

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. **20-7292**

MATTHEW LEE STASZAK,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ORIGINAL

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**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. WHETHER THE SUPREME COURT SHOULD GRANT THE WRIT WHERE PROSECUTORIAL MISCONDUCT AND INEFFECTIVE ASSISTANCE OF COUNSEL VIOLATES DUE PROCESS WHERE NO SEXUALLY EXPLICIT VIDEO IS IN POSSESSION OF THE GOVERNMENT; WHERE NO VIDEO EXISTS, AND WHERE THE GOVERNMENT CLAIMED TO POSSESS A VIDEO TO PROSECUTE OBTAINING A COERCED PLEA OF GUILTY THE DEFENDANT BY FALSELY PROSECUTING 18 U.S.C. SECTION 2251(A) AND (E) WHERE LOWER COURTS ERRED IN DENYING 2255 RELIEF.

II. WHETHER THE SUPREME COURT SHOULD GRANT THE WRIT WHERE PROSECUTORIAL MISCONDUCT AND INEFFECTIVE ASSISTANCE OF COUNSEL VIOLATES DUE PROCESS WHERE THE DEFENDANT WAS COERCED INTO SIGNING A PLEA AGREEMENT AND STIPULATION OF FACTS, WHILE UNDER DURESS BY THREATS OF CHARGING HIS PARENTS CLAIMED AS THIRD-PARTIES,

AND WHERE NO PROBABLE CAUSE EXISTED IN ORDER TO PROSECUTE AND CHARGE THIRD-PARTIES WHERE LOWER COURTS ERRED IN DENYING 2255 RELIEF.

III. WHETHER THE SUPREME COURT SHOULD GRANT THE WRIT WHERE PROSECUTORIAL MISCONDUCT AND INEFFECTIVE ASSISTANCE OF COUNSEL OCCURRED WHERE COUNSEL FAILED TO INVESTIGATE AND FOLLOW THE LAW PERTAINING TO 18 U.S.C. SECTION 2423(B); I.E., COUNSEL FAILED TO DISCOVER THAT COUNT 2 NEVER OCCURRED; THAT COUNT 3 DOES NOT CONSTITUTE A FEDERAL OFFENSE, AND WHERE DUE PROCESS IS VIOLATED WHEN THE GOVERNMENT PROSECUTED 18 U.S.C. SECTION 2423(B) WHICH DO NOT CONSTITUTE FEDERAL OFFENSES AS STIPULATED WHERE LOWER COURTS ERRED IN DENYING 2255 RELIEF.

INTERESTED PARTIES

The parties appear in the caption case citing on the cover page of this Writ of Certiorari. Respondent United States of America is an interested party.

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**On Petition for Writ of Certiorari to the
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PETITION FOR WRIT OF CERTIORARI

Petitioner Matthew Lee Staszak, ("Staszak"), pro-se, respectfully petitions the Supreme Court of the United States for a Writ of Certiorari to review *Staszak*

v. United States Case No. 3:15-cv-00020-JPG (S.D. IL) & Case No. 20-1381 (7th Cir.), of the judgment from the United States District Court for the Southern District of Illinois, and the judgment from the United States Court of Appeals for the Seventh Circuit resulting from Staszak's Title 28 U.S.C. Section 2255 Motion to Vacate, Set-Aside, or Correct Sentence. The judgment was decided on February 21, 2020, and the Seventh Circuit judgment decided on November 5, 2020. On December 3, 2020, the Seventh Circuit denied Staszak's petition for rehearing and rehearing en banc.

OPINION BELOW

The Appendix includes copies of: a.) District Court Judgment of *Staszak v. United States, Case No. 3:15-cv-00020-JPG* (A-1); b.) Seventh Circuit Judgment of *Staszak v. United States, Case No. 20-1381* (A-2); c.) Seventh Circuit Order denying Petition for Rehearing and Rehearing En Banc in *Staszak v. United States, Case No. 20-1381* (A-3); d.) *United States v. Staszak, Crim. No. 4:12-cr-40064-JPG*, Second Superseding Indictment (A-4); e.) *United States v. Staszak, Crim. No. 4:12-cr-40064-JPG, Judgment of Conviction*, (A-5); f.) 18 U.S.C. Section 2251(a) and (e) (A-6); g.) 18 U.S.C. Section 2423(b) (A-7); and 18 U.S.C. Section 3146(a)(1).

