No. 19-6704

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE FREYA D. PEARSON,
PETITIONER

On Petition for Rehearing of Writ of Certiorari

PETITION FOR REHEARING OF WRIT OF CERTIORARI

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

QUESTIONS PRESENTED

1) Should 18 U.S.C. 1957 be Void-For- Vagueness, and/or Is the current application of 18 U.S.C. 1957 Un-Constitutional , and should it be "RESTRICTED" back to the original use that Congress intended when the Statute was created.

2) When the Appellate Court itself rather than the Jury reaches a "Materiality" determination, does it exceed Article III case and controversy powers given to them by the Constuition.

3) When an Attorney states that he only defended the defendant against a portion of the Defendants case, due to his fear of a negative result from the Prosecutor on his future cases, was his decision to deny a full . defense, a violation the defendants sixth amendment Constitutional Rights to Counsel?

LIST OF PARTIES

All Parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition are as follows:

Freya D. Pearson, Petitioner

United States of America, Respondent

IN THE SUPREME COURT OF THE UNITED STATES

IN RE FREYA D. PEARSON

Case #_____

PETITION FOR "REHEARING" OF WRIT OF CERTIORARI

Freya D. Pearson Petitions for a Rehearing of my Writ of Certiorari from the Supreme Court of the United States.

OPINIONS BELOW

On May 6, 2019 the Eighth Circuit Court of Appeals Affirmed the convictions of the District Court. Writ of Certiorari was denied on November 12, 2019.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1)

STATUTES AND CONSTITUTIONAL PROVISIONS

Fourteenth Amendment

Sixth Amendment

Eighth Amendment -cruel and unusual punishment

Article III case and controversy Powers of the Constitution

STATEMENT OF THE CASE

Pearson was indicted on 10-28-14 on a nine count indictment. My Direct Appeal was Fully Briefed on July 19, 2017, and was partially adjudicated on May 6, 2019. Mandate was issued May 27, 2019. I filed a Writ of Certiorari on August 3, 2019, and it was denied on November 12, 2019. I am Requesting my case to be reheard.

I was not represented by Counsel although I have repeatedly requested Counsel. I was accused of "Wire Fraud "By Omission" and accused of receiving a loan from a private citizen, and failing to disclose what I was going to do with the proceeds. The Indictment did not allege ANY "Acts to Conceal", which are required to be in the indictment for a Wire Fraud "By Omission" charge, according to the Eighth Circuit ruling in US V Steffen, 687 F.3d at 1113-16 (8th Cir 2012). Eighth Circuit stated that US V Steffen will be the Precedent for the Eighth Circuit for "Fraud By Omission" cases.

However, the Appellate Courts Affirmation was "inconsistent" with its own Precedent. You can see the split by the Judges in the Dissent by Judge Kelly, a split that clearly needs clarity. Judge Kelly's Dissent was consistent with the Precedent set in US V. Steffen (8th Cir 2012) regarding the elements needed to Affirm a "Fraud By Omission" conviction, as well as her views on this case being outside of the Elements for Wire Fraud without the "Fraud By Omission" standard, but it conflicts with the other 2 Judges on the panel. What is the rule for criminal "Fraud by Omission" cases, and shouldn't there be an amended Jury instruction. To allow this Affirmation to stand, is a Miscarriage of Justice. Especially with a charge that needs clarity, and actual guidelines for the Courts to follow. Judge Kelly stated "under "Steffen" there was insufficient evidence to support these convictions".

Their is NO other "Fraud By Omission" case that is criminal and has gone to trial in any Circuit, and clearly the Eighth Circuit is conflicted by what standards to follow. The only cases to come close, using "Fraud by Omission" that are criminal, are "Honest Services" cases, which have a "Duty to Speak" built in just by the nature of the charge, this case does not.

The Eighth Circuit amended the charges in the Indictment. Pearson was not charged with, nor accused of the allegations that the Eighth Circuit Affirmed. They created scenarios that were not presented by the Prosecutor.

