No. 18-9800

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

BARTON ADAMS – Petitioner
and
JOSEPHINE ADAMS; BA Claimants

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

I. Whether the district court and the appeal court departed from the accepted and usual course of judicial proceedings throughout this case including when the court relied on *United States v. Susi*, 2007 WL 2757748 (W.D. N.C. Sept. 21, 2007) as the basis to incarcerate Dr. Adams pre-trial for over four years with no end in sight in retaliation for Dr. Adams exercising his Fifth Amendment right to remain silent and also to deny Dr. Adams's § 2255 motion. The district court, the appeal court, and defense counsel failed to recognize that the defendant in Susi was given immunity when Susi was ordered to create a pre-trial accounting in a separate order and therefore Susi's Fifth Amendment rights were not violated.

Unlike Susi, there is no second order from the district court protecting Dr. Adams from prosecution. The four plus years of pre-trial incarceration for civil contempt with no end in insight along with many other constitutional violations made Dr. Adams's signature on the 20th plea agreement offer, involuntary, and the product of ineffective assistance of counsel. I would like to point out that not one judge on the appeal court in the fourth circuit recognized the violation of Dr. Adams's right to remain silent.

Certiorari should be granted to exercise this Court's supervisory powers.

II. Whether the district court proceeded in conformity with the provisions of 28 U.S.C. § 2255, when the district court made findings on controverted issues of fact without notice to the petitioner and without a hearing, when the petitioner made a substantial showing of the denial of a constitutional right.

III. Whether a district court must for purpose of resolving an appeal of a §2255 motion accept the sworn material facts as stated by a §2255 movant as true when the district court denies § 2255 relief without an evidentiary hearing and without notice.

LIST OF PARTIES

Barton Adams is the petitioner. The United States of America is the respondent. Josephine Adams and BA, claimants.

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion-decision of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion-decision of the United States district court appears at Appendix B to the petition and is unpublished.

The opinion-decision of the United States court of appeal for the Motion for Rehearing En Banc appears at Appendix C to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided Dr. Adams's appeal was November 5, 2018. A timely petition for rehearing was denied by the United States Court of Appeals on January 23, 2019. An extension of time was granted to file the Writ of Certiorari extending the time to and including June 22, 2019. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Implicated in this case is the Fifth Amendment to the United States Constitution, which provides in relevant part that:

> 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; . . . nor be deprived of life, liberty, or property without due process of law . . . .

and the Sixth Amendment to the United States Constitution, which provides:

> This case involves the Sixth Amendment rights to criminal defendants "to assistance of counsel: "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 defense." U.S. Const. amend. VI.

Also implicated is Section 1 of the Fourteenth Amendment to the United States Constitution:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

and the Fourth Amendment to the United States Constitution, which provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The remainder of the statutory and regulatory provisions are set out in the appendices.

STATEMENT OF THE CASE

The District Court for the Northern District of West Virginia (NDWV) denied Dr. Adams's Motion to Vacate Under § 2255, filed September 23, 2015, rather summarily and acknowledged the ineffective assistance of counsel arguments only with regard to the "dual docket" issue, the court appears to have ignored well over fifteen (15) other controverted issues of fact detailed in the attachment stapled to the standard form for the §2255 motion. The attachment stapled to the § 2255 motion is titled: "Sworn Brief in Support of Motion to Vacate under 28 U.S.C. § 2255".

The attachment to the § 2255 motion was initially submitted on September 23, 2015, but was returned for exceeding the page limit. As instructed by the magistrate the attachment was refiled on 12/10/2015. The attachment that was originally stapled to the § 2255 motion was only filed in case 3:08-cr-77 as DE 1461, and not filed in 3:15-cv-111, i.e. the case number assigned to the § 2255 motion, making the additional fifteen (15) plus controverted issues of material fact, including the brandishing of a weapon by counsel easy to overlook.

