18-9384 ORIGINAL

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE FREYA D. PEARSON,

PETITIONER

On Petition for Writ of Mandamus

PETITION FOR WRIT OF MANDAMUS

Freya D. Pearson, (Pro Se)
Aliceville Federal Prison
Po Box 4000
Aliceville, Al 35442

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IN THE SUPREME COURT OF THE UNITED STATES

In Re Freya D. Pearson

PETITION FOR WRIT OF MANDAMUS

Freya D. Pearson, Pro Se

INTERESTED PERSONS

Freya D. Pearson (Petitioner), Pro Se

Kathleen D. Mahoney, AUSA

Jane Pansing, AUSA

STATEMENT REGARDING ORAL ARGUMENT

Petitioner Freya D. Pearson waives Oral Argument, although she will participate in argument should the Court determine that it would be helpful to its resolution of the Petition.

BRIEF OF PETITIONER" Freya D. Pearson

I. RELIEF SOUGHT

In this case Petitioner Freya D. Pearson respectfully petitions for a Writ of Mandamus directing the Eighth Circuit Appellate Court to:

1. Rule on her Direct Appeal
2. Provide New Counsel
3. Release Petitioner Immediately on Bond Pending Appeal
4. Order an In Camera Review of the Grand Jury Transcripts
5. Provide Petitioner with a copy of the Grand Jury Transcripts
6. Provide Petitioner with ALL discovery, including Prosecutor and IRS Case Agent Notes
7. Subpoena the Attorney calls between Petitioner and her Atty from Alderson FPC for the 3 dates requested
8. Sanction Prosecutor Mahoney for Prosecutorial Misconduct and Suborning Perjury
9. Sanction Defense Attorneys involved in the case for Ineffective Assistance of Counsel
10. Properly investigate the allegations against the Prosecutor, and Attorneys

II. ISSUES PRESENTED

1. Whether the undue 21 month delay caused by the Eighth Circuit Appellate Courts refusal to rule on Petitioners Direct Appeal, warrants the issuance of a Writ of Mandamus to compel action by the Court.
2. Whether the Petitioner should be released immediately on Bond
3. Whether the Petitioner is entitled to Counsel, and whether the Courts repeated denial of Counsel violated her rights.
4. Whether 18 U.S.C 1957 is void for vagueness, and/or whether its misuse is Un-Constitutional
5. Whether the Prosecutors participation in the use of False testimony warrants dismissal of Petitioners Indictment
6. Whether or not the District Court has Jurisdiction when the Prosecutor manufactures probable cause, manipulates the Grand Jury into issuing an indictment not resting on truth, and participates in the presentation of False/Fabricated testimony designed to produce a "Tainted Indictment".
7. Whether or not a conviction under 18 U.S.C 1001 requires the Defendant to actually state something false, and if Defense Attorney was deficient by not requiring the Court to address the "Materiality" element of 18 U.S.C 1001.

III. PRELIMINARY STATEMENT

This Petition involves a Criminal case Indicted on 10-28-2014. The Direct Appeal was fully Briefed on July 19, 2017, of which the Appellate Court has declined to rule. This case is about a defaulted loan. Petitioner had a written loan agreement with Ms. Wilson (Alleged Victim) which required her to pay $1200 per month. Petitioner paid on time for 1.5 years, with Ms. Wilson repeated request for more money, it caused Petitioner to pay 2.4 years ahead per contract. Ms. Wilson and Petitioner agree that the Loan Agreement bore their signatures.

However, the Case Agent required a Handwriting exemplar, even though their was no signature dispute. The Prosecutor charged Petitioner in the Indictment with "Wire Fraud By Omission". The Indictment did not allege that any misrepresentation occurred, instead, she said Petitioner failed to inform the alleged victim, of what she intended to do with the loan. She did not allege in the Indictment, any "Acts to Conceal", or any "Duty to Speak". Ms. Wilson was there with Petitioner at MANY of the Prosecutors "Omission Allegations".