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1) and Part III of the Rules of the Supreme Court of the United States. In the underlying criminal case the district court asserted jurisdiction over Petitioner because he was charged with a violation of federal criminal statutes, that is, 18 U.S.C. Section 2251(a) and (e), 18 U.S.C. Section 2423(b) and 18 U.S.C. Section 3146(a)(1). The Court of Appeals had jurisdiction on his appeal, pursuant to 28 U.S.C. Section 1291 and 18 U.S.C. Section 3742, which provides that a United States Court of Appeals shall have jurisdiction for all final decisions of a United States District Court.

STATUTES INVOLVED

This petition revolves around the lower Courts review of Petitioner Matthew Lee Staszak's convictions for violations of 18 U.S.C. 2251(a) and (e), 2423(b) and 3146(a)(1).

STATEMENT OF THE CASE AND FACTS

A. Course Of The Proceedings And Disposition In The Low Tribunals:

On June 20, 2012, a grand jury returned an indictment against Staszak.

Staszak pled not guilty to the charges. Staszak was released on bond, and the grand jury returned a superseding indictment adding an additional charge. The grand jury reconvened and a Second Superseding Indictment was brought adding an additional charge of failure to appear. On June 3, 2013, Staszak was arraigned on the Second Superseding Indictment. On August 5, 2013, during Rule 11 Plea Colloquy proceedings, while under duress, Staszak pled guilty to 18 U.S.C.

Section 2251(a) and (e), two counts of 18 U.S.C. Section 2423(b), and one count of 18 U.S.C. Section 3146(a)(1) for a total of four counts. On February 5, 2014, Staszak was sentenced by the Honorable J. Phil Gilbert, ("Judge Gilbert").

Staszak was sentenced to serve 180-months on Counts 1, 2, and 3, concurrently, and 60-months on Count 4 consecutive to the sentence for Counts 1, 2, and 3, for a total of 240-months imprisonment. Judge Gilbert sentenced Staszak 60-months below the agreement by the parties of 300-months. Staszak did not direct appeal. Judgment was finalized by the District Court on February 20, 2014.

On January 8, 2015, Staszak timely filed a Section 2255 motion to Vacate,

Set Aside, or Correct Sentence raising 12 Grounds. On May 27, 2015, Staszak was permitted to supplement his 2255 with Ground 13. On January 20, 2017, Staszak was allowed to supplement his 2255 with his tendered Ground 14. On January 17, 2017, Staszak filed a Writ of Mandamus against Respondent Judge Gilbert, Case No. 17-1108, (7th Cir.). On January 25, 2017, the Writ of Mandamus was denied by the Seventh Circuit. On November 21, 2017, the District Court ordered an Evidentiary Hearing on Staszak's 2255. On the following dates: March 22-23; April 16, 19, and 25, 2018, the District Court conducted Evidentiary Proceedings on the 2255 motion. On July 18, 2019, Staszak filed a second Writ of Mandamus against Respondent Judge Gilbert, Case No. 19-2367, (7th Cir.). On July 24, 2019, Staszak's Petition for Writ of Mandamus was denied by the Seventh Circuit. On August 5, 2019, Staszak filed a Petition for Rehearing on his Writ of Mandamus. On September 9, 2019, Staszak's Petition for Rehearing was denied by the Seventh Circuit. On September 17, 2019, Staszak filed a Writ of Mandamus, (with additional materials) to the Supreme Court of the United States, Case No. 19-6121, against Respondent Judge Gilbert. The Supreme Court ordered show cause against the Respondent. On October 15, 2019, the Solicitor General waived a response. On November 12, 2019, the Supreme Court denied Staszak's Petition for Writ of Mandamus. Staszak