The magistrate held onto the § 2255 motion for over three years and

then out of the blue, the district court judge, not the magistrate without notice and without a hearing denied the motion and ignored the attachment to the § 2255 motion, i.e. the "Sworn Brief in Support of Motion to Vacate under 28 U.S.C. § 2255". The brandishing of a weapon by defense counsel was also overlooked as well as many other constitutional violations.

The court then relied on its improper denial of Dr. Adams's § 2255 motion to deny several other motions as "moot".

The constitutional violations are numerous and blatant. The four plus years of unlawful pre-trial incarceration with no end in sight in retaliation for Dr. Adams exercising his Fifth Amendment right to remain silent, the defect in the venue, the constitutional speedy trial violation, the brandishing of a weapon by defense counsel, the numerous violations of the court's rules and the government's lack of an expert witness for trial is overwhelming. Dr. Adams is factually innocent. The indictment should have been dismissed years before Dr. Adams filed his § 2255 motion.

REASONS FOR GRANTING THE WRIT

I. **The district court and appeal court did not proceed in conformity with the provisions of 28 U.S.C. § 2255 and the constitution, when the district court made findings on controverted issues of fact without notice to the petitioner and without a hearing.**

1. Dr. Adams's was incarcerated pre-trial for over four (4) years with no end in sight in retaliation for Dr. Adams's refusing to waive his constitutional rights to remain silent. The district court ordered Dr. Adams to create a trial exhibit accounting of his personal finances to be used at trial to prosecute both Dr. Adams and his wife. Dr. Adams's attorneys failed to identify Dr. Adams's Fifth Amendment as a natural person to remain silent and failed to identify Dr. Adams's Fourth Amendment protection against unlawful search and seizure.

2. To convince Dr. Adams that his constitutional rights were not being violated, and to force a plea agreement, counsel gave Dr. Adams misadvise about the United States v. Susi, 2007 WL 2757748 (W.D. N.C. Sept. 21, 2007) case, in doing so, counsel failed to identify the second order in the Susi case that protected the defendant's Fifth Amendment

rights. In its order on the § 2255 motion, the N.D. W.Va. district court cites Susi in support for its statement that "the defendant cites no legal authority for the proposition that the order was, in fact, unlawful."[1] The order issued on Sept. 21, 2007, in Susi is an order to repatriate assets and relies on authority granted in 21 U.S.C. § 853(p).

In addition, in the Susi case, there was another order issued on Sept. 20, 2007, an Order Directing Defendants to Identify and Disclose the Nature and Location of Property Subject to Criminal Forfeiture, that required the defendants to "itemize, in the form of an affidavit submitted to the court all property held by them or on their behalf that is described in the indictment as being subject to forfeiture, whether such property is located in the United States or elsewhere, and shall disclose the location of such property." Further, defendants were ordered to disclose property no longer in their possession and to whom such property was transferred. The final paragraph of that order states that "the information disclosed by any defendant in terms of the affidavits made in compliance with this Order will not be used in the prosecution of an

[1] The legal authority not recognized by the court is the Fifth Amendment right to remain silent. It was the court that acted without legal authority.

offense alleged to have been committed by the person who made the disclosure."

The final paragraph of that order states that "the information disclosed by any defendant in terms of the affidavits made in compliance with this Order will not be used in the prosecution of an offense alleged to have been committed by the person who made the disclosure." That is, the order protected the defendants by explicitly stating that the evidence they were ordered to provide would not be used against them.

Thus, the defendant in Susi, Fifth and Fourth Amendment rights, were not violated. The orders in Dr. Adams's case clearly do not protect Dr. Adams Fifth and Fourth Amendment rights, as did the order to disclose property in the Susi case. The order directing Dr. Adams to identify those assets is an illegal order, therefore Dr. Adams's pre-trial incarceration for civil contempt for over four years was illegal, a matter of law not recognized by counsel. After four years of unlawful pre-trial incarceration for civil contempt with no end in sight, Dr. Adams was coerced into accepting the 20th plea agreement offer or else as advised by counsel Dr. Adams's pre-trial incarceration for civil contempt will continue indefinitely. There should be no doubt that an effective

attorney would have researched the Susi case and not let his client be illegally incarcerated pre-trial for civil contempt for over four years when there was no civil contempt, counsel failures made the plea agreement and waiver involuntary and the product of ineffective assistance of counsel.