Petitioner was assigned a Federal Defender, on October 31, 2014, she sent DKT 30 (See Exhibit 2 Letter) to Judge Fenner to request her Federal Defender be replaced. Dkt 30 explained many instances of Prosecutorial Misconduct, and Ineffective Assistance of Counsel, proof was attached, but the Court ignored the Misconduct. Dkt 30 resulted in Federal Defender being relieved, nothing was done to address the Prosecutorial Misconduct issues raised. Please see DKT 30. Counts 1-8 involve the Petitioner being Criminally Charged for what should have been a Civil Matter.

A. FALSE/FABRICATED TESTIMONY and PROSECUTORIAL MISCONDUCT BEFORE TE GRAND JURY:

It is well settled that Due Process prohibits the Prosecutors Knowing use of False/Fabricated evidence, and/or Subordination of perjured testimony before a Grand Jury, such use can cause a indictment "not resting on truth." (Napue v Illinois, 360 U.S. 264, 269, 79 S. Ct. 1173, 3 L.Ed 2d 1217 (1959) Due Process prohibits the states "knowing use of false evidence" because such use violates "any concept of ordered liberty.")

Once defendant has made a sufficient demonstration of uncorrected false testimony, the burden should shift to the Prosecutor to "show, beyond a reasonable doubt, that the false testimony was harmless in the context of the Appellants Grand Jury decision". But, in the case of the Prosecutors Subordination of Perjured testimony, the Indictment should be dismissed. Appellant has made at least 6 accusations in Motions to the Eighth Circuit regarding the Prosecutor suborning

perjury, and Presenting False Testimony and evidence before the Grand Jury. "It is Clear" that the Prosecutor knew and participated in the falsity/fabrication, of which the Prosecutor "DOES NOT" Contest.

When it comes to "Materiality" in front of the Grand Jury, the Eighth Circuit has held, that ("...the government need not prove that a defendants false statement actually influenced or mislead a Grand Jury. Where a defendants statements Bear directly on the core issue before the Grand Jury, her false testimony "is material".) US v Winters, 592 f. Supp.2d 1105 (2009). US v Armilio, 705 F.2d 939 (8th 1983) "The Eighth Circuit quickly found her testimony "material" because it "certainly tended to impede or hamper" the Grand Jury's investigation." It would strain credulity for the Eighth Circuit to find, that when referring to a "Prosecutor and IRS Case Agent", that the "Materiality" standards would be any different, than that of a defendant.

The Prosecutor and case agent purposely presented false/fabricated testimony that bore directly on the core issue before the Grand Jury, the issue of whether or not there was a loan agreement "Signed" by the Petitioner and Ms. Wilson. The Prosecutor and case agent took a further step and Perjured themselves, by telling the Grand Jury that, not only did the defendant refuse to complete the Handwriting Exemplar that was needed to verify the signatures on the loan agreement, but they told the Grand Jury that the Petitioner "Specifically Refused to sign Ms. Wilson's Name." Then they painted a picture that the defendant forged Ms. Wilson's name on the loan agreement. They did this while in possession of the "Fully Completed" handwriting Exemplar, "Including" the signing of Ms. Wilson's name and initials. Also, I don't believe the Handwriting Exemplar was in discovery. They intended to deceive, that's probably why it was not in the discovery. I had a copy from the IRS Agents when I demanded one in CA. (See Exhibit 2)

What makes the Prosecutors ..."knowing use of Perjured Testimony different is that it involves an element of deceit, which converts the issue from the adequacy of the Indictments evidentiary basis to fraudulent manipulation of the Grand Jury that subverts its Independence." The Indictment would not have been issued except for the Perjured testimony, this Prosecutorial misconduct made a difference to the defendant, because the Grand Jury's only question was, whether or not the second witness actually "Saw" the loan agreement.

