

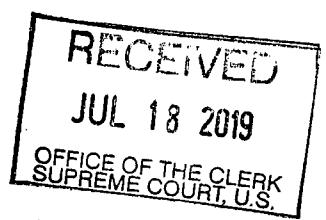
THE SUPREME COURT OF THE UNITED STATES

WRIT OF CERTIORARI

EXTRAORDINARY CIRCUMSTANCES For
Re-Hearing of *good faith and not for delay*

Cover Page

Case No. 18-9181



Kwame Askia,
Pro se



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THE SUPREME COURT OF THE UNITED STATES

WRIT OF CERTIORARI

EXTRAORDINARY CIRCUMSTANCES For
Re-Hearing

KWAME A. ASKIA

VS.

**WESTERN DISTRICT OF ARKANSAS (WDAR) - THE UNITED STATES
COURT OF APPEALS FOR THE 8TH CIRCUIT**

Motion - For Re-Hearing For The / Case No. 18-9181

Come now, The Petitioner's purpose for his necessary Re-Hearing is of intervening extraordinary circumstances of New Direct Exculpatory Evidence of *good faith and not for delay*. Also, in conjunction to New Evidence of Actual Innocence submitted brings a worthy and ripe Three (3) Prongs, requesting proper vetting. In which was denied the Petitioner before and during Grand Jury and Jury Trial. These Prongs were ignored by the original Argument of Actual Innocence by the lower court, offering good cause and merit for Re-Hearing with the United States Supreme Court with New Direct Exculpatory Evidence. False Submissions of Evidence and Jury Oversights becomes an act of Perjury (**See Exhibit 1- 8**). The Petitioner believes John Cocke is a third-party attorney with invested interest working corroboratively with Prosecutor and wrongly submitting fraudulent evidence against the Petitioner to a Federal Court. The Petitioner's proper readiness was wrongly impacted by denied access to this key evidence and false

evidence. Denied by the Lower Court and or prevented by the Prosecutor. The Petitioner was denied his proper due diligence based pretrial readiness on the denial of this critical evidence of perjury and the lack of Bill of Particulars. The ongoing denials prevented the Petitioner from proper evidence of actual innocence that strongly became a misleading factor against the Petitioner's and his Sixth Amendment Rights. The denials also denied the Grand Jury and Trial Jury of their needed and proper due diligence to properly judge the perplexities' of the Statute of 666 within the circuits around the country (USA). Preventing the Grand Jury and Trial Jury from considering the lack of ripeness of the Lower Court allowing the Prosecutor to comingle two unrelated Statutes, and in which was not a part of the indictment. The Judge of record of the (WDAR) Lower Court removed one of the false claims / statement from the record months after Jury Trial was over, doing the sentencing of the Petitioner. But the act appeared to be a mere act of attempting to Un-Ring-A-Bell and or the closing of a Barnyard-Door after cows are out. However, wrongly tarnishing the Petitioner in the eyes of Jurors with of fraudulent evidence, submitted by the Government's Argument without proper vetting by the Lower Court, also, processing the Petitioner into BOP before being given a Trial Date. A statement was placed into the PSI-Report, numbered as number 74. A Federal Judge, Judge Johnsen of Rome of Georgia stated "***I do not know what kind of Law is being practiced in Western Division of Arkansas but it's not being practiced in Northern Georgia***". After, appearing in a first Hearing February 19, 2014 to hear the pending charges, months later the Petitioner was re-rested placed into ICE, in

isolation. During the Hearing the Federal Judge King of record in Atlanta stated, *"I have no idea why I am holding you Sir, (speaking to the Petitioner) but I have to hold because I am being asked to do so by the Federal Marshal's. That was the first step for the Petitioner to be processed into the Federal Bureau of Prisons without being given a Trial Date. The Lacking of Probable Cause is not an opinion by the Petitioner, it is an acknowledged statement by the Prosecutor during the April 12, 2018 Hearing at the time of the 8th Circuit Hearing.*