filed a Petition for Rehearing on his Writ of Mandamus on December 10, 2019. On January 27, 2020, Staszak's Petition for Rehearing was denied by the Supreme Court. On February 5, 2020, Daniel and Norena Staszak, Staszak's parents mailed correspondences to Associate Justice Kavanaugh and additional officials. On February 21, 2020, Judge Gilbert denied Staszak's 2255 in its entirety and further declined to issue a certificate of appealability ("COA"). On March 6, 2020, Staszak's appointed counsel docketed a request for issuance of a COA pursuant to 28 U.S.C. Section 2253(c), and a petition for appointment of appellate counsel. On March 12, 2020, Staszak's counsel, a Terry M. Green, ("Green"), further filed a Docketing Statement. On March 25, 2020, Green further filed Transcript Information Sheets. On November 5, 2020, the Seventh Circuit denied Staszak's request for a COA and appointment of counsel. On November 19, 2020, Staszak filed pro se, (due to Green's health, office closures, and COVID-19 restrictions) a petition for rehearing and rehearing en banc. On December 3, 2020, the Seventh Circuit denied Staszak's pro se petition for rehearing and rehearing en banc.

Note: Docket Sheets: a.) Case No. 12-cr-40064-JPG, (A-8); b.) Case No. 15-cv-00020-JPG, (A-9); c.) Case No. 17-1108, (7th Cir.), (A-10); d.) Case No.

19-2367, (7th Cir.), (A-11); e.) Case No. 19-6121, (S. Ct.), (A-12); and, f.) Case No. 20-1381, (7th Cir.), (A-13).

B. Statement Of The Facts

In the summer of 2010, Petitioner Matthew Lee Staszak, ("Staszak"), was residing in rural eastern North Carolina where he was assigned at II Marine Expeditionary Force while stationed Camp Lejeune, North Carolina. Staszak while only in his twenties built a new home, participated in religious activities, civic organizations, and was furthering his education by attending numerous classes, seminars, and training exercises. Staszak served in Operation Iraqi Freedom in 2003, twice in Operation Enduring Freedom in 2003-2004 and 2007-2008, and Operation Unified Response in 2010 as result from the Haitian earthquake. Summarily, Staszak is a decorated combat veteran.

In 2010, Staszak was in contact with a new friend, a Dennis Presley, ("Presley"), whom was a law-enforcement officer located in southern Illinois. During Staszak's contact with Presley, Staszak was connected to one of Presley's girlfriends. This girlfriend was an Amy Gayer, ("K.G.'s mother"). Staszak was also Facebook friends with a Bridgette Gayer, and minor K.G., ("K.G. "), both whom were the teenage daughters of K.G.'s mother.

In January 2011, plans were established between Staszak, K.G.'s mother, and K.G. to meet. K.G.'s mother and K.G. traveled from their residence located in Tybee Island, Georgia, in order to meet with Staszak in Columbia, South Carolina.

During this time, Staszak was not aware of K.G.'s actual age, where K.G. and K.G.'s mother claimed K.G. was "19." K.G.'s characteristics were; 5' 5 in height; around 115-120 pounds; well-developed; and appeared between 18-20 years of age. During the Facebook interactions between Staszak and K.G., she never displayed her actual birthday or age within her Facebook profile.

From around February 2011 to April 2012, Staszak and K.G. formed a relationship. K.G.'s mother knew of the relationship. On or about March 10, 2011, Staszak traveled home to southern Illinois on military leave to spend time with his father and family members as his father's birthday was on March 22, 2011. Staszak would often travel from his place of duty station to his hometown to visit his family for various reasons and circumstances. Staszak is charged in (Count 2) with 18 U.S.C. Section 2423(b). Staszak and K.G. did not have sex on or around March 22, 2011. During the early evening of March 22, 2011, while at the Comfort Suites Hotel in Marion, Illinois, K.G. distraughtly complained to Staszak of being diagnosed with a venereal disease, claiming she contracted the disease from a Kyle Ferguson ("Ferguson"). Evidence indicates that Staszak did not have sex with K.G. on March 22, 2011, as Staszak never contracted the disease from K.G., that she contracted from Ferguson. Staszak's blood test results from his U.S. Navy medical records prove this fact. See (A-24).