18 U.S.C. 1957 Should be Void-for-Vagueness and/or Restricted back to the intended use by Congress.

REASONS FOR GRANTING REHEARING:

1. Appellate Court failed to Adjudicate ALL claims- and is in need of clarity on "Fraud By Omission" Standards

2. Their was a Defect in the Prosecution- District Court Proceeded Without Jurisdiction

3. Ineffective Assistance caused Pearson to miss her opportunity to have a Hearing regarding the "Defect"

4. Pearson's Counsel was allowed to Withdraw without a hearing, or Notice to me of the Withdrawal request

5. Appellate Court Exceeded its Article III case and controversy Powers

6. 18 U.S.C. 1957 should be Void-for-Vagueness

A- THE APPELLATE COURT FAILED TO ADJUDICATE ALL CLAIMS

. (A1)- I submitted additional appellate claims on 12-21-18, and it was accepted to be adjudicated with the appeal. The issues were not ALL Adjudicated. There is a Defect in the Prosecution when the Prosecutor Knowingly presents Perjured testimony to the Grand Jury, regarding the core issues for them to decide. When a Prosecutor "Knowingly" presents perjured testimony to the Grand Jury, it converts the issue from an evidentiary basis, to fraudulent manipulation of the Grand Jury, which subverts its Independence. Ordinarily Prosecutorial Misconduct, and Ineffective Assistance of Counsel issues are heard in 2255, however, a few of the issues here are interrelated, and affect the Fairness of these Judicial Proceedings, Jurisdiction, and amount to a MISCARRIAGE OF JUSTICE.

Prosecutor Mahoney and the Case Agent told the Grand Jury, that I refused to complete the handwriting exemplar, that the Case agent required. They specifically told the Grand Jury that I refused to sign Ms. Wilson's name & initials, in particular. This was false, I have included a copy of the fully completed Handwriting exemplar as Exhibit __. The Grand Jury found this information "Material" in their decision to indict, because, the ONLY question, that the Grand Jury asked the second witness was, "Did you actually see the loan agreement", when the witness stated that we both told her, that we had a loan agreement, the Grand Jury asked again, "yes, but did you actually see it". The core issue for the Grand Jury to decide, was whether or not we had a loan agreement. So when the Prosecutor Knowingly Presents Perjured Testimony to the Grand Jury, in order to manipulate them into believing that the loan agreement was forged by ME, at the very least, the Prosecutor has subverted the Grand Jury's Independence, and abused the "Trust", that the Grand Jury and Courts have in the Prosecutors obligation, to refrain from underhanded dealings, an obligation that plainly rest upon her. The Grand Jury Indictment is how Jurisdiction is conferred upon the District Court, so if there is a Defect in the Prosecution, then the District Court was without Jurisdiction to proceed. That should have been an issue that my Attorney addressed, but with his divided Interest, between his loyalty to the Prosecutor and his future clients, my best interest were ignored.

This Issue was not addressed. The District Court proceeded "without" Jurisdiction, and my Attorney let them, without a fight.

(A2)- In the Original Appeals Brief submitted on 7-19-2017, the Attorney presented issues regarding whether or not the acts to conceal should have been in the Indictment, with a "Fraud By Omission" charge. The Appellate Court failed to rule on the issue of whether or not "acts to conceal" should be in the indictment. The Prosecutor failed to include any "Acts to Conceal" in the indictment, which conflict with the Eighth Circuit ruling in US v Steffen (8th 2012). Wire Fraud "by Omission" procedures need to be properly defined in the Eighth Circuit, because it will also require an amended Jury Instruction, and so far, the Eighth Circuit just affirmed a conviction for a charge of "Wire Fraud By Omission", with a "Wire Fraud by Misrepresentation" Jury instruction. It seems that no Judge wants to be the first to address the issue, but the District Court is denying JOA's, and the Appellate Courts are affirming Convictions for the charge.

The Eighth Circuit has a Jury instruction for one charge, and is applying it to another charge, that requires different Elements needed to convict. Clarity is needed. The Eighth Circuit has a Wire Fraud Jury instruction, which requires a Misrepresentation, however, Prosecutors are now adding a Wire Fraud "by Omission" charge, one that does not require a Misrepresentation to occur, it requires an "Omission" to occur, and "Fraud By Omission" has its own elements needed, those elements being, "Acts of Concealment", and/or a Duty to speak", none of which are addressed in the current Jury instruction for Wire Fraud without the Omission charge. None of which was included in my Indictment. The issue of an amended Jury instruction being needed for this particular charge, was addressed at the bottom of the "ORDER" in US v Steffen (8th Cir 2012), but it has yet to be "amended" by the Court. It matters in a case like this, where the indictment "ONLY" alleges Wire Fraud "By Omission" as the reason for the Wire Fraud charge. Clarity is needed. This conviction should not stand.

(A3)- In the filing from 12-21-2018 the claim of the Prosecution admittedly tampering with a Juror was not addressed in the Appeal. This issue affects the Fairness and Integrity of the whole trial. My attorney should have removed that Juror, and asked for another Jury Pool. The Prosecutor tampered with the ONLY Black Juror in the entire Jury pool. That most definitely means that I did not have a Jury of my peers, and that the Prosecutor targeted this Black Juror to gain a benefit.