Also, during the same Hearing, the Court Appointed Counsel for the Petitioner informed the 8th Circuit Judges he was unable to hear because of the bad batteries in his new Hearing Aids. He became an ineffective counsel and also stopped as if he was discouraged leaving time on the clock, after one of the three Panel Judges abruptly interrupted to offer support and assistance to the Prosecutor as he was seemly having some difficultly responding to a question presented by one of the other Judges. By saying " **We are trying to help you** " The Petitioner believes the unexplainable denials and push backs and delays, maybe an example of the Judge and his colleagues making good on the above statement and promised help. **Jury Oversights- Failing to follow the Jury Instructions** - According the multiple pages (*8th Cir. No. 3.03) Jury Instructional guideline specified by the court*, the Jury appeared to simply ignore the direction and the Petitioner's Rights. *"The evidence in this case consists of the testimony of witnesses."* But the Jury ignored the key element of witness testimony introduced by the Government into the record of the court. The Government Expert witness, a well-respected CPA, by testimony gave two of the most

compelling reasoning for doubt, favoring the Petitioner's Argument. 1. It wasn't possible to determine the expenditures and 2. Whereas, the CPA report submitted to the court, demonstrates a major discrepancy of \$43,600.00 and or 53 to 1 difference of the alleged claim by the Government's Argument in favor of the Petitioner, which creates doubt. The approved amount \$34,500 and or **23.1%** for which was approved and listed in the Budget Category for supplies materials / as Licenses Fees for ASKIA Proprietary Materials was simply ignored. However, which the Grand Jury and the Trial Jury were denied that knowledge and it likely wrongly influenced their judgments and prevented proper due diligence, depriving the Petitioner of his Sixth Amendment Rights / Fair Trial. The above calculation with the assistance of the Government's Expert Witness offer proof of the Government's Miscalculation of Funds and brings good cause for doubt with merit. The ***Government's Expert Witness during testimony stated, "There's no way to determine the expenditure of the Funds."*** If the Expert Witness gave the above testimony, as a CPA, then this justifiable doubt has acknowledged and established, according to the Jury Instructions (D&B 15.02) **You (The Jury) should weigh all of the evidence in the case"** **The Expert Witness Testimony is evidence. Therefore again reinforcing doubt,** According to The Jury Instructions (D&B 11.06), The Jury was given four elements of consideration. According to (8th Cir. No. 6.18.666A, 3.09, on Jury Instruction page No. 11, last paragraph. " **If all of these elements** have been proven beyond a reasonable doubt as to the defendant then you must find the defendant guilty of the charged under Count 1 of the indictment; **otherwise you must find the**

defendant not guilty of this crime. Despite, The perplexity of Statute 666 and The Petitioner processed into BOP before being issued a Trail Date, and held in isolation for 18 months, the incarceration of three times the suggested time by the Federal Sentencing Guideline, being denied access to the Bill of Particulars and being denied access to evidence of actual innocence are critical items. **The Government's Argument did not and could not meet the basic requirement of guilty issued by the court, to the Jury as part of the Jury Instruction for Jury guidelines and conduct.** As outlined in Jury Instruction No. 11. **The Second Element was not proven by the Government.** **The second element** according to Government's Argument Alleged Claim is the ASKIA Program started between the periods **of August 23, 2007 and the about April 11, 2008. Not according to the Evidence – it's an act of Perjury.** The Direct Exculpatory Evidence simply proves this not be true like many of the statements made by the Government's Argument. According to the Approved Program Application the ASKIA Program was approved for **30 weeks** starting July 01, 2007. The above information is reiterated and confirmed by the following evidence: The approved Application, The Budget Categories Page, it's clearly stated at the point of Initial Funding Year – July 01, 2007. The Budget Page in the Approved Program Application clearly states multitude of time and 20 times throughout the Approved document for 30 weeks. 30 weeks starting from **July 01, 2007 and 30 weeks later the ASKIA Program was officially and completed by January 25, 2008**, excluding two weeks for holiday. This is in direct contrast with the Government's Argument Alleged Claim of **August 23, 2007 and the about April 11,**