On or about May 29, 2011, Staszak traveled from North Carolina to Williamson County, Illinois, and is charged in (Count 3) with 18 U.S.C. Section 2423(b) where on May 29, 2011, K.G. had revealed to Staszak that she was not 19. May 29, 2011, was K.G.'s 16th birthday. Prior to K.G.'s birthday Staszak had sent K.G. a phone because she stated to Staszak that she could not afford a phone while having to use her mother's phone. On May 29, 2011, K.G. further confessed to Staszak that she liked "*older guys*" and further described to Staszak of intricate details pertaining to her private life. Staszak was in shock and floored by these revelations. On the afternoon of May 29, 2011, Staszak had obtained a room at the Drury Hotel in Marion, Illinois. That evening, serious talks between K.G. and Staszak began about marriage. Staszak pondered the situation where K.G. agreed that she "*definitely*" wanted to get married further stating she would discuss it with her mother. K.G.'s mother refused the marriage and further threatened K.G. with Staszak's arrest. K.G.'s mother sought this opportunity in order to extort from Staszak of cash, clothes, cosmetics, food, gasoline, and other items. Staszak on (3) three occasions dropped envelopes of cash of that contained *1000.00* dollars in cash to K.G.'s mother. Staszak's instructions by K.G.'s mother were to place the envelopes of cash under the passenger side floor mat of her unlocked Ford Escape. Staszak paid a total *3000.00* dollars in cash and further provided approximately

2000.00 dollars in various items to K.G.'s mother totaling around 5000.00 dollars.

To date, K.G.'s mother has not been charged or prosecuted.

In the summer 2011, K.G. had moved away from her mother's house.

Staszak was charged with (Count 1) that is, 18 U.S.C. Section 2251(a) and (e) that sometime between "On or around June or July of 2011", Staszak *"used"* K.G. to take *"part"* in a sexually explicit conduct for the *"purpose"* of producing a visual depiction with Staszak's Verizon cellular telephone, that was a Droid X2, serial number SJUG6250. Staszak is further alleged that he and K.G. *"watched"* a video. The Government officially claimed; (only after Staszak filed his Section 2255 motion), that a video was *"deleted."* Moreover, the Government claims that Staszak deleted a video, but provides no forensic evidence that a video exists or existed from Staszak's phone, or that the Government possesses forensic evidence that a video was created or actually deleted by Staszak.

REASONS FOR GRANTING THE WRIT

I. THE SUPREME COURT SHOULD GRANT THE WRIT WHERE PROSECUTORIAL MISCONDUCT AND INEFFECTIVE ASSISTANCE OF COUNSEL VIOLATES DUE PROCESS WHERE NO SEXUALLY EXPLICIT VIDEO IS IN POSSESSION OF THE GOVERNMENT; WHERE NO VIDEO EXISTS, AND WHERE THE GOVERNMENT CLAIMED TO POSSESS A VIDEO TO PROSECUTE THE DEFENDANT OBTAINING A COERCED PLEA OF GUILTY BY FALSELY PROSECUTING 18 U.S.C. SECTION 2251(A) AND (E) WHERE THE LOWER COURTS ERRED IN DENYING 2255 RELIEF.

Staszak sought relief under 2255 where he entered a guilty plea and was sentenced without the benefit of his Sixth Amendment right to effective assistance of counsel and further violations of his Due Process under the Fifth Amendment. *Strickland v. Washington*, 466 U.S. 668, 688-94 (1984). In the context of claims "a defendant has the right to effective assistance of counsel in considering whether to accept a plea." *Lafler v. Cooper*, 566 U.S. 156, 168 (2012). Staszak demonstrated that "counsel's representation fell below an objective standard of reasonableness", and second, that "there is a reasonable probability that, but for

counsel's unprofessional errors, the result of the proceeding would have been different." *Williams v. Taylor*, 529 U.S. 362, 390-91 (2000). A reasonably competent attorney "will attempt to learn all of the relevant facts of the case, make an estimate of a likely sentence, and communicate the results of that analysis to the client before allowing the client to plead guilty." *Strickland* emphasizes that the core of the Sixth Amendment right to effective assistance is a requirement that counsel stand up as an adversary to the prosecution. *E.g.*, *Strickland*, 466 U.S. at 685 ("The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel's skill and knowledge is necessary to accord defendants the 'ample opportunity to meet the case of the prosecution' to which they are entitled.") (*quoting Adams v. United States ex rel. McCann*, 317 U.S. 269, 275 (1942))