B. INEFFECTIVE ASSISTANCE OF COUNSEL- From Above # 3,4,5 combined in (B)

(B1)- I am being punished for not having the skills necessary to relay to the Courts in the proper manner what the issues are in the case. The Courts state that when a Pro Se defendant presents documentation, that it is given a certain amount

of "leniency", but the reality is, leniency is a relative term. Since the Court has no clue of what the defendants arguments are, until it receives the issues in a Filing, it has no way of knowing whether or not the actual issues or Constitutional violations are properly/fully brought before the Court. In this case, Pearson has used the wrong vehicle, (Writ of Mandamus) to attempt to find relief, now a Writ of Certiorari, to find relief, and both documents have been denied. Pearson has been so busy with trying to research and prepare these documents, that she was not aware of part of the process, which was a "rehearing en banc" through the Appellate Court. I have been dealing with the "Mandamus", and then the Supreme Court made a mistake in the filing, then the Appellate Court ruled in the midst of her correcting that mistake, which took a whole "Motion" to be created to Justice Gorsuch. Then the Prisons copier was broken and the staff refused to make copies. I am not an Attorney, but you all have treated me as if I should be. You dismiss, or don't realize the real life obstacles, that we often have to deal with, you assume that the simple things in the whole process, are always just that, simple. Like a Supreme Court filing, that the clerk made a mistake on, not so simple for a layman, to figure out 3 deadlines and 3 documents at the same time.

The issues here are enough to have the convictions set aside, as Judge Kelly has said in her Dissent, but because I am not "Presenting" the case in a manner that is acceptable to the Court, relief is being denied, remedies are being exhausted. I need Counsel. I have YET to even see a copy of what my Counsel filed for his withdrawal.

I have YET, to see a Supreme Court Justice, that is ok with a Prosecutor, "Knowingly Presenting Perjured testimony", and yet the issue is being ignored in this case. The standards for Certiorari are so high, that "Fairness & Justice" are often denied, and a citizens Freedom, has become secondary, to a Legal Process that they know little about. Jurisdiction was manufactured by the Prosecutor, and I have been incarcerated over 2 years and deprived of Counsel, which is Un-Constitutional. The Supreme Court should exist to correct In-Justice, not let it pass because the defendant is unaware of how to properly present an argument.

There is evidence of a CJA attorney, telling his client, that he gave deficient representation, in order to maintain his relationship with the Prosecutor, and ALL the Court needs to do, is Subpoena a call and hear the Attorneys own voice say it. Why won't they, it is no longer a defendants word against the attorney, if you have a recorded call. I should not have to wait in Prison for a 2255 when both behaviors are so blatant. This bar is too high to address Misconduct. Citizens should not suffer when this much Misconduct is Present in a case. How can you allow a CJA attorney to intentionally provide deficient representation, when you can stop it. Why would you keep assigning citizens, to this Attorney, knowing, that he intends to Yield to the Prosecutor, and not fully represent his client. This is Un-Constitutional. Whether you hear my case or not, I am

requesting that you DON'T ignore this Attorneys, nor the Prosecutors behavior. We need proper representation. I need it.

Justice Sotomayor, Justice Ginsburg, Justice Roberts, Justice Alito, Justice Thomas, Justice Kagan, Justice Kavanaugh, Justice Breyer, and Justice Gorsuch . When a Country, begins to spend more money, depriving its citizens of their freedom, than it does defending it, then that is a Country, becoming absent Liberty.

C. THE APPELLATE COURT AMENDED MY CHARGES

(C1)- Pearson's Tax Evasion charge in the indictment, had an allegation of ONLY "failing to file a Return", and NOTHING else, which is insufficient for the felony charge of Tax Evasion. There were no "acts to evade" mentioned in the indictment. However, the Appellate Court stated, "Pearson did not pay taxes on the funds (which amount to $122,186), was aware of the Duty to pay Federal income tax..." "This Court Affirms the conviction for Tax Evasion because the government proved a tax deficiency, willfulness, and affirmative acts constituting evasion". On the contrary, the Government failed to allege "ANY" acts to evade in the indictment nor at trial, and that is not up for interpretation, because the government ONLY alleged "Failing to file a Return" and NOTHING else, no other verbiage was there to interpret. The government is required to send a deficiency to the last known address as a matter of LAW. In this case, although the government had my current address, the Government sent the deficiency notice to an address from 2001, they sent Federal Agents to my current address, they had pictures of my house, they had a current address in the 3 emails that I sent the Case Agent "asking her if I had a tax deficiency", plus the government had a fax number in the emails as well, and yet they chose to send the "Deficiency Notice" to an address from 2001. They had the Tax Returns with an address on them from 2010, and Yet they VIOLATED the Law and sent the 'Deficiency Notice" to an address from 2001, which is CLEARLY NOT the last known address. My Attorney should have argued this point, but he refused to. Contrary to the Appellate Courts conclusion, the Government has NOT proved a Deficiency within the guidelines set forth in the LAW. The conviction should be set aside, this is a MISCARRIAGE OF JUSTICE.