2008. The Government's Argument failed to prove the second element. According to the United States Department of Education in Washington DC/ **Grant Award Notification**, disagree with the Government's Alleged Claim. In which has an Authorizing Official Signature dated **July 01, 2007**. This is in direct contrast with the Government's Alleged Claim and the Second Element. An Affidavit Letter from the Boys and Girls Club disagree with the Government's Alleged Claim dated **July 09, 2007, the ASKIA Program was in use serving 41 students, starting 07, 01, 07**. This is also in direct contrast with the Government's Alleged Claim and the Second Element. **August 23, 2007 and the about April 11, 2008** was a false Alleged Claim submitted by the Government. The Government was unable to prove the Second Element, the program Application submitted to the Grand Jury is not the Program Application submitted by the Petitioner and it was ignored by the Lower Court. The framework for the Re-Hearing has been acknowledged by a ruling from the United States Court of the Appeals for the 8th Circuit. Ruled, on conduct, stating the Prosecutor wrongly submitted alleged evidence and the WDAR wrongly accepted 76% as evidence. In addition to the 76%, acknowledged by the 8th Circuit, The Petitioner believes this acknowledged oversight along with many other false submissions of evidence prevented the Grand Jury and the Trial Jury from its due diligence and causing the ignoring of the direction. Therefore, denying him of his Sixth Amendment Rights. The United States Court of Appeals for the 7th Circuit Ruling of the Statute 666 off set the Government's Argument. Strongly suggesting the Petitioner has been a victimized with an Alleged Claim of more five years and brings a question of doubt.

Our element of fact is ripe of being constitutionally worthy of a Rehearing, of the case 18-9181. The Case Law of Askia v. USA demonstrates Askia was denied proper access to Direct Exculpatory Evidence of Actual Innocence. The Trial Jury and Grand Jury was forced to make uninformed decision without proper due diligence and was systemically and systematically denied proper vetting. Circumventing and ignoring the Petitioner access to proof of actual innocence. Also, condoning the conduct of the United States Court Appeals for the 8th Circuit to deny Re-hearing after the court appointed counsel informed the court he was unable to hear due to bad batteries in his new Hearing Aids. This is only one of many inabilities seemingly to have been crafted to purposely deny the benefits of the Constitutional Law. To ignore basic principle and foundation of our legal system is to purposely set the wheels of injustice in motion against righteousness, because every criminal defendant has the right to proper legal representation. The court appointed counsel clearly acknowledged his lack of readiness by informing the court of his health limitations of lack of hearing. The Petitioner was denied a fair hearing. The Petitioner's believes this is proper merit and grounds for ineffective counsel with an uneven level legal playing field designed to eliminate citizens their constitutional protections. If allowed to stand, ***We The People*** and our trusted gate keepers are at-risk. The Petitioner believes this is proof of an unacceptable transgression against the principles of Sixth Amendment Rights and the intent of the United States Congress. (***See Exhibits 1 - 8***)

Educationally Your!

Kwame Askia - *Pro se* "In God We Trust"

Ex-1

for permission to pay the defendant, but did not receive permission. Sometime in 2010, the defendant claimed he wrote a grant for SSD, but was never paid by SSD. The same year, the defendant filed a lawsuit against SSD and Ellis, claiming he was never paid for services. According to Mr. Griffin, the defendant was in a relationship with Principal Sharita Giles of McEvans High School, within the SSD, who became pregnant with the defendant's child. It should also be noted that Ellis was forced to repay SSD approximately \$40,000 for fraudulent timesheets on his wife, who he had hired as an employee of SSD.

