DOCKET NO.: _____

19-6197

SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,

PLANTIFF-APPELLEE

V.

DONALD STEVEN REYNOLDS

DEFENDANT-APPELLANT

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Is the Sixth Circuit's holding in Martinez v. United States, that the 25 page limit under Local Rule 7.1 applies to §2255 Motions, inconsistant with Rule 2(b), which places no page limits on §2255 motions (or 2254 motions);

2) Can the Government contravene 2255 Rules 4(b) & 5(b), which directs that it must file an answer addressing all allegations in the §2255 motion, when directed to do so by the district court if the motion is not summarily dismissed, by filing a "pre-answer" motion to strike the §2255 motion for excess pages that the district court took no issue with in it's preliminary review;

3) Does a district court's preliminary review of §2255 or §2254 motions exceeding a local rule page limit and order directing the respondant to file an answer, implicity grant permission to exceed such page limits;

4) Does a district court abuse its discretion in granting a motion to strike §2255 motion for excessive pages without also determining whether such an action is in the interest of justice and does not undermine the principle of this court that the purpose of a civil pleading is to facilitate a proper decision on the merits.

CORPORATE DISCLOSURE

The parties to the proceeding in the Court whose judgement is sought to be reviewed are accurately set out in the caption of the case. No corporate disclosure statement, as required by Rule 29, is required.

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JURISDICTIONAL STATEMENT

1. Reynolds seeks review of the judgement and opinion of the United States Court of Appeals for the Six Circuit which is dated June 26, 2019, Case Number 19-1332.

CONSTITUTIONAL PROVISIONS

Sixth Amendment to the United States Constitution, The Guarantee of Counsel at trail.

STATUTORY PROVISIONS

Title 18, United States Code, Section 2252A, Set out verbatim in the Appendix G.

DISTRICT COURT'S JURISTDICTION

The district Court's Jurisdiction comes from 18 U.S.C. §2252A

TABLE OF AUTHORITIES

STATEMENT OF THE CASE

While the scope of this petition is limited to the review of the Questions presented and every subsidary question fairly included therein, in the interest of justice the Court should take a notice of the outlying factors related to the presented questions. Following indicting Reynolds on three Child Pornography counts, namely 18 U.S.C. §2252A, §2252A(a)(2) and §2252(5)(B)(Distribution, Receipt and Possession), At Trial the Government:

1. Presented Screenshots From a P2P Software Program Never Installed on Reynolds computer, and falsely testified that the ScreenShots Displayed a completely different P2P software program.

2. Did not inform the jury of the absence of Reynolds at a time of discovered deleted images. Case Agent Blanton testified this is where he began his investigation. As well as other critical time periods discovered in the turned over discovery post conviction from Appellate Attorney Satawa.

3. Did not inform the jury on the day of the executed search warrant when the FBI took custody of Reynolds computer, S/A Martin of the FBI reported via 302 report that "No images or video's containing child pornography were located" [on the subject computer] by the FBI Fornesic Software Program ImageScan 3.02A.

4. Presented False Evidence claiming Frostwire 4.21.7 was installed April 7, 2011, only to present Evidence from a different witness Forensic Examiner Sharp that it was not installed until May 23, 2011. With No Correction to the Jury.

5. Presented testimony Gov't witness Sharp used the Frostwire Log Report to compile his timeline of Child Pornography Activity, But failed to investigate the Frostwire Log Report Samples provided by Sharp. These Log Report Samples contained personal documents including a 1099 from 2010 created by wdsharp on 1/31/2010. Demonstrating the Hard Drive information could not have been derived

from Reynolds Computer but was derived from a computer from wdsharp.

Additionally Reynolds Trial Counsel Failed to:

1. Impeach Gov't witness Agent Blanton who filed False Reports and gave False testimony during the Trial Testimony.

2. Investigate the facts of the case including the Gov't presenting Evidence GUID #00BDDA86D24B7FC15B557DBC5BE03E00 is from the installation process of Limewire 4.21.3, but presented testimony and reports that claim that the GUID # 00BDDA86D24B7FC15B557DBC5BE03E00 belonged to the installation of Frostwire 4.21.7 a different P2P software program unavailable April 7, 2011.

Furthermore, Reynolds Appellate Counsel Failed to:

1. Raise the claim of Prosecutorial Misconduct on direct Appeal for failing to correct False Testimony.

2. Raise the claim that during closing arguments the Prosecution misstated the facts in evidence and made claims not in evidence.