Furthermore, how can the Appellate Court say that the funds were beyond the reach of the IRS, when they were in 2 linked checking/savings accounts, at the same bank that they were wired to, a local bank (Bank Of America), INSIDE of the United States. I am confused as to why the IRS could not reach them, at Bank Of America. What is the Appellate Court talking about? This assessment by the Court does not make any sense, and yet I remain incarcerated from this statement.

D. "MATERIALITY" WAS DETERMINED BY THE APPELLATE COURT, NOT THE JURY IN COUNT 9

The Appellate Court is expanding what the Prosecutor charged in the Indictment. The Prosecutor chose the specific date of 2-14-11 in the indictment, for the date that the False Statements were alleged to have been made. The Eighth Circuit simply ignored that FACT. The Eighth Circuit Affirmed a conviction for a charge that is different than what the Prosecutor charged in the indictment. The Prosecutor was "LIMITED" to the date that he alleged in the indictment, and the Appellate

Court has allowed that date to be extended. I was charged with False Statements 18 U.S.C. 1001 (1), which REQUIRES me to have made a False statement, and the Appellate Court affirmed a conviction stating that "the Government would have wanted to know" additional information, not for me making a false statement. They amended the charge.

"Materiality" is REQUIRED under 18 U.S.C. 1001 (1), and it is supposed to be determined by the Jury, NOT the Appellate Court. The Appellate Court is NOT allowed to make a "Materiality" determination "AFTER THE FACT" for the Jury, as they have done here. The Appellate Court has exceeded Article III case and controversy Powers granted to it by the Constitution. Nowhere has the issue of "Materiality" been made by the Jury. How could they have made that determination, when the Prosecutor has not produced 1 bank statement in the record, for the date in question, with the figures that would be needed for the date charged to make that type of determination. The Prosecution tampering with the Jury had an effect, on how this jury is viewing evidence, they are giving the Prosecutions "Word" alone, weight, in their decision, and it should carry none. There were 3 false statements alleged to have been made in Count 9, 1)that I received no other income, (yet I am alleged to have received interest income from a Corporate account ending in 5535) Of which "NO" 5535 bank statement was produced to prove "ANY" interest amount. 2) That I lived in Kansas City Missouri , when in fact I lived in St. Louis Missouri- 3) That I had $60 in bank accounts (Bank Of America). We have yet to receive what the amount was in the Bank Of America account regarding the $60, no statement was produced from the account whatsoever, so NO "Materiality" determination can be determined from that alleged statement. The Government had to concede, that NO ONE ever asked me the question of "where do you live", ALTHOUGH, the lease was in my name, the utilities were in my name, and NO ONE else lived at the Kansas city address, so clearly the place was mine. The Prosecutor stated in the indictment, that I received interest income, but never produced "any" statement providing the "amount of interest", alleged to have been received from the "account" that it said the money came from, on the date that the indictment alleged it happened or "any" date from that account, nor was anything produced to show that interest was given to "me" at all. Not 1 document. For the sake of argument, what could the Appellate Court be basing its "Materiality" determination on, if nothing was presented by the Prosecutor. This information and/or lack of information, was in the factual record before the Appellate Court.

The Appellate Court affirmed a conviction for False Statements, WITHOUT requiring the Prosecutor to produce "1" document to back up the allegation. The Appellate Court did not hold the Prosecutor to the date alleged in the indictment of 2-14-11 either. The Prosecutor is stuck with the date that it indicted me for, and the Appellate Court is not requiring them to be held to the date that it charged. It would be a "Miscarriage of Justice" to allow the Appellate Court to make a "Materiality" determination for the Jury, or to allow an "Allegation" by the Prosecutor to substitute as evidence.

E. 18 U.S.C. 1957 SHOULD BE VOID FOR VAGUENESS, ITS CURRENT APPLICATION IS UN-CONSTITUTIONAL

18 U.S.C. 1957 should be void-for-vagueness. Sanctions are being imposed under this statute allowing Prosecutors to criminalize Non-Criminal behavior. The current application of this statute, goes beyond what Congress intended, when the statute was created. 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 invites arbitrary enforcement.