It can be argued that a Prosecutor and IRS Case Agent lying can be worse than allowing a witness to lie, because a Grand Jury trust the Prosecutor and Case Agent more than a lay witness. The prosecutors participation in manipulating, Suborning Perjury, presenting false/fabricated evidence to the Grand Jury offends every notion of Justice, violates Due Process, and undermines fairness. Prosecutor Mahoney's behavior in front of the Grand Jury and at trial is abhorrent, and

she should be held accountable. Below is the exchange in front of the Grand Jury between Prosecutor Mahoney and IRS Case Agent Heather Brittain Dahmer:

a. Q- Did you attempt to have those signatures tested by handwriting examples?
b. A- I did
c. Q- And were there some problems with that?
d. A- It was, it was inconclusive because without the original, the originals they can tell the ink and things like that, and Freya refused to, obviously, turn that over.
e. Q- Did she also refuse to provide the full handwriting sample--
f. A- Yes
g. Q- --in signing Marva Wilson's name?
h. A- Yes

Your Honor, please see "Exhibit 2". The handwriting exemplar is there, complete with the IRS agents signatures, as a witness verifying that I signed each page. The Prosecutor and Case agent lied to the Grand Jury, and their behavior is not up for interpretation, "It is Clear", they intentionally lied to the Grand Jury, to secure an Indictment. The Indictment should be dismissed.

B. 18 U.S.C 1957 VOID-FOR-VAGUENESS

18 U.S.C 1957 should be void for vagueness. Sanctions are imposed under this statute allowing Prosecutors to Criminalize Non-Criminal behavior. The current application of this Statute is being used outside of the context intended by Congress. The VOID-FOR-VAGUENESS doctrine prohibits Prosecutors from sanctioning citizens under a criminal law so vague that it fails to inform the citizens of the behavior that it punishes. It also prohibits a statute so meaningless that it allows arbitrary enforcement.

The Courts and Prosecutors have stripped all the meaning that Congress had intended from the "1957" Statute and its application conflicts with Congress's intent and the Constitution. For Example: Eight Circuit has held "the fact that the jury did not convict [defendant] on the underlying....charges does not undermine the money-laundering convictions.... the only relevant question when reconciling inconsistent verdicts....is whether there was enough evidence presented to support the conviction." United States v. Whatley, 133 F 3d 601, 605-606 (8th cir 1998).

The problem with this application is that it allows Prosecutors to convict a defendant for non-criminal behavior. Engaging in a "Monetary Transaction" over $10,000 is not Criminal, the underlying Predicate illegal offense is what makes engaging in a "Monetary Transaction" illegal under 18 U.S.C. 1957. So, if the Eight Circuit allows a conviction for 18 U.S.C 1957 to stand, without the proceeds being deemed illegal through the Predicate offense, then citizens are being convicted and sanctioned to a loss of Liberty for non-criminal behavior, and no criminal verdict should stand, for engaging in non-criminal behavior.

It is well settled that Congress intended for 18 U.S.C 1957 to be a "Money Laundering " Statute under "Racketeering" and is meant to be much more restricted than is being practiced. To allow any Circuit to create their own generic version of 18 U.S.C 1957 and change the intention of Congress, would result in a defendant being convicted under a statute, for behavior that Congress did not intend to criminalize when the statute was created.

In my case, counts 4,5,6,7 are considered violations of the law under the generic version that the Eighth Circuit has created, the version that Congress did not create. Count 4 charges for withdrawing $60,000 cash from a bank. Although the evidence reflected that a cashiers check was actually issued and made out to a Title company to buy a commercial building for business, which is not a crime. The record reflects that No cash was given to the defendant in that transaction, although

the Prosecutor falsely states that I received cash. My Attorney presented a copy of the cashiers check.

Counts 5,6,7 are transfers from a savings account to a checking account at the same bank, 2 linked accounts under the same name, and nothing more, again, non-criminal behavior with no criminal intent. 18 U.S.C. is a "Money Laundering" Statute being used outside of "Racketeering", not requiring any money to be laundered.

Inside the "Racketeering" aspect, all funds are illegal, so having a "Money Laundering" statute that criminalizes any "Monetary Transaction" over $10,000 would criminalize "Racketeering" behavior. However, outside of "Racketeering", it allows Prosecutors to punish citizens, for what would otherwise be non-criminal behavior. Such as in the instant case, being convicted of "Money Laundering", but not actually accused of Laundering, hiding, or attempting to hide any money. This Statute should be void for vagueness, at a minimum it should be restricted back to the use that Congress had intended in its creation, to be a "Racketeering" statute. My "Money Laundering" conviction should be reversed, and the indictment should be dismissed.