Due to the complexity of the issues, Raised in his §2255 motion Reynolds went thru great pains to keep the facts of the case as concise as possible. As is noted above Reynolds has brought to the district court's attention mitigating factors that if proven true would put a light on a great injustice. While Reynolds has maintained his innocence through out it was only after receiving a portion of the discovery turned over pre-trial to attorney John Freeman a former AUSA for the Eastern District of Michigan, was the corruption in what Reynolds maintains was a malicious prosecution exposed. At Trial case agent FBI S/A Ryan Blanton testified he conducted an undercover session April 7, 2011 with Reynolds Computer (Subject

computer). Agent Blanton placed into evidence as Gov't Ex. 1A-1P 16 Screenshots which deplicted various timeframes of his undercover session. Agent Blanton Falsely testified these screenshots displayed a GUID from the installation of Frostwire 4.21.7. Noted above these screenshots actually display a GUID from the installation of Limewire 4.21.3 a completely different software vendor. The significance is Limewire 4.21.3 was shown through forensic review to have NEVER BEEN INSTALLED on the subject computer. Also of note Limewire had been previously installed but was last executed 11/7/2010 5 months prior to S/A Blanton's April 7, 2011 session and was shown to be a different version. Drawing question to this Government Exhibit and other exhibits offered as proofs. Reynolds detailed many false statements presented by Agent Blanton, as well as the omission of the whereabouts of Reynolds at a timeframe Agent Blanton testified he began his investigation as who was seated at the keyboard at the time of the Child Pornography activity. As was noted in a previous filing in this Court(case #16-8574) the government's case hinged on the reliability of the Call Detail Records for Reynolds cell phone. FBI Agent Christopher Hess maintained his analysis was accurate, yet that analysis was contingent on an accurate timeframe. Agent Blanton testified he discovered deleted images dated May 25, 2011 from 8:50P.M. till 9:53P.M. it was this discovery that prompted S/A Blanton to begin his investigation. Agent Blanton's omission to the jury was Donald Reynolds A.K.A Defendant was in a different city at the time. Reynolds in his 2255 motion detailed this trial altering omission. Reynolds also in great detail presented proof the Forensic Analysis reports relied upon by the Government were Fabricated by the Forensic examiner himself. Noted above as part of discovery the

Government provided Attorney Freeman Bates Stamped samples of Walker D. Sharp's Reports. Walker David Sharp testified he used a read-only device that prevented any information to be written to the hard drive so as to not contaminate the investigation. Sharp provided Agent Blanton a timeline based off his findings from the Frostwire Log Report.

Reynolds after reviewing the Frostwire Log Report samples Bates #1502-1506, Reynolds discovered many disputable facts. Most notably what appears to be Sharp's tax information from 2010 in a Microsoft Excel document dated 1/31/2011, as well as Child Pornography video's Sharp would place in his summary report claiming these video's were located on Reynolds' Computer. Along with many other disputable facts that Sharp's forensic analysis was derived from Reynolds Hard Drive, but was in fact from another source.

Along with filing Fraudulent Reports Sharp commited Perjury during cross examination, as well as disputing his own timeline as being accurate testifying he had no idea when the downloads began. Yet still presented his timeline exhibits as Gov't Ex. 12A-12G.

Reynolds has presented the facts in detail in the filing of his §2255 motion addendum. Reynolds understands that in order to entitled to relief: Petitioner bears the burden of demonstrating an error of constitutional magnitude which had a substancial and injurious effect or influence on the criminal proceedings, Reed v. Farley, 512 U.S. 339, 353, 114 S. Ct. 2291, 129 L.Ed.2d 277 (1994); Brecht v. Abrahamson, 507 U.S. 619, 637-38, 113 S. Ct. 1710, 123 L.Ed.2d 353(1993), and he likewise bears the burden of articulating suffieient facts to state a viable claim for relief under 28 U.S.C. §2255. A §2255 motion may be dismissed if it only makes vague conclusory statements without substantiating allegation of specific facts and thereby fails to state a claim congnizable under §2255. Green v. Wingo, 454 F.2d 52, 53 (6th Cir. 1972).

On September 28, 2018, Reynolds filed a timely §2255 motion to vacate, set aside, or correct his sentence. Along with the 2255 form motion Reynolds filed an addendum with (76) double spaced pages.

The motion complied with the format provisions under Rule 2 of the rules governing Section 2255 proceedings ("2255 Rules"). Pursuant to 2255 Rule 2(b), the motion was filed by the clerk, then forwarded to Judge Cox for preliminary review, Pursuant to 2255 Rule4. Judge Cox determined that the motion was not subject to summary dismisal and pursuant to 2255 Rule 4 - -"... order[ed] the [goverment] to file an answer ... within a fixed time."