The Susi case helps established a Fifth Amendment right violation, not the opposite as **erroneously claimed** by the district court and the appeal court.

3. I would like to point out that the district court approved the accounting submitted by Dr. Adams's private attorneys for the request to appoint CJA counsel and for permission to proceed in forma pauperis. But, at the same time the district court ordered the pre-trial incarceration of Dr. Adams for over four years with no end in sight for not submitting a personal accounting similar to the accounting submitted to proceed in forma pauperis and for the appointment of CJA counsel that the district court just reviewed and approved.

4. In addition, in the Susi case the defendant had something to repatriate. In Dr. Adams's case, there was nothing for Dr. Adams to repatriate, therefore because Dr. Adams had nothing to repatriate the district court ordered an accounting, identical to accounting already in the district court's possession for the request for CJA counsel and to proceed in forma pauperis? At the same time the district court ordered Dr. Adams to submit an accounting the district court found that Dr. Adams was unable to assist in his own defense??

5. Instead of protecting Dr. Adams's constitutional rights, counsel misadvised Dr. Adams that he did not have the Fifth Amendment Constitutional right to remain silent and that Dr. Adams would have to remain incarcerated on the civil contempt charge indefinitely. The unlawful pre-trial civil contempt incarceration and the denial of bail hearings was used to force Dr. Adams's signature on the 20th plea agreement offer. Dr. Adams already rejected 19 plea agreement offers and made numerous demands for a trial.

6. Counsel also used *Armstrong v. Guccione*, 470 F.3d 89 (2nd Cir. 2006) when he misadvised Dr. Adams that his civil contempt pre-trial incarceration for over four years did not violate any constitutional rights and will continue indefinitely. Armstrong is not applicable because Armstrong was a corporate office and as a corporate officer has no Fifth Amendment right, but Dr. Adams is a natural person with Fifth Amendment rights, a constitutional right not recognized by counsel, not recognized by the district court and not recognized by the appeal court in order to improper coerced a plea agreement.

7. Counsel also misadvised Dr. Adams that the only way the district court would end the civil contempt finding was if Dr. Adams plead guilty and that even if Dr. Adams was found innocent at trial the civil contempt incarceration will continue indefinitely. During the four-plus years of unlawful pre-trial incarceration for civil contempt, Dr. Adams rejected nineteen (19) plea agreement offers, because he is innocent, and he wanted a trial.

8. Dr. Adams's counsel failed to identify that the government relied on an inapplicable statute 21 U.S.C. § 853 as the statutory basis, in its efforts to keep Dr. Adams in pre-trial jail and for pre-trial forfeiture of a substituted asset, because the indictment **does not charge** a violation of any part of Title 21, a matter of law that was not recognized by counsel. The charges in the indictment against Dr. Adams have **nothing to do with** Title 21. The charges in the indictment against Dr. Adams have **nothing to do with** Title 21.

9. In addition to the unlawful pre-trial use of 21 U.S.C. § 853, Dr. Adams's attorneys failed to identify that the district court did not have the authority to issue a forfeiture order. According to **Rule 32.2 Criminal Forfeiture**, a court **must not** enter a judgment of forfeiture in a criminal proceeding unless the indictment or information contains the **applicable statute**. The applicable statutory basis for this health care fraud case is 18 U.S.C. §1345, not 21 U.S.C. § 853. The charges against Dr. Adams have nothing to do with Title 21. The indictment does not state the applicable statute. **Rule 32.2** does not allow for forfeiture **unless** the applicable statute is stated in the indictment. Counsel was

ineffective when he misadvised Dr. Adams to agree to a forfeiture order that violates the mandatory requirements of **Rule 32.2.**, especially when the government had no qualified expert for trial.