INTERSTATE COMMERCE

It is well established that all elements that need to be deliberated by the jury, MUST be presented to the jury. At no time did the Prosecutor argue how the Money Laundering and Wire Fraud charges affected Interstate Commerce. So, how could the jury convict on 2 charges that require Interstate Commerce to be affected, with NO argument presented to them on the subject. No reasonable jurist could make the "Nexus" to Interstate Commerce in this case, because the Prosecutor spent the majority of the trial arguing, that Petitioner lived in Missouri, and that the money was spent in Missouri. The bank accounts were opened in Missouri, and the transfers were alleged to have been made in Missouri branches. Also, I did not affect Interstate Commerce.

C. FALSE STATEMENTS 18 U.S.C 1001

Petitioner was convicted for making 3 false statements under this statute, they are below:

a. "that she had $60 in bank accounts, when in fact, on February 14, 2011, she had at least $3200 in bank accounts controlled by her."

b. "that she no other income, when in fact, she had received interest income from her Bank Of America savings account number 5535."

c. "that she lived in Kansas City, Missouri, when in fact, she moved to the St. Louis, Metropolitan area."

We will start with (a), The Prosecutor never did produce for the Jury, the Bank Statements from Bank Of America for February 14, 2011 to show that there was more than $60 in my personal Bank of America account, that was stated in the application. The application that she is referencing, only asked me for my personal information, and I answered the question that the application asked me.

The Prosecutor kept arguing that the "Government" would have wanted to know additional information. But, I was charged with making a false statement, and nothing more. It does not matter what the Government would have wanted to know, they did not ask, and I did not make a false statement to "what they would have wanted to know".

There was no evidence presented to the Jury, to determine whether or not a lie was told. Additionally, the "indictment" stated that there was $3,200 under my control. The Prosecutor never did produce a bank statement showing where she got that figure. She just made it up. However, the Prosecutor and Case Agent, told the Grand Jury, that the amount was $32,000 under my control, in order to get the indictment, not $3,200.

This Prosecutor lied to the Grand Jury, or in the indictment, I was not sure which amount she was using, and from where it was supposed to have come from, in order to defend against the charge. My Atty would not press the issue when I asked him several times. I believe that the Prosecutor told the Grand Jury $32,000 because it was a much larger number and sounded better, to help her secure the indictment. But the difference between $3200, and $32,000 is so great, that it had to have made a difference to the Grand Jury in their decision. Also, the question asked in the application was specific to me personally, not to the corporate accounts that she mentioned in passing, but never produced the accounts for. So, how could

a conviction rest on just the Prosecutors allegation, without requiring proof. Maybe her team speaking privately to the only Black Juror helped.

Next, is (b) regarding me receiving interest payments from "RAW" (Corporate) savings account 5535. The Prosecutor never did produce "any" documentation to the Jury, showing any interest payments being paid to me. No bank statements, no receipts, no transfers, no checks, no interest money coming to me at all, nothing. She just simply made the allegation. So, a conviction could not rest on this allegation, without any evidence being submitted to the Jury for them to consider.

Last is (c), that I stated that I lived in Kansas City, when in fact I moved to the St. Louis, Metropolitan area. The Head of the Housing authority had to concede that no one ever even asked me that particular question, for me to have lied to. But, if they had, I had a current lease in my name in Kansas City, and the Prosecutor did not allege that anyone else lived in my home in Kansas City. But, more importantly, I could not have lied to a question, that was "never" asked.

MATERIALITY

The Court was not presented with any argument, for it to consider, on whether or not any of the accusations in Count 9 were "Material" or not. They Jury was not presented with any "Materiality" argument either. So, a conviction cannot stand without "Materiality" being addressed. My Attorney did not even argue the point, nor did the Prosecutor bring it up. "No" conviction can stand, without a "Materiality" determination under 18 U.S.C 1001.

IV. STATEMENT OF RELEVANT FACTS

A. The Parties

1. Petitioner- Freya D. Pearson

Ms. Pearson is a Licensed Realtor and has been for over 15 years. A Citizen on the United States and Resident of Georgia.

2. AUSA- Kathleen D. Mahoney

Assistant Prosecutor and the person who Suborned Perjury and participated in manipulating the Grand Jury.