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On September 22, 2015, SA Beers contacted John Cocke, attorney for the Clarksdale Municipal School District (CMSD), in Clarksville, Mississippi, regarding Askia Learning Concepts. In the school year for 2006-2007, the school district had a contract with the defendant to provide tutoring services to students at CMSD. The contract was specifically for one school and the defendant was to receive \$34,500 for services rendered. If CMSD was satisfied with the defendant and the program, they would approve tutoring services at five (5) additional schools in the CMSD, at a rate of \$34,500 per school. According to Mr. Cocke, the defendant did not perform enough tutoring work under the first contract to justify the \$34,500. He was supposed to tutor 4.5 hours per week at the middle and elementary school; however, it is unknown how often the defendant was actually at the school, according to Mr. Cocke. Ultimately, CMSD was not satisfied with services provided by the defendant, but ended up paying the full amount of the contract. The defendant billed CMSD for \$207,000 for tutoring at the approved school and the other five schools in the district, although he did not perform any services at the other five schools, and was never approved or contracted to do so. The defendant also threatened to file a lawsuit if he was not paid by CMSD. As of today, no lawsuits have been filed against CMSD by the defendant.

Victim Impact

✓ 75. The provisions of the Mandatory Victim Restitution Act of 1996 apply to this Title 18 offense. According to Tammie Cloyes, 21st CCLC Coordinator with the ADE, the unpaid loss owed to the United States Department of Education is \$148,416

✓ 76. Adjustment for Obstruction of Justice

The defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice when the defendant refused to participate in the presentence investigation and interview process. The defendant refused to sign authorizations to release information and stated that he did not want his personal information submitted due to fears of his family being put at risk. Therefore, it is impossible to accurately determine the defendant's financial situation. It should be noted that during a bond revocation hearing on October 26, 2015, the defendant also refused to give details to the Honorable Barry A. Bryant, U.S. Magistrate Judge, as to where he had been residing upon his return to Arkansas.



W.A. HIGGINS MIDDLE SCHOOL

"BUILDING EXCELLENCE ON A LEGACY OF SUCCESS"

1749 Chestnut Street

Clarksdale, MS 38614

662-627-8550 Phone

662-627-8543 Fax

Ex-2
Reginald Griffin, Principal

Mario Keys, Assistant Principal

May 23, 2007

TO: Ms. Sadie Dorsey, Assistant Superintendent
FROM: Regional Griffin, Principal
RE: Askia Learning Concept
SUBJECT: End of Year Report

The Askia Learning Concept was utilized during the second semester in our Seventh Grade math classes. It was deemed a success for the student participants. Mr. Askia visited the classes' at least twice weekly and made additional follow-up that was not scheduled. Please refer to the teacher comments that will accompany this document.

Ex-3

GEORGE H. OLIVER ELEMENTARY SCHOOL
MRS. SHARRON MONTGOMERY, PRINCIPAL
871 RITCHIE STREET
CLARKSDALE MS 38614
662-627-8605

MEMO TO: Miss Sadie Dorsey, Assistant Superintendent

FROM: Mrs. Sharron Montgomery, Principal *jm*

RE: End of Year Report

The Askia Learning Concept was utilized at George H. Oliver Elementary School and proved to be very successful. Mr. Askia visited the classes at least twice weekly as well as unscheduled follow-ups.

Please refer to the student comments included with this document.