10. Not only did Dr. Adams attorneys fail to assist Dr. Adams when the district court violated Dr. Adams's Fifth, Fourth, and other Constitutional amendment rights, Dr. Adams's attorneys failed to identify his constitutional right to a trial in the **proper venue**, a structural error. Dr. Adams's practice was in the Southern District, not the Northern District of West Virginia (NDWV). According to. *United States v. Auernheimer*, 748 F.3d 525, 538-539 (3rd Cir. 2014), **proper venue** is twice guaranteed in the Constitution. The government erroneously claimed venue in the NDWV allegedly because of payment in the NDWV, but payment is a consequential element in a healthcare case and not an essential element, a constitutional violation not recognized by counsel, the district court and the appeal court. The NDWV is the wrong venue and counsel in order to force a plea agreement misadvised Dr. Adams that the NDWV was the proper venue when the NDWV is the wrong venue. A consequential element is not

sufficient to establish venue. *United States v. Auernheimer*, 748 F.3d 525, 538-539 (3rd Cir. 2014).

11. The government must have known when it was preparing the indictment that it was violating Dr. Adams's Constitutional right to **proper venue**, because in the indictment the government **changed the wording** of Title 18, United States Code, Sections 1347 to make it appear that the NDWV was the **proper venue** when it was not the **proper venue**, an **"or"** was changed to **"and"** in Section 1347, to make it appear in the indictment that payment is an essential element.

12. Counsel misadvised Dr. Adams about his **absolute right** to have the Tax count heard in California (where Dr. Adams resided when he filed his 2006 tax return). Counsel's advice was deficient because Section 3237(b) gives the defendant an absolute right to be tried for the alleged violation in the district of their **residence,** which in this case is California. A motion under Section 3237(b) is not directed to the court's discretion, but rather Congress intended that defendants be given an

absolute right to be tried for alleged violation enumerated in Section 3237(b) in the district of their residence regardless of consideration of convenience. *United States v. Workman*, 26 F.R.D. 183 (ED. III 190); SRep no. 1952, 1958 U.S. Code & Adm. News, pp 3261, 3262. See also, *United States v. Youse*, 387 F. Supp 132 and *United States v. Auernheimer*, 748 F.3d 525, 538-539 (3rd Cir. 2014).

The Third Circuit stated that harmless error should not apply in Venue matters: [h]olding that defective venue could ever be harmless would arguably reduce this constitutional protection to a nullity. The defective venue is a **structural error**, and the defective venue was not recognized by Dr. Adams's counsel.

13. Dr. Adams was originally arrested at the **port of entry** in Northern California, the district court in San Francisco **released** Dr. Adams on his own recognizance - signature bail and gave Dr. Adams two weeks to go to West Virginia, Dr. Adams arrived a day early.

14. I would like to point out that although all international money laundering charges were later dismissed, the filling of such charges apparently made Dr. Adams's arrest at the port of entry San Francisco, the **proper venue**, this defect in the venue was not recognized by counsel.

15. Counsel misadvised Dr. Adams to plead guilty to Count 13, the tax count, even though his amended tax return timely prepared by a CPA-Tax Attorney, showed **no taxes due**. No taxes were due in part because of the "excluded" provider issue stated in the indictment. Simply put, if a provider is "excluded" all payments must be returned, no taxes return needs to be filed and no taxes are owed, all payments must be returned regardless of the veracity of any accusation of healthcare fraud, a matter of law not recognized by counsel. Dr. Adams's CPA-Tax Attorney informed Dr. Adams that as a matter of law Dr. Adams is factually innocent of Count 13. Nonetheless, Dr. Adams's attorney personally chosen by the district court judge advised Dr. Adams to plead guilty to Count 13.

16. Counsel failed to advise about Dr. Adams factual defenses to each claim in the indictment, instead, counsel repeatedly misadvised Dr. Adams that even if he was found innocent at trial, he would not be released from jail because of the civil contempt finding.

17. Dr. Adams's counsel also misadvised Dr. Adams to plead guilty to Count 10, the healthcare fraud count. There was no healthcare fraud. The government's "**grand jury expert**" recanted his grand jury testimony and informed the district court he would not testify at trial. After four-plus years of searching for a replacement expert, the government could not find a qualified expert for trial. The indictment should have been dismissed, after the government's "grand jury only expert" recanted his grand jury testimony and informed the court he would not testify at trial.