In this case, there was no "mens rea", which is necessary for a violation of 18 U.S.C. 1957, from a citizen transferring funds from their saving to their checking account, and NOTHING more. There was no criminal intent in the transactions that were charged under this statute, nor was there an allegation of any criminal intent. The indictment ONLY accuses me of making the transfers, and nothing more, which is insufficient.

The problem with the application of this statute Circuit wide, is that it allows Prosecutors to charge and convict citizens for non-criminal behavior. Behavior that in and of itself, was not criminal at the time of the act. It only became criminal when the Prosecutor arbitrarily titled the transactions/behavior under 18 U.S.C. 1957, and the Courts are allowing Prosecutors to make non-criminal behavior, criminal, in order to pad a case against a defendant.

Engaging in a monetary transaction over $10,000 is not criminal. 18 U.S.C. 1957 was created to criminalize "Racketeering" behavior, not ordinary financial transactions done by citizens in ordinary life. Allowing this Statute to be used outside of Congress's intended purpose for this statute, allows Prosecutors to criminalize non-criminal behavior, that was not criminal at the time of its action. Calling the non-criminal behavior, criminal, by retroactively using 18 U.S.C. 1957, to do so, when there was no criminal intention at the time, is Un-Constitutional.

In my case, I stand convicted of "Money Laundering", and NOT accused by the Prosecutor in my indictment or at trial, of actually Laundering, hiding, or attempting to hide "ANY" money. It is impossible for a citizen to defend against the way this statute is being mis-applied. This should have been argued at Oral Arguments. This Statute should be void-for vagueness or at a minimum, restricted back to what Congress intended when the statute was created.

F. APPELLATE COURT OPERATING OUTSIDE OF ITS AUTHORITY

The Appellate Court is doing way more than deciding whether the evidence presented should sustain a conviction, they are adding facts that were not presented or charged in the indictment, and are allowing Affirmations for things that the indictment "did not charge", and for behavior that the "indictment did not allege". They have constructively amended the charges for the government. I needed an Attorney to address these issues. This Affirmation is not consistent with the authority Granted to the Appellate Court under Article III. The Appellate Court is supposed to review evidence, that has already been presented, NOT re-litigate and add weight to evidence that was not argued or presented by the government in District Court. When the government falls short of presenting evidence, the convictions should be reversed. To affirm the governments convictions, by adding arguments that they themselves did not present, is Un-Constitutional. For the Appellate Court to Affirm convictions, based off of it arguing the governments case for them, goes beyond the authority that the Appellate Court has been granted. The convictions should be reversed.

I have NOT had the opportunity to Defend myself, against the arguments that the Appellate Court is making for the government in its affirmation, because this is the first time that they are being Presented, and it is by the Appellate Court, NOT the government. The arguments that the Appellate Court has made, for their reasons in Affirming the convictions were not Presented in the District Court by the government. They are not reflected in any record presented to the Appellate Court. This is far more than a review of the factual record before them, they are creating a trial factual record themselves. The convictions should be reversed.

INEFFECTIVE ISSUES THAT AFFECTED SENTENCING

My Attorney was ineffective in ignoring Prosecutorial Misconduct, and diminishing his representation to protect the Prosecutor. However, in my Count 8 (Tax Evasion) he failed to prepare a tax return, with the proper allowable deductions, that I was allowed. By him failing to do so, it caused me to be sentenced in a Higher Sentencing category, than I was supposed to. Had he prepared a Return, with the proper deductions, then my restitution amount would have been below $500K, and my sentencing guideline category, would have been lower, and I would have received a lower guideline range for sentencing. It would be time served now.

Wherefore I PRAY this Honorable Court to:

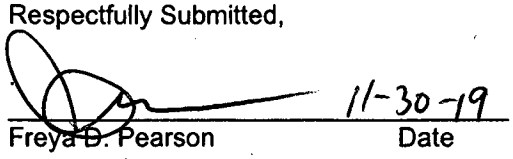
1. REVERSE MY CONVICTIONS
2. Give Me Counsel to argue my case "properly" before the Court, with the opportunity to raise "all" claims
3. Order the Appellate Court to Adjudicate ALL of my claims and give me Oral Arguments within 30 days

4. Void 18 U.S.C. 1957 or at a minimum "RESTRICT" it back to its Congress's original intention

5. To Reconsider the arguments in my original Writ OF Certiorari

6. To release me while my case is pending

Respectfully Submitted,



11-30-19

Freya D. Pearson Date