Counsel Melissa A. Day, ("Day"), was deficient and ineffective in her performance. Day rendered ineffective assistance when she failed to conduct an investigation into (Count 1), which would have revealed that the Government did not possess a sexually explicit video, did not possess a link between Staszak's cellular device to any sexually explicit conduct, and that she never advised Staszak of this prior to an entry of his plea of guilty. *Elmore v. Ozmint*, 661 F.3d 783, 861 (4th Cir. 2011) ("Elmore's lawyers disregarded their professional obligation to

investigate critical prosecution evidence, thereby engendering 'a breakdown in the adversarial process that our system counts on to produce just results.'" (*quoting Strickland*, 466 U.S. at 696)). A jury reasonably could not have found Staszak guilty of (Count 1). Day never considered moving to dismiss (Count 1), or further move for a directed verdict on those charges. *See, e.g., Pattern Crim. Jury Instrs. of the Seventh Cir., 2012 ed., at 657* ("If...you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt as to the charge you are considering, then you should find the defendant not guilty of that charge.").

Staszak was charged with (Count 1) Sexual Exploitation of a Minor where the charge states that he did knowingly "*employ*", "*use*", "*induce*", "*entice*" and "*coerce*" a minor, K.G., to engage in sexually explicit conduct, for the purpose of producing a visual depiction of such conduct, and did attempt to do so, which visual depiction was produced using materials that had been "*mailed*", "*shipped*", and "*transported*" in interstate commerce; all in violation of Title 18, United States Code Sections 2251(a) and (e). As such, Staszak informed Day that he never used his Droid X2 cellular phone ("phone") to record sexual intercourse between him and K.G., and that no video showing sexual intercourse could possibly exist, and a forensic examination of his phone, which previously had been seized by the

Government would prove this fact. Day failed to conduct any investigation into the allegations contained in (Count 1), and instead, repeatedly advised Staszak that a video would be forthcoming when discovery was completed. Staszak made further requests of Day to compel the Government to produce any video evidence and any forensic examination that was done. Day refused and insisted that Staszak plead guilty to (Count 1). The Supreme Court has held that ([A]n attorney's ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under *Strickland*." *Hinton v. Alabama*, 571 U.S. 263, 274 (2014). Had Day performed effectively, Staszak would have proceeded to trial, where he would have had a strong case and a very strong motion for judgment of acquittal on (Count 1).

Staszak plead guilty to (Count 1) due to threats of third-party prosecutions against his parents relayed to him by Day and later Chief Federal Defender Phillip J. Kavanaugh, ("Kavanaugh"). After Staszak's guilty plea was entered, Day acknowledged to him that the Government did not possess a video. No forensic examination of Staszak's phone was provided and thus no link between Staszak's phone to any sexually explicit conduct. Day was ineffective for failing to investigate whether the video existed; whether Staszak's phone could be

linked to any sexually explicit conduct, and for advising Staszak to plead guilty without conducting an investigation.

After Staszak had agreed to plead guilty; *resulting from threats of prosecution of his parents*, Day presented Staszak with a Plea Agreement and a Stipulation of Facts, which stated that the conduct described in the indictment had actually occurred, and instructed Staszak to sign that agreement. Staszak reiterated to Day that the Government has never produced a video referred to in (Count 1), and that he was not comfortable signing the agreement. Staszak informed Day that he was only willing to stipulate to conduct that had actually occurred. Day advised Staszak that it did not matter; that it would not affect his sentence, and the he had no other choice. Day never considered a different approach, even though (Count 1) was unmistakably insufficient. Therefore, in doing so, Day advised Staszak to plead guilty to (Count 1) on a charge that the Government simply could not prove. Day was ineffective for not conducting an investigation of the facts surrounding the video. Day's representation was deficient when she failed to research the law regarding offenses related to 2251(a) and (e).