At that point 2255 5(b) provides that "[t]he answer must address the allegations in the petition ...," However, instead the Government filed a motion to strike the 76 page addendum ("brief") becuase it exceeded the 25 page limit under Mich. Dist. Ct. Local Rule 7.1; Reynolds opposed the motion to strike arguing that such an action would be inconsistant with sixth circuit precedent. Brown & Williamson Tobacco Corp. v. United States, 201 F.2d 819, 822(CA6, 1953)("[t]he action of striking a pleading should be sparingly used by the courts," because "[i]t is a drastic remedy to be resorted to only when ... the pleading to be stricken has no possible relation to the controversy.") Judge Cox granted the Motion to strike citing Martinez v. United States, 865 F.3d 842, 844 (CA6, 2017). See Dist. Ct. January 15, 2019 Order Granting the motion to strike. Appendix. A

Reynolds filed a motion for reconsideration arguing inter alia, that the brief in support of the 2255 motion contained two additional Grounds for relief that could not fit in the space provided on the 2255 form and that the District Court's order granting the motion to strike did not apply the Analysis set forth in Brown & Williamson Tobacco Corp.,Supra. @ 822 (ECF No. 208 @ pp. 4-5). Reynolds cited several decisions in the district court that applied this rule to

civil pleadings. See e.g. ABCDE Operations, LLC v. City of Detroit, 254 F. Supp 3d 931, 936 n.3(E.D. Mich. 2017)(permitting defendant to file a 69 page brief based on the complex facts involved and the number of claims at issue); Counts v. GM LLC, 237 F. Supp 3d 572, 594 (ED Mich. 2017)(Doubling page limits for parties in recognition of the Complex issues of law implicated by Plaintiff's Claim).

On Feburary 12, 2019, the district court denied Reynolds' motion for reconsideration. On Feburary 26, 2019, Reynolds filed a second motion for reconsideration wherein he asked the court to "certify the matter for interlocutory appeal to the Sixth Circuit Court of Appeals." The district court denied the second motion for reconsideration/certification on March 11, 2019. Reynolds then filed a petition for "permission to appeal" pursuant to Rule 5 of the Federal Rules of Appellate Procedure in the Sixth Circuit. See Reynolds v. United States, 2019 U.S. App. LEXIS 11987.

Reynolds argued that the appeal was authorized under the Collateral Order Doctrine because -- (1) the district court's order striking the brief in support of his 2255 motion conclusively determined an important legal issue completely seperate from the "merits" of the claims presented in the motion and (2) that order is effectively unreviewable on appeal from the final judgment. (citing United States v. Young, 424 F.3d 499, 504 (CA 6, 2005). Accordingly, Reynolds first argued that in granting the Government's motion to strike, the district court, in effect, allowed the government to circumvent its order pursuant to 2255 Rule 4(b) to file an answer and 2255 Rule 5(b) directive that the answer "must address the allegations in the motion ...." He further contended that such

a practice undermines the integrity of the 2255 proceedings because it permits the "respondent" to limit the amount of claims a petitioner can raise and the extent of facts that can be presented to support such claims. Accordingly, Reynolds argued that the Sixth Circuit's decision in Martinez, supra. -- a one page precedent -- not fully briefed -- litigated by a prisoner -- pro se -- raised an important legal issue -- whether application of the 25-page limit of Local Rule 7.1 to a 2255 motion improperly permits the Government to circumvent Rules 4(b) and 5(b) of the 2255 Rules -- and thus avoid answering the allegations presented in the 2255 motion. Reynolds further argued that such a procedure was inconsistant with Rule 2 of the 2255 Rules, which governs the format and does not contain any page limits. See also Spagnola v. Scutt, 2014 U.S. Dist. LEXIS 81324 (ED Mich. June 16, 2014)(pre-Martinez decision holding that Local Rule 7.1(d)(3)(A) concerns briefs filed in support of a motion or response thereto ..., and that "Rule 2 of the Rules Governing § 2254 Cases does not contain any page limits for a habeas petition or supporting brief, nor do this Court's Local Rules. Accordingly, it is unnessary for Petitioner to obtain the Court's permission to file a memorandum in excess of twenty pages.")(same provisions under 2255 Rule 2).

In an Opinion and Order dated April 23, 2019, the Sixth Circuit held that it lacked jurisdiction. Reynolds, supra. 2019 U.S. App. LEXIS 11987 @ 2. The appellate court's opinion did not address the collateral order doctrine, but instead treated Reynolds' filing as a writ of mandamus that may "be invoked only in extraordinary situations." Id. (quoting Kerr v. United States Dist. Court for

Northern Dist., 426 U.S. 394, 402; 96 S. Ct. 2119; 48 L.Ed.2d 72 (1976)). The court concluded that "[n]othing in the record suggest that Reynolds will suffer irreparable harm from the denial of an immediate appeal." ID.