18. Counsel failed to advise Dr. Adams that the indictment in addition to being filed in the wrong venue is duplicitous, vague and defective, and as a matter of law should have been dismissed. ***United States v. Eury,***

Dist. Court, MD North Carolina, 2015, Nos. 1:14CR39-1, 1:14CR39-5. The government claimed it would provide more specifics, details and submit special interrogatories about the charges as soon as it found a new expert witness, but the government never found a qualified replacement expert to testify at trial. The government never produced a report actually written by a replacement expert as ordered by the district court. The indictment should have been dismissed, nor did the government provide more specifics, details or special interrogatories about the charges.

19. The district court in West Virginia repeatedly made it clear that the only reason Dr. Adams was not released on bail was the court civil contempt finding, but the civil contempt finding was unconstitutional, based on the wrong statute and wrong case law, i.e. Susi, a matter of law not recognized by Dr. Adams' attorneys, that keep Dr. Adams from working and paying for his own attorney. Dr. Adams originally paid $200,000.00 to a Washington DC attorney that was forced off the case at the start of the case. The district court judge then without any request from Dr. Adams for a CJA counsel personally chose Dr. Adams's counsel.

The CJA counsel request form was not submitted by Dr. Adams, but by his private attorneys. Dr. Adams has never saw the CJA counsel request form submitted to the court, but a blank copy of the CJA counsel request form appears to satisfy the district court's request for an accounting, so why was there a civil contempt finding? Dr. Adams should have been allowed to remain free on bail in order to work and pay for his own counsel.

20. I would like to also point out that Dr. Adams's has a physical disability because of blood disorder that was misdiagnosed as a mental health problem. For a period of approximately three years, the court found that Dr. Adams could not assist in his own defense, nonetheless counsel permit Dr. Adams to be arraigned on superseding indictments even though D. Adams was already declared unable to assist in his own defense by the district court, and at the same time ordered incarcerated pre-trial for civil contempt while incompetent?

21. After about four years of unlawful pretrial incarceration in numerous county jails around the country, Dr. Adams's depression at the time of the 20th plea agreement offer progressed to a **psychosis** (after four years of unlawful pre-trial incarceration with no end in sight) and because Dr. Adams had an adverse reaction to several anti-psychotic medicines, Dr. Adams was off medicine and not competent during plea bargaining and sentencing stages for the 20th plea agreement offer. Nonetheless, counsel went ahead with the 20th plea agreement offer and sentencing, the district court allowed Dr. Adams's attorney to answer the court's questions during the plea and sentencing stages. The assistance Dr. Adams received from counsel fell far below constitutional standards.

22. Dr. Adams's attorney failed to identify the procedural bar caused by the violations of Dr. Adams's constitutional right to a **speedy trial** because the government could not find a qualified medical expert witness for trial, the government needed to delay the trial. In order to delay the trial for the first three or four years or so of pre-trial incarceration without the required bail hearings years while the

government searched for an expert witness for trial, Dr. Adams was put in transit for over two years, but as a pre-trial detainee, **transportation** time for treatment and evaluations is limited by statute to ten (10) days. Instead of being transported within the allowed 10 days, Dr. Adams's was transported from the holding court in Martinsburg, West Virginia to different federal prisons and county jails around the country allegedly to receive treatment even though no medical treatment was prescribed, and no treatment was recommended or offered by any healthcare provider.

The speedy trial clock is only stopped for the days of **actual treatment,** such as a daily medicine to get better. Dr. Adams handwritten request for a competence hearing, even though a personal right was denied. Dr. Adams's statutory and constitutional right to a speedy trial was violated when Dr. Adams was left in transit and transported for over two years and hospitalized for months allegedly for treatment without receiving any treatment, a constitutional speddy trial violation and procedural bar not recognized by counsel.