The Government violated Fifth Amendment Due Process when it committed prosecutorial misconduct when it charged Staszak with a violation

2251(a) and (e) without establishing subject matter jurisdiction, and Day further rendered ineffective assistance when she failed to challenge the Government's lack of jurisdiction. The Government lulled Day into believing it possessed a video, and this evidence would soon be forthcoming through the discovery process. The Government finally conceded, after Staszak's plea of guilty, and later in its response within Staszak's 2255, that no video existed connecting Staszak to any sexually explicit conduct as charged in (Count 1). The Government claims a video was "*deleted*" based upon information from a FBI recorded telephonic call between Staszak and K.G.. But the Government fails to prove as to when an alleged video was "*deleted*"; that an alleged video actually exists; and of a forensic examination showing a deletion of a video.

In *United States v. Palomino-Coronado*, No. 14-4416, Decided November 5, 2015, (4th Cir.), the court reversed and vacated a conviction for a violation of 2251(a) holding that the Government adduced insufficient evidence to show that the defendant acted for the purpose of producing a visual depiction. The *Palomino* court went further to say that ("a defendant must engage in the sexual activity with the specific intent to produce a visual depiction; it is not sufficient simply to prove that the defendant purposefully took a picture."). See also *United States v. Lebowitz*, 676 F.3d 1000, 1013 (11th Cir. 2012)(It is simply not enough to say the

photo speaks for itself and for the defendant and that is the end of the matter).

The Government in Staszak's case committed serious prosecutorial misconduct when it continued to prosecute (Count 1), when the Government knew, or should have known, that without having a video or establishing a forensic link between Staszak's phone and sexually explicit conduct, which the Government highly relied on to establish an interstate commerce nexus, that it lacked a jurisdictional basis for the 2251(a) and (e) charge. One constitutional author observed "[t]he essential guarantee of the due process clauses is that the government may not imprison or otherwise physically restrain a person except in accordance with fair procedures. The first due process clause is concerned with procedures...to convict someone of crime..." *Treatise On Constitutional Law Substance And Procedure, Rotunda, Nowak, and Young, Section 17.49(a)(b)(1986)*.

In addition, under the Supreme Court's holding in *Brady v. Maryland*, 373 U.S. 83 (1963), Staszak was entitled to a copy of the results of the Government's forensic examination as he was preparing for a trial. Instead, the Government violated the spirit of the *Brady* requirement and deliberately withheld exculpatory evidence from the defense in order to obtain Staszak's guilty plea. To establish a *Brady* violation, a defendant must "show that (1) the [government] suppressed

evidence, (2) the evidence was favorable to the defense, and (3) the evidence was material to an issue at trial." *United States v. Villasenor*, 664 F.3d 673, 683 (7th Cir. 2011). Evidence is suppressed when "the prosecution fail[s] to disclose the evidence in time for the defendant to make use of it" and "the evidence was not otherwise available to the defendant through the exercise of reasonable diligence." *Ienco v. Angarone*, 429 F.3d 680, 683 (7th Cir. 2005). Under the Supreme Court's holding in *Massaro v. United States*, 538 U.S. 500, 504 (2003) it held (holding that a federal criminal defendant can first bring ineffective assistance of counsel in collateral proceedings under 2255 regardless of whether the defendant could have raised the claim on direct appeal). Thus, Staszak did so in his 2255 motion.

II. THE SUPREME COURT SHOULD GRANT THE WRIT WHERE PROSECUTORIAL MISCONDUCT AND INEFFECTIVE ASSISTANCE OF COUNSEL VIOLATES DUE PROCESS WHERE THE DEFENDANT WAS COERCED INTO SIGNING A PLEA AGREEMENