

25) Will this court Rule it was ineffective counsel when our lawyers did not object to the judge keeping the jury until after 1:00 AM the next day about 17 or 18 hours, FORCING the jury to find guilty so it could go home, and the appellant lawyers did not file anything for a new trial or for judicial misconduct because of it? In violation to my 5th Amendment right to due process and 6th Amendment right to counsel.

26) Will this court Rule it was ineffective counsel when our lawyers did not object to the judge or show that the 3 new charges added at the end of the trial was nothing, 1) Moving wells, wells are moved all the time, when there are problems with an area then move the rest, Every investor was asked about moving the wells and agreed to it, so it could not been any form of fraud. 2) No gas lines in Clinton County, Ky, the booklet said oil and gas wells, they go together, but in Clinton County, everyone knew we were drilling for oil, that is what all of the others are. This should have been another question for the jury to decide, not the court. 3) Using my other company to get permits to get permits to drill new wells, the court called this fraud. There is nothing wrong with it, it too is common. No one was frauded in any way. Our lawyers failed to show the jury this. This is a violation to my 6th Amendment right to counsel.

27) Will this court Rule it was ineffective counsel when our lawyers did not object to the questions the jury used to decide if there was a crime. What was the criminal act, what did we do wrong. All questions were by well numbers. This was a violation to my 5th Amendment right to due process and right to a jury trial, which include a vote on the crime. and my 6th Amendment right to counsel.

28) Will this court Rule it was ineffective counsel when our lawyers did not object to the prosecutors when they was telling the jury that geologist pick the drill sites for oil and gas wells, they can do tests and find just where to drill to hit oil or gas. That is not true, they can not, prosecutor Caltron was told this before the trial by the 6 geologist she contracted to testify at the trial, but none would get on the stand and say that. So Caltron told the jury this, with no testimony from anyone during the trial. This was not allowed to mislead the jury. Surveyers pick almost all drill sites, they have to be so many feet from the property lines, so many feet from the houses, so many feet from the creeks, etc. The prosecutor lied to the jury and our lawyers did nothing about it. This is a violation to my 5th Amendment right to due process and my 6th Amendment right to counsel.

There are many more reasons to ask for the conviction and sentence to be vacated, there was no crime. Everything shown or told to the court to try to portrait guilt was fraud on the court, a misrepresentation of the truth. There was no evidence I did anything to anyone, there could not be any creditable evidence, because I did not cheat anyone. It was a month long trial of nothing, putting a snow job on the jury, trying to brain wash it, which must have left some of the jurors thinking with a month trial, he had to have done something. I don't want anyone to think I am not smart and did not see the crime, so I will vote guilty. I must have missed it because I still don't see what he did wrong. I have great respect for the jury, and it would have done the right thing if it had the total story and the judge had not threatened it and turned the heat on the jury room in July, and telling it no one is leaving until there is a verdict, with a federal agent on the jury, and keeping it there that day about 18 hours, the jury was forced to vote guilty so it could go home. Just before the jury made it's decision, the lawyers went back in the courthouse and had a meeting with the judge, we were not allowing in this meeting.

I feel so strong they met with the jury and threatened it again, it was a

very short time after that that a guilty verdict was read. (I will tell what one of my fellow prisoners told me happened to him, I do not know the judge, but he said the same thing happened to him, and when the jury walked back in to the room to read the verdict, one woman on the jury was crying and was still crying when the guilty verdict was read.) The entire Federal Judicial is on trial here, its reputation, it's integrity before the entire world, we should set an example of how every person in this world should be treated, with fairness, and justice. It is not a need of the government to do what has been done to me, it is not for justice, national security, what is right or fairness. The reason what was done to me, was to protect a small group of people who have done wrong and should have to pay damages to see that it never happens again. I thought in the beginning of my 2255 motion that if I say anything bad about the federal trial judge that I may not get out of prison, that is a no, no. But I decided that without the jury being bullied and put in a hot room and threatened it would have found me not guilty or a hung jury, I would not have had to go to prison for something I did not do. If I was done this way most likely other have too, it is the Supreme Court's duty and responsibility to keep the lower courts in order. If this is not corrected, the very core of our Constitution and being a free nation is jeopardy, and there is nothing to prevent it from happening again and even worse.

I believe the trial judge is not that bad of a person, he was on pain

meds, from his 2nd hip replacment and someone who he respected told him things that was not true, and in his mind he really thought he was doing the right thing. During the trial a lawyer called us in the early morning before we left for the court house and the lawyer asked did you all kill that man's dog, we asked what man, and the lawyer said Seth McCowan, the one who testified a day or two ago, We told him NO WE DID NOT KILL HIS DOG. The lawyer then said, if you did kill that dog, you all deserve going to prison. and that the judge has a dog and he is very upset about this. The next time I talked to the parole officer, I told her what they accused me of. She told me that the prosecutors had asked her to tell the judge that we had killed his dog. She then said that she did not believe it and that she would not tell the judge that. At the trial my lawyer asked the prosecutor if they got another parole officer to tell the judge and they said yes we did. We did not kill the dog, the man was a past employee of mine and he said nothing on the stand that I was worried about, he told the truth, as far as I remember. After the trial it was told to me from heresay, that the man was in the hotel in Lexington, KY for days waiting to testify at the trial, and that it was about 95 degrees everyday outside and that there was no one to take care of his dog. One thing is for sure the prosecutors knew how to turn the judge on me. The reason they did this is because they were having problems proving a crime when there was no crime so they decided they needed some help from the

judge, it worked.