On May 23, 2019 Reynolds filed a petition for rehearing with suggestion for rehearing En Banc -- wherein he argued the panel erred in concluding it lacked jurisdiction under the "collateral order doctrine" or the "multi-factor test for determining the propriety of mandamus ...," set forth in In re Chimenti, 79 F.3d 534, 539 (CA 6, 1996), as follows: (1) whether the party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief desired; (2) whether the district court's order is clearly erroneous as a matter of law; (3) Whether the district court's order is an oft-repeated error or manifest a persistent disregard of the federal rules; and (5) whether the district court's order raises new and important problems, or issues of law of first impression." Id. (quoting In re Bendectin Products Liability Litigation, 749 F. 2d 300, 304 (CA 6, 1984)(noting that "[r]arely if ever will a case arise where all the guidelines point in the same direction or even where each guideline is relevant or applicable")). Reynolds also urged the Sixth Circuit to rehear its decision in Martinez v. United States, supra. -- en banc -- because it was not fully briefed by counsel, but rather filed by a prisoner pro se, -- undermines Rule 2(b)(1) of the 2255 Rules and runs afoul of Sixth Circuit precedent. see Brown & Williamson Tobacco Corp., supra.; Anderson v. United States, 39 Fed. Appx. 132 (CA 6, May 3, 2002)(holding "[t]he district court's order striking the [2255] motion ... contravened the case law of this circuit, and the Federal Rules of Civil

Procedure.").

While the petition for rehearing en banc was pending in the Sixth Circuit, Reynolds received an Order entered May 21, 2019 by the district court restating its previous order striking the 76-page brief to the 2255 motion, and instructing that "Reynolds must [file a conforming 20-page brief] no later than June 14, 2019 ...," or the district court "will order the Government to file a response based on [the] form §2255 motion ...," and "further advis[ing] that the Court will not entertain any additional motions seeking an extension of time for filing his brief, or any motions seeking to file an over-sized brief." See Appendix B.

Reynolds petitioned the appellate court to stay the mandate, in an attempt to prevent manifest injustice. Appendix C, E. Reynolds has petitioned the court to accept his (76) page addendum citing a complex set of mitigating factors, of which was needed to receive the relief sought in the filing of the §2255 motion. Reynolds received an order September 6, 2019 instructing him August 30, 2019 district court judge Cox ordered the government to issue a response to the §2255 form only, by October 15, 2019. Reynolds has filed this writ of certiorari within the 90 days of the appellate courts last ruling See Appendix E.

As is noted in Appendix D p.2 the appellate court has advised Reynolds he is free to file the writ of certiorari.

REASON RELIED UPON FOR THE WRIT

The procedural impasse in this case has reached the point where only this Court using its supervisory power can resolve the four procedural questions set forth in Reynolds' motion to stay mandate filed in the Sixth Circuit: (1) Is the Sixth Circuit's holding in Martinez v. United States, that the 25 page limit under Local Rule 7.1 applies to §2255 motions, inconsistant with 2255 Rule 2(b), which places no page limits on §2255 motions (or 2254 motions); (2) Can the Government contravene 2255 Rules 4(b) & 5(b), which directs that it must file an answer addressing all allegations in the §2255 motion, when directed to do so by the district court if the motion is not summarily dismissed, by filing a "pre-answer" motion to strike the §2255 motion for excess pages that the district court took no issue with in its preliminary review; (3) Does a district court's preliminary review of §§ 2255 or 2254 motions exceeding a local rule page limit and order directing the respondant ~~to~~ file an answer, implicity grant permission to exceed such page limits; (4) Does a district court abuse its discretion in granting a motion to strike §2255 motion for excessive pages without also determining whether such an action is in the interest of justice and does not undermine the principle of this Court that the purpose of a civil pleading is to facilitate a proper decision on the merits. See e.g. Foman v. Davis, 371 U.S. 178, 181-82 (1962)("The Federal Rules [] reject the approach that pleading is a game of skill in which one misstep by [a party] may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits."); See also Conley v. Gibson, 335 U.S. 41,

48 (1957).

As noted by the Sixth Circuit, Reynolds is "free to petition" this Court "for certiorari" review. Appendix D . In the interm, Reynolds should not have to fear that the district court "will order the Government to file a response based upon [only] Reynolds' form §2255 motion ...," Appendix B without regard to the factual support and other two issues presented in the 76-page addendum to the form §2255 motion. The addendum provided testimonial and documentary evidence admitted at trial or generated by the government, but not introduced at trial. This evidence is relevant to the controversy set forth in the grounds Reynolds presents for relief. The government's attempt to avoid addressing this evidence is simple. If true and relief is granted, the agents and prosecutors involved will be held accountable for their misconduct during the investigation of the case and its presentation at trial.

Accordinly, Reynolds is asking this Court to issue the Writ of Certiorari to prevent a manifest injustice from continuing. And prevent the striking of a motion based on a Local Rule, when the Federal Rules of Civil Procedures instructs that the Government "must address" the allegations of the §2255 motion.

9/18/2019
Dated

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