> The exclusion in § 3161(h)(4) applies to the dates of a defendant's actual treatment rather than the lack of such treatment due to the failure to transport that defendant. *See, e.g., United States v. Howard*, 590 F.2d 564, 568 n. 3 (4th Cir.1979); *White v. United States*, 273 Fed.Appx. 559, 564 (7th Cir.2008)(unpublished opinion). The delay here is a result of the failure to transport Defendant for treatment, and this contingency is specifically provided for in § 3161(h)(1)(F). "The Speedy Trial Act amendments specifically indicate that anything over ten days in transport is presumptively unreasonable[.]" *United States v. Castle*, 906 F.2d 134, 138 (5th Cir.1990). The suggestion that this provision does not apply to transportation which is tangentially caused by a defendant's illness would eviscerate § 3161(h)(1)(F), and implausibly render it applicable only to those who are mentally and physically healthy but are nevertheless being transported for examination or hospitalization. *US v. Hernandez-Amparan*, 600 F. Supp. 2d 839 - Dist. Court, WD Texas 2009.

23. Counsel gave Dr. Adams incorrect information about the key terms of the plea agreement, including but not limited to:

(a) failure to identify the fact that since Dr. Adams was already incarcerated for more months than the equivalent of a 50-month sentence, the 50-month sentence in the binding Rule 11 (c) (1) (C), 20th plea agreement offer was therefore not possible;

(b) misadvised Dr. Adams about who had the statutory authority to issue credit for time served;

(c) misadvised Dr. Adams that the waiver still allowed him to appeal the civil contempt case, the protective order and numerous other orders related to the civil contempt case.

24. When Dr. Adams instructed his attorney to reject the 20th plea agreement, instead of following Dr. Adams's unequivocal instructions to reject the 20th plea agreement offer attorney Stephen Herndon, who maintain a massive collection of weapons at his law office, decided to brandish a weapon at Dr. Adams. While making no verbal threats, Mr. Herndon made it clear that Dr. Adams would never have a trial. Brandishing of a weapon by counsel ended the attorney-client relationship, made Dr. Adams's signature on the 20th plea agreement offer, involuntary, and left Dr. Adams without counsel at critical stages of plea bargaining and sentencing. The brandishing of a weapon by attorney Stephen Herndon was reported in writing to the district court. I should point out that District Court Judge Bailey must personally know about Attorney Herndon's collection of weapons in attorney Herndon law

office and about at least one other incident when attorney Herndon brandished a weapon (a gun) during a bar fight why working as an attorney for the State of West Virginia in Charleston, West Virginia. Dr. Adams also has a letter from attorney Herndon which helps substantiate the timely reporting of attorney Stephen Hendon brandishing a weapon.

25. Dr. Adams's attorney allowed the government and district court to breach the agreement when it computed his sentence based on the "written" judgment not the "oral" pronouncement of sentence controls. The Rule 11 (c)(1)(C) plea agreement was for a **50-month sentence.** The government breached the agreement by calculating Dr. Adams's sentence based on the "written" judgment and not the "oral" pronouncement of sentence or binding plea agreement, in doing so, Dr. Adams ended up serving the equivalent of an **85-month sentence.** The oral pronoucment "not consecutive: the written judgment left out the word "not". A year or two later, the district court without notice and without a hearing modified Dr. Adams's sentence. The district court realized that Dr. Adams already served many more months than the binding plea agreement of 50 months, so the district court decided to

modify the sentence and not to give Dr. Adams credit for a large part of the time Dr. Adams spent in transit for treatment and evaluations breaching the plea agreement.

26. Dr. Adams appeal attorney David Schles was appointed on March 12, 2013, but never spoke to Dr. Adams, never consulted with Dr. Adams and never returned any of Dr. Adams telephone calls. Mr. Schles ignored Dr. Adams unequivocally written instructions and failed to file a notice of appeal for **amended** judgment of conviction filed on July 15, 2013.

Mr. Schles ignored Dr. Adams unequivocally written instructions to appeal:

Orders issued before March 12, 2013:

(1) November 21, 2008, Protective Order.