The attorney I had at the beginning was Martin Hatfield, his was supposed to get my dad's money back, about \$200,000 that the US Postal Inspector Roberta Bottoms had taken after lying on the search warrant, she searched my dad's house not mine. After waiting some time, I went and talked to Hatfield, he told me that the government considered dad's money their money, and that if we ask for it back you will be indicted, I told him we have done nothing wrong and dad is 90 years old and he wants his money back.

At some point my lawyer, Hatfield told me a long time employee of my was cooperating with the prosecutors, I ask who, he said Tracy Smith, an ex wife of my brother. My brother divorced her because she was on drugs and was stealing his money and even holding a gun to him and robbed him, at least onced. I told Hatfield she has never worked for me, I would never let her work for me. Hatfield had to set down, and he asked me are you telling me the truth, I said yes I am, make her produce one check stub, if she worked for me she would have that. I was told that the Grand Jury asked Tracy on the stand if she had any check stubs showing where she had worked for me and she said no. The Grand Jury did not indict, me.

Looking back at everything that was done to me at this trial, someone

had Judge Hood turned on me in the very beginning, no indictment, and everything else that was done, they suckered him into this case on lies. One of them I believe as attorney Bill Hayes, he was raised in Ashland with the Judge and served in the Vietnam War with him. Hays was referred to me as a very good lawyer with federal experience and that he knew both the prosecutor Catron and old girl friend and the Judge Hood, he was supposed to get my dad's \$200,000 back that the Postnal Inspector took from my dad in his house, when lying on the search warrant. My other lawyer had told me it would cost me a lot of money to get it back. Hays was also supposed to be reporting the State Financial people, everytime an audit was done on me by them, my investors would start investing with other oil and gas companies. They were selling my names. At least one investor told us that the State Financial people told him to invest with another oil company.

But just as soon as Hayes got my case I was indicted, his secretary told me he was broke, building a building in Middlesboro. So instead of helping me, he found a way to get over \$100,000 out of me, then threatened to have me and my family killed if I did not plead guilty.

We had some very good oil and gas wells, and if we had been allowed to operate as other companies are, we would have make alot of money on these wells, for investors. After running 5 miles of gas line and being told, by EQT that they would hook some of our wells up, they never did, even when

they were required by federal law to hook them up if they had the room, they had room and I had letters from them stating that. We had one gas well in Bell County, Ky. that was making \$179,000 in one month, this one was not even listed on the wells shown the jury.

We have been done very wrong and this court has the duty to keep this country free and a government of the people, to see that justice is done. Instead of the 6th Circuit doing the right thing and correcting my case and releasing me, they all voted and made Judge Hood a member of the Judicial Conference of the United States and control of all complaints against all federal judges in the 6 th Circuit district, so they have all ruled he is to be protected, this is very scary that wrongdoing so far is going to be protected.

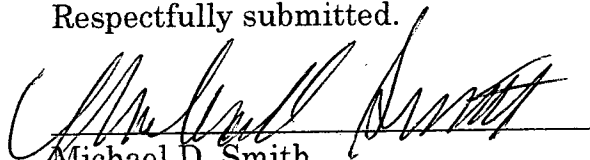
In the 1990's my brother filed a malpractice lawsuit against one of the largest law firms in the state, Vernon Smith v. McBrayer, McGinnus, Leslie and Kirkland, that was appealed all the way up, this case was where a coal company after surveying our property 2 times moved our property lines about 200 yards around out of their way, willful trespass, Stole all of our coal, we were told 3 times the gross selling price of the coal would be paid us, about \$40 million, but after going all the way the SC. No one could see anything wrong with it. A few years later when we were in the drilling business, we drilled a well on our property and in another coal seam down lower in the ground the drill bit just fell about 8 feet, (I have been told this coal seam

runs up to 13 feet thick), they had stolen that coal seam too, that we did not know they were mining in, this seam about 8ft thick and 100 acres, would have been in the hundreds of millions, on willful trespass. We did not file anything, just a total waste of time and money, the fight was over, we give up. Then look what the govenment has done to us again, FORCED us in another fight in court for years for nothing. We are sick of fighting in court.

I am at a total loss at how we could be done this way and now look at this case, I don't understand.

I respectfully ask this court to vacate my conviction and sentence, or grant me another trial in another district out of the 6th Circuit district, there is no way a fair trial can be had here.

Respectfully submitted.



Michael D. Smith

#12926-032

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Re: 3:08-cr-31, USA v. Michael SMith et al.

July 20-18

CONCLUSION

The petition for a writ of ^{mandamus}~~certiorari~~ should be granted.

Respectfully submitted,

Mitchell Smith

Date: July - 19 - 18