3. CJA Atty- John Justin Johnston

Attorney assigned to Ms. Pearson to fight her case. The person who stated he was more concerned with watching what he did to the Prosecutor as to not mess up his future cases.

B. Appellate Court Proceedings

On 5-2-17 Appellants Brief Filed was filed, and on 5-16-17 Appellants Motion for Release on Bond Pending Appeal was filed and it was denied on 5-25-17. The Prosecutor asked for an extension and then filed her Reply Brief on 6-28-17. Atty Johnston allowed the Prosecutors extension to extend into his vacation and then he filed an extension for more time. Appellants Final Reply Brief was then filed on 7-19-2017. Petitioner turned herself in to Alderson FPC on 5-30-17. Since then, Petitioner has filed several Motions, and all but 1 have been denied. Petitioner has filed 7 Motions requesting an Atty, asking the Appellant Court to Rule, regarding Prosecutorial Misconduct, asking for records to be subpoena, asking to be released on Bond, and asking for help. I don't know what I am doing. I am reading and teaching myself, but I am not an attorney, nor do I have their understanding and skills, and this is Prison, so I do not trust anyone in here to guide me. 7 Motions and ALL but 1 have been denied. The one filed on 12-21-18, has "no" disposition on it.

V. LEGAL STANDARDS OF WHY THE WRIT SHOULD ISSUE:

Pursuant to the All Writs Act, "[T]he Supreme Court and all Courts established by Act of Congress may issue all Writs necessary or appropriate in aid of their respective Jurisdiction and agreeable to the usages principles of Law. "28 USC 1651 (a). The preemptory Writ of Mandamus has traditionally been used in Federal Courts" "to confine an inferior Court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." Will v. United

States, 389 US 90, 95, 88, S. Ct. 269, 273, 19 L.E.D. 2d 305 (1967). The Supreme Court has established that Mandamus "will lie in a proper case to direct a subordinate Federal Court to decide a pending case."

"[A]n Appellate Court may issue a writ of mandamus when an undue delay in adjudication is tantamount to a failure to exercise jurisdiction." Paluck v. Secretary of Health and Human Services, 11 Fed.Cl. 160, 167 (Ct. Fed. Cl. 2013). ("We may issue a writ of mandamus in response to undue delay") Johnson v Rogers, 917 F.2d 1283, 1284-85 (10th Cir. 1990). Ms. Pearson realizes that mandamus "is a drastic and extraordinary remedy reserved for really extraordinary causes." This Court has determined that this extraordinary remedy "is appropriate only when the trial court has exceeded its jurisdiction or has declined to exercise it, or when the trial court has so clearly and indisputably abused its discretion as to compel prompt intervention by the Appellate Court". In Re Hood, 135 Fed. Appx. 709, 710 (5th Cir. 2005).

In the present action, the Appellate Courts delay is significantly more egregious than in Hood. The case has been pending for over 22 months. Since that time the Petitioner has been deprived of her Liberty, and has been denied the opportunity to obtain relief. By declining to adjudicate the pending Appeal, allowing her Counsel to withdraw, refusing new counsel, ignoring blatant Prosecutorial Misconduct, ignoring the former counsels divided interest, the Petitioner has been harmed. Although Defendants ordinarily must wait for final judgment to seek relief from this court, "the 'no other means' requirement" is met here because petitioner has exhausted every possible avenue of relief through the Appellate Court to no avail.

There have been no pending Motions or Hearings delaying a ruling, and the Appellate Court has denied every request from the Petitioner to "Rule". Petitioner even sent a letter to the Chief Judge asking for help, and a ruling, and received "no" response.

Here, Pearson seeks not to substitute this Petition for the ordinary trial or appellate process, but simply to obtain adjudication and relief to which she is entitled in a meaningful and reasonable time in the face of excessive and prejudicial delay. Like the Petitioner in Hood, Pearson has no means of attaining relief absent action by the Appellate Court. Pearson has a clear and indisputable right to have the Appellate Court effectively exercise jurisdiction over her case. The Appellate Courts 22 month delay in adjudicating my Direct Appeal and failure to enter a "Ruling" is tantamount to an arbitrary refusal to act that warrants issuance of a Writ of Mandamus.