(2) December 10, 2008, Order for an Accounting.

(3) March 20, 2009, Order Finding Contempt.

(4) October 22, 2012, Protective Restraining Order.

(5) January 14, 2013, Preliminary Order of Forfeiture.

(6) February 14, 2013, Amended Preliminary Order of Forfeiture.

Orders issued after March 12, 2013:

(1) July 11, 2013, Second Amended Preliminary Order of Forfeiture.

(2) July 15, 2013, Amended Judgment of Conviction.

(3) April 23, 2014, Amended Judgment of Conviction.

(4) June 25, 2014, the Final Order of Forfeiture.

(5) July 15, 2014, the Final Order of Forfeiture.

(6) Case 3:09-mj-00024-JPB-JES, forfeiture and seizure orders.

Instead of consulting with Dr. Adams or returning Dr. Adams's phone calls or following Dr. Adams unequivocal written instruction, Mr. Schles appealed the wrong judgment of conviction.

Mr. Schles appealed the March 5, 2013 judgment of conviction (the wrong judgment of conviction). Allegedly because there was an appeal waiver, Mr. Schles filed an Anders brief for the wrong judgment of conviction. Mr. Schles failed to follow Dr. Adams unequivocal instruction to file a notice of appeal for the amended judgment of conviction filed on July 15, 2013, that had no appeal waiver as part of the binding plea agreement.

The alleged "appeal waiver", did not include any amended judgments including the amended judgment of conviction filed on July 15, 2013, i.e. the judgment Dr. Adams's appeal attorney failed to appeal. It did not matter if the amended judgment is amended a little or a lot, there was no waiver of appeal for an amended judgment.

27. There are other procedural bars and constitutional violations not recognized by Dr. Adams's attorneys that are part of Dr. Adams's § 2255 motion, and related files and records, including the failure to raise appropriate challenges to, violations of Dr. Adams's Constitutional rights under the First, Fourth, Fifth, Sixth and Eighth Amendments.

II. The Supreme Court has held that when a defendant has foregone trial in reliance on ineffective assistance of counsel, there is sufficient cause to order a government response to and full hearing on the §2255 motion. Lee v. United States, 137 S. Ct. 1958 (2017).

Based on the motions, files and records the petitioner has foregone trial in reliance on ineffective assistance of counsel.

III. **The facts in Dr. Adams §2255 motion and sworn brief in support of his motion and related filing must for purposes of resolving an appeal must be presumed to be true and must be reviewed in the light most favorable to the movant.**

The Fourth Circuit already decided that for purposes of resolving an appeal of the dismissal of a §2255 motion without holding a hearing the material facts as stated in my §2255 motion and related filings must be presumed to be true and must be reviewed in the light most favorable to the movant. ***United States v. Poindexter,*** 492 F.3d 263 (4th Cir. 2007).

IV. **Transfer of jurisdiction**

On July 05, 2016, jurisdiction was ordered transferred from the NDWV to the (VAED). Dr. Adams' §2255 motion was filed as required in the sentencing court almost months earlier i.e., September 23, 2015. The order transferring jurisdiction to VAED had an "addon clause" that states in the discretion of the transferring court the sentence could be deleted i.e., vacated. There was no reason to have this "addon cause" about deleting the sentence, unless jurisdiction to delete i.e. vacate the sentence (§2255 motion) was included in the transfer order.

The VAED accepted and assumed jurisdiction on July 14, 2016, and

promptly granted Dr. Adams's motion to reduce restitution, that is, the same motion to reduce restitution the NDWV denied over a year later by NDWV. It clearly makes no sense for NDWV to out of the blue denied that very same motion already granted by VAED, because jurisdiction was already transferred to VAED and the VAED granted Dr. Adams's motion to reduce restitution. The fourth circuit apparently thinks it is OK for two different district court to issue an opposite decision on the motion to reduce restitution.

In regards to the accounting order, district court in the NDWV approved Dr. Adams's private attorney's financial accounting for his request to appoint CJA counsel and for permission to proceed in forma pauperis. But, at the same time the district court ordered the pre-trial incarceration of Dr. Adams for over four years with no end in sight for not submitting a personal accounting similar to or identical to the accounting for a CJA and to proceed in forma pauperis already approved by the NDWV.

