

April 5, 2019

Chief Justice John G. Roberts, Jr.  
Supreme Court of the United States  
1 First Street, NE  
Washington, DC 20543

Re: Fourth Circuit Case Number 18-6595

Dear Chief Justice John G. Roberts, Jr.:

I am a physician and surgeon who was incarcerated pre-trial for over four years allegedly for civil contempt; there was no civil contempt.

The district court in West Virginia said I was civil contempt because I refused to waive my Fifth Amendment right as an individual to remain silent. The district court ordered me to create a detailed pre-trial accounting of my personal finances to be used as a trial exhibit by the government to prosecute me, to prosecute my wife and for the pre-trial forfeiture of substituted assets. I did not create the trial exhibit and was incarcerated pretrial. Because my pre-trial incarceration was falsely labeled civil contempt I was denied required bail hearings. Since the government's medical expert witness for the indictment recanted his grand jury testimony and said he would not testify at trial, the government needed to incarcerate me to force a plea agreement, no matter how many years it took and no matter how many plea bargains offers I rejected during the four-plus years. In total, I rejected nineteen (19) plea agreement offers because I am innocent, and I wanted a trial. The district court now basically admits that my four plus years of pre-trial incarceration was unlawful, but that this procedural bar should be overlooked because they got me to sign the 20<sup>th</sup> plea agreement offer.

My privately retained Washington DC attorney Barry Coburn was pushed off the case at the very start of the case, but was allowed by the district court to keep the entire \$150,000.00 retainer I paid for a 2-3 week trial and was also allowed to keep most of the additional \$50,000.00 I

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paid for trial expert witnesses, even though no expert witness was retained and there was no trial, as long as Barry Coburn did not return to West Virginia, the alternative would be very ugly for Mr. Coburn.

Although I made no request for a CJA attorney, nonetheless a CJA attorney was appointed to replace Barry Coburn. I had no problem working and paying for my own attorney and I also had the means to borrow money to pay for my own attorney. Instead of letting me borrow money for my own attorney, the district court ordered me to borrow all the money I could borrow and give it to the district court. I borrowed \$140,000.00 and gave it to the district court as ordered. Stealing \$140,000.00 from me denied me my right to pay for and retain counsel of my choice. Keeping me from working with the false charge of civil contempt kept me from paying for and retaining the counsel of my choice.

The district court wanted to decide who would represent me. It was the district court judge John Preston Bailey himself who decided who would represent me in "his courtroom". A series of local CJA attorneys were appointed and after allegedly spending over a \$1,000,000.00 more on CJA attorneys, because of false the civil contempt finding I still could not even get bail. I was initially arrested near my home in California and the US District Court judge in California gave me signature bail and two weeks to go to West Virginia on my own, I reported a day early.

CJA attorney Stephen Herndon explained to me that district court judge John Preston Bailey's ex-wife reported judge Bailey's cocaine use to the FBI during a background investigation. Attorney Herndon convened to me that when the FBI interviewed him about judge Bailey's cocaine use he did not tell the whole truth to the FBI and in the end judge Bailey was indebted to attorney Herndon, hence the \$1,000,000.00 plus dollars in CJA funds for local CJA attorneys. According to the local newspaper reports Judge Bailey enjoys going the festival called "Jamboree in the Hills", adding support to attorney Herndon's claims about judge Bailey. Several requests for a copy of the CJA billings were rejected by judge Bailey; so much for the first amendment rights in West Virginia.

(3) My West Virginia CJA appeal attorney David Schles was appointed on March 12, 2013, but never spoke to me, never consulted with me and never returned any of my telephone calls. Mr. Schles ignored my unequivocally written instructions and failed to file a notice of appeal for amended judgment of conviction filed on July 15, 2013.

Mr. Schles ignored my 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 me and returning my phone calls Mr. Schles appealed the wrong judgment of conviction. Mr. Schles appealed the March 5, 2013 judgment of conviction (the wrong judgment). Mr. Schles failed to follow my unequivocal instruction to file a notice of appeal for amended judgment of conviction filed on July 15, 2013. The involuntary appeal waiver did not include any amended judgments.