Pearson also wants this Honorable Court to see the issues that her "Ineffective Counsel" has refused to raise, and the the Appellate Courts "denial" to appoint new counsel which has caused a failure to properly raise these issues and more in

her appeal. The Appellate Courts delay in "Ruling", has caused Prejudice to Pearson that cannot be remedied through any other process. The delay has caused Petitioner to "Pay a Debt to Society" that she does not owe.

With no final ruling on her Direct Appeal, and none in sight, the Prejudice created by delay brings to mind the legal maxim that "Justice delayed is Justice denied." The Petitioners right to resolution in this case is indisputable. As a result, issuance of the Writ is appropriate.

A. DENIAL OF COUNSEL

The Denial of Counsel by the Appellate Court has been damaging to the Petitioner, and has left the Petitioner without a means to properly bring all issues before the Court. In light of the fact that Petitioners formerly assigned CJA Counsel John Justin Johnston's admission of his feelings about "watching what he did to the Prosecutor as to not affect his future cases", it has left Petitioner without Effective assistance of Counsel throughout this "Entire" Judicial process, and that is Unconstitutional. Petitioner is not sure if this Writ is properly written, but Petitioner did her best, without Counsel this is a very difficult task to properly complete, especially with the non-existent resources here in Prison, and no Attorney help. We don't even have a proper working copy machine, or regular access to the one we use, and we don't have a "Microsoft Word" program or anything like it, to accomplish this Courts requirements. I need help. Someone just died here last week, the 2nd person in 1 year from lack of medical care, and the Prison is severely understaffed, so we don't have the regular things that we need, nor do we have anyone to ask for help. I have to get out of here, this is inhumane.

VI. INEFFECTIVE COUNSEL

It is well settled that when a Defense Attorneys Loyalty is divided, then the Defendant has not received Effective Assistance of Counsel. My CJA Atty John Justin Johnston sent me an email right before I turned myself in telling me that, "he had to watch what he did to the Prosecutor, so as to not affect his future cases". I was asking him, why he did not address all the Prosecutorial Misconduct like he said he would, and he expressed his concern with upsetting the Prosecutor. I turned myself in and he then expressed to me over the phone at Alderson FPC the same thing, "that he had to watch what he did to the Prosecutor so as to not affect his future cases." I followed that phone call up, with an email regarding my concerns about the phone call. (Exhibit 1). I have the 1st email that he sent to me, before I self-surrendered, in my personal email at home, and I have tried to get someone to find it for me, but they were unable. I can get it, if I had access to my email.

I wish he had expressed his feelings "BEFORE" my trial, I would have asked for Counsel without this conflict of interest. The Atty was straight forward regarding his feelings, so they can't be misunderstood, especially with all of the Prosecutorial

Misconduct that went un-addressed. Atty Johnson sent an email regarding his feelings, stated his feelings in a recorded phone call, and then responded to my email after the phone call, telling me that "he understands" my concerns regarding him telling me that "he has to watch what he did to the Prosecutor as to not affect his future cases". What else does the Appellate Court need. I have asked the Court to subpoena the recorded calls from Alderson, so they can hear his own voice. I have no problem signing whatever is needed for you to hear the call, (Ex Parte), if needed. He should not be minimizing his representation to maintain a relationship with the Prosecutor for future cases. I deserve my Atty's undivided loyalty in defending me, and I did not have it.

VII. CONCLUSION

The undue delay caused by the Appellate Courts 22 month failure to "Rule" on Petitioners Direct Appeal, and the denial of Counsel, warrants an issuance of a writ of mandamus compelling the Appellate court to promptly rule, to grant bond and immediately release Petitioner from prison, to appoint new counsel so all issues can properly be brought before the court, and to reverse my convictions. I have lived my whole life not in trouble, and this Prosecutor decides to turn my world upside down, by violating the law, she has committed more crimes in this case, than I have in my entire life, and she has yet to be held accountable. This is not Justice. Please Grant my Writ, Bond Pending Appeal, and give me new Counsel.

Respectfully Submitted,

Freya D. Pearson, Pro Se Petitioner

4-23-19
Date