Also, the initial repatriation order makes no sense. In Susi, the defendant had something to repatriate. In Dr. Adams's case, there was

nothing for Dr. Adams to repatriate. Because there was nothing to repatriate the district court changed the repatriation order to an accounting order, but Dr. Adams's private attorneys already submitted an accounting to the district court for the request for CJA counsel and to proceed in forma pauperis. To make it more difficult to follow at the same time all the accounting request were overlapping the court found that Dr. Adams was unable to assist in his own defense??

The Following documents were filed on or after 09/23/15.

a. September 23, 2015: Document 1413, Motion Under 28 U.S.C. 2255 To Vacate, Set Aside, or Correct Sentence by A Person in Federal Custody).

b. September 23, 2015: Document 1461, Sworn Brief in Support of Motion to Vacate under 28 U.S.C. § 2255), initially submitted on September 23, 2015, returned for exceeding page limit, then refiled on 12/10/2015 as instructed.

c. September 23, 2015: Document 1413-1, Declaration of Barton Adams in Support of 28 U.S.C. 2255.

d. October 5, 2015: Document 1425, Supplement to Declaration in Support of 28 U.S.C. 2255.

e. December 10, 2015: Document 1461-1 (Exhibit A, Motion to Remand and Order from 4th Circuit Court of Appeal.

f. January 17, 2017: Document 1557, MOTION to Supplement the Motion to Vacate Under 28 USC 2255 re 1413 MOTION to Vacate under 28 U.S.C. 2255.

g. January 17, 2017: Document 1557-1, Declaration in Support of Motion to Supplement the Motion to Vacate Under 28 USC 2255.

h. November 8, 2016: Document 1549 (Styled as 2255 Petition), Counsel Failed to File Various Notices of Appeal or Appear at the Defendant's Resentencing.

i. December 28, 2016: Document 1554, Motion to file in Case number 3:15–CV–111 Defendant ADAMS'S SWORN BRIEF IN SUPPORT OF 2255 MOTION.

j. January 9, 2017: Document 1556 (Memorandum regarding the failure of counsel to file notices of appeal after being specifically and unequivocally instructed.

k. January 17, 2017: Document 1557 (Motion to Supplement the Motion to Vacate Under 28 § USC 2255 re 1413.

l. February 14, 2017: Document 1559 Declaration Regarding Attorney David Schles Ineffective Assistance of Counsel.

m. April 11, 2017: Document 1560 (List of Orders that defense attorney failed to appeal for the pending Motion to Vacate Under 28 U.S.C. § 2255).

n. April 11, 2017: Document 1561 (Declaration in Support of List of Orders that defense attorney failed to appeal).

o. May 30, 2017: Document 1562 (List of Twelve Orders that Defense Attorneys Breached Their Constitutionally Imposed Duty to Consult.

p. June 5, 2017: Document 1563 (Declaration Regarding Defense Attorney David O. Schles Breaching His Constitutionally Imposed Duty to Consult).

q. June 26, 2017: Document 1564 (MEMORANDUM Regarding Ineffective Assistance of Counsel for the Tax Count in the Plea Agreement.).

r. June 26, 2017: Document 1565 (Declaration in Support of Memorandum Regarding Ineffective Assistance of Counsel for the Tax Count in the Plea Agreement.

CONCLUSION

Because this case presents a question implicating this Court's supervisory powers, certiorari should be granted to exercise this Court's supervisory powers to review whether the court of appeals in reviewing criminal cases had departed from accepted and usual course of judicial proceedings.[2]

Dr. BARTON ADAMS, pro se
Petitioner, June 22, 2019

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[2] See, e.g., Nguyen v. United States, 539 U.S. 69 73-74 (2003) (granting certiorari to exercise this Court's supervisory powers to review whether court of appeals in reviewing criminal cases had departed from accepted and usual course of judicial proceedings).