Professionally

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The Arkansas Department of

EducationArkansas Department of Education
21st Century Learning CentersName of Site Strong High SchoolINITIAL FUNDING YEAR July 1, 2007 – June 30, 2008

Budget Categories	Project Year 1	Project Year 2		Project Year 3	
		80% CCLC	20% Other \$	10% CCLC	30% Other \$
1. Personnel					
Adm. Costs	\$9,999.00	\$7,999.20	\$1998.80	\$6,999.30	\$2,999.70
Benefits	\$ 2,000.00	\$1,600.00	\$ 400.00	\$1,400.00	\$600.00
Site Coor.	\$10,464.00	\$8,371.20	\$2,092.80	\$7,324.80	\$3,139.20
Benefits	\$ 2,000.00	\$1,600.00	\$ 400.00	\$1,400.00	\$ 600.00
Staff	\$49,368.00	\$39,494.40	\$9,873.60	\$34,557.60	\$14,810.40
Benefits	\$ 2,000.00	\$1,600.00	\$ 400.00	\$1,400.00	\$600.00
2. Equipment (Item over \$1000)	\$ 6,700.00	\$5,360.00	\$ 1,340.00	\$4,690.00	\$2,010.00
3. Supplies/Materials	\$35,352.00	\$28,281.60	\$7,070.40	\$24,746.40	\$10,805.60
4. Professional Dev./Travel	\$11,250.00	\$9,00.00	\$ 2,250.00	\$7,875.00	\$ 3,375.00
5. Transportation (Student)	\$ 6,930.00	\$5,544.00	\$1,386.00	\$4,851.00	\$2,079.00
6. Other	\$ 12,207.00	\$9,765.60	\$2,441.40	\$8,544.90	\$3,662.10
7. Assessment (\$70 per student)	\$1,005.00	\$804.00	\$ 201.00	\$703.50	\$ 301.50
8. Total Direct Costs (1-7)	\$149,280.00	\$119,424.00	\$29,856.00	\$104,496.00	\$44,784.00
9. Total Indirect Costs (Restrictive Rate)					
10. Total Costs (1-9)	\$149,280.00	\$119,424.00	\$29,856.00	\$104,496.00	\$44,784.00

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Ex-
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President:
Mark Turner
Vice President:
Scott Fife

Vice President:
Paul Fisher



Treasurer:
Robert G. Dudley
Secretary:
Pat Jackson Compton
Executive Director:
David Wetherington

CLUBHOUSE
TAC HOUSE
1101 NORTH WEST AVE.
870-863-3808

BOYS & GIRLS CLUB

CLUBHOUSE
1201 NORTH WEST AVE.
EL DORADO, AR 71730
870-863-8753 ~ Ext 103
FAX 870-863-5461
Email: bgclub1@abctel.net

CLUBHOUSE
SOUTHEAST UNIT
1401 E. CENTER ST.
EL DORADO, AR 71730
870-881-9603
FAX 870-881-9603

Board
Ken Blackmon
Joy Brooks
Pat Jackson Compton
Elaine Downing
Robert G. Dudley
Dr. Michael Eggers
George Fennell
Scott Fife
Paul Fisher
Gary Hegi
Larry Holder
Dr. Tom Johnson
Dr. William Landers
John Lowery, Jr.
Paul Manzella
P.A. McClaugh
Madeline Murphy
Lorena Newcom
Terry Norman
David Pender
Jerry Reiba
Bob Sheppard
John Sinclair
David Skinner
John Strother
Sam Tengus
Mark Turner
Will Vance
Chris Walker
Dr. Dean Wedde
Kris White

July 9, 2007

Dear Kwme:

The Boys & Girls Club of El Dorado wishes to show its support for the 21 Century Learning Center Grant and Strong/Hutting School District to make this program a success.

1. There are 41 Kids that live in Strong Arkansas that are members of the Boys & Girls Clubs of El Dorado.
2. These kids spend an average of 5 hours a day at the Club.
3. The starting date for this program was 7/01/07 to present.
4. The collaborative letter of agreement between the Boys & Girls Club of El Dorado and the 21 Century LLC Grant was sent . . .

The Boys & Girls Club of El Dorado is proud to partner with the 21 Century Learning Center Grant and Strong/Hutting School District. If your organization could help us out with some of the transportation cost, I would appreciate it. Now it cost the Club \$18.00 an hour for the bus driver plus the gas.