(4) My West Virginia CJA attorney failed to properly inform me about and failed to raise appropriate challenges to, violations of my Constitutional rights under the First, Fourth, Fifth, Sixth and Eighth Amendments.

(5) My West Virginia CJA attorney failed to identify my constitutional right to a trial in the proper venue. My practice was in the Southern District, not the Northern District, not a difficult venue issue to understand. I read that proper venue is twice guaranteed in the Constitution, so it must be important.

(6) My West Virginia CJA attorney misadvised me to plead guilty to the tax count even though my amended tax return timely prepared by a competent CPA-Tax Attorney, not from West Virginia showed **no taxes due**. My new CPA-Tax attorney said my accountant in West Virginia was just making trouble for me to bleed money out of me.

(7) My West Virginia CJA attorney failed to identify that the government relied on an inapplicable statute 21 U.S.C. § 853, in its efforts to keep me in pre-trial jail because the indictment does not charge a violation of any part of Title 21, a simple matter of law that was not recognized by counsel.

(8) My West Virginia CJA attorney 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 statute for this health care fraud case is 18 U.S.C. §1345. The indictment does not state the applicable statute.

(9) My West Virginia CJA attorney failed to advise me that the indictment including Count Ten was not only filed in the wrong venue but is intentionally vague, making the mandatory "traceable to" requirement impossible. In addition, the amount of forfeiture in the plea agreement is excessive, a constitutional violation not recognized by counsel.

(10) My West Virginia CJA attorney gave me incorrect information about the key terms of the plea agreement, including but not limited to:

- (a) failure to identify the fact that since I was already incarcerated for more months than the equivalent of a 50-month sentence, a

50-month sentence in the 20<sup>th</sup> plea agreement offer was therefore not possible;

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

(c) misadvised me about my right to appeal the civil contempt case and numerous orders related to the civil contempt case.

(11) My West Virginia CJA attorney allowed the government to breach the agreement when it computed my 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 my sentence based on the “written” judgment and not the “oral” pronouncement of sentence, in doing so, I ended up serving the equivalent of an **85-month sentence**.

(12) My West Virginia CJA attorney failed to advise me about my factual defenses to each claim in the indictment, instead he repeatedly misadvised me that even if I was found innocent at trial I would not be released from jail because of the civil contempt finding.

(13) My West Virginia CJA attorney failed to identify the procedural bar caused by the violations of my constitutional right to a speedy trial. The government could not find a qualified medical expert witness for trial. My physical health problem involving a blood disorder was intentionally misdiagnosed at a mental health problem. To delay the trial, I was put in transit for **over two years**, but as a **pre-trial detainee**, transit time is **limited** by statute to ten (10) days. I was transported to different federal prisons around the country allegedly to receive treatment, but no medical treatment was prescribed, and no treatment was recommended 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.

(14) After about four years of unlawful pretrial incarceration, I was more than depressed. My useless West Virginia CJA attorney was informed by two mental health professionals that my depression escalated to psychosis and because I was having an adverse reaction to several anti-psychotic medicines I was off medicine and not competent. In response, the district court allowed my attorney to answer the court's

questions, because I was not competent, during the plea and sentencing process.

There are other procedural bars and constitutional violations not recognized by my West Virginia CJA attorney that are part of my 2255 petition, but the above should suffice as grounds to hold some sort of hearing on my 2255 petition.


From what I have read 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 (4<sup>th</sup> Cir. 2007).

### **REQUEST FOR A SIXTY-DAY EXTENSION OF TIME TO FILE A WRIT OF CERTIORARI**

I need a sixty-day (60) extension to file a Writ of Certiorari because I recently suffered another heart attack. My heart problems are directly related to being incarcerated pre-trial for over four years with rarely having access to fresh air, sun or exercise because I was sitting in a county jail cell for civil contempt because I would not waive my Fifth Amendment rights.

If possible, please appoint counsel because an attorney should have been appointed at the district court level.

Respectfully submitted,

  
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