Sincerely:

A handwritten signature in black ink, appearing to read "David Wetherington".

David Wetherington
Executive Director

Senior Board
Dr. Dan Brown
Natalie Davis
Rodney Laddies, Sr.
John Lowery, Sr.
Bob Manzella
W. C. Rolen, Jr.
Garfield Solomon

JUL-9-2007 03:55P FROM: BOYS AND GIRLS CLUB

TO: 17705771151

P.1.2

BOYS & GIRLS CLUB OF EL DORADO
1201 NORTH WEST AVENUE
EL DORADO, AR 71730
PHONE: 870-863-3808

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U.S. Department of Education

Washington, D.C. 20202

GRANT AWARD NOTIFICATION

PR/AWARD NUMBER: S287C070004

RECIPIENT NAME: ARKANSAS DEPARTMENT OF EDUCATION

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TERMS AND CONDITIONS

(1) This grant is made subject to the provisions of all applicable acts and regulations.

This grant is subject to the provisions of Title IX of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001, the General Education Provisions Act (GEPA) and the Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 76, 77, 80, 82 and 85.

(2) UNDER THE "TYDINGS AMENDMENT," SECTION 421(b) OF THE GENERAL EDUCATION PROVISIONS ACT, 20 U.S.C. 1225(b), ANY FUNDS THAT ARE NOT OBLIGATED AT THE END OF THE FEDERAL FUNDING PERIOD SPECIFIED IN BLOCK 6 SHALL REMAIN AVAILABLE FOR OBLIGATION FOR AN ADDITIONAL PERIOD OF 12 MONTHS.

(3) This award is subject to the terms and conditions (if any) identified in Attachment T regarding the approval of your consolidated State application.

AUTHORIZING OFFICIAL

DATE

Ver. 1

ED-GAPS001 (01/98)

Page 1 of 1

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JURY INSTRUCTION NO. 11

Ex- 7

The crime of embezzlement, theft, fraud, conversion or misapplication concerning a program receiving Federal funds, as charged in Count 1 of the indictment, has four elements, which are:

One: the defendant was an agent of Askia Learning Concepts;

Two: during the period between on or about August 23, 2007 and on or about April 11, 2008, the defendant intentionally embezzled, stole, obtained by fraud, converted to his own use without authority, or misapplied property of a value of \$5,000 or more as part of a single scheme or plan;

Three: the property was under the care, custody, or control of Askia Learning Concepts;

Four: Askia Learning Concepts received benefits in excess of \$10,000 in the one-year period beginning on or about August 23, 2007, pursuant to a federal program involving a grant.

As used in this instruction, the term "agent" means a person authorized to act on behalf of Askia Learning Concepts and includes an employee, partner, director, officer, manager, or representative.

To "embezzle" means knowingly, voluntarily and intentionally to take, or to convert to one's own use, the property of another which came into the defendant's possession lawfully.

To "steal" means knowingly to take with the intent to deprive the owner permanently or temporarily of the rights and benefits of ownership.

To "obtain by fraud" means to act knowingly and with intent to deceive or cheat, usually for the purpose of causing a financial loss to someone else or bringing about a financial gain to oneself or another.

"Conversion" means the deliberate taking or retaining of the money or property of another with the intent to deprive the owner of its use or benefit either temporarily or

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EX -

JURY INSTRUCTION NO. 11

permanently. Conversion includes the misuse or abuse of property as well as use in an unauthorized manner or to an unauthorized extent.

To "misapply" means to use the funds or property of Askia Learning Concepts knowing that such use is unauthorized, or unjustifiable or wrongful. Misapplication includes the wrongful taking or use of the money or property of Askia Learning Concepts by its agent for his own benefit, the use or benefit of some other person, an unauthorized purpose, even if such use benefitted Askia Learning Concepts.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged under Count 1 of the indictment; otherwise you must find the defendant not guilty of this crime.

8th Cir. No. 6.18.666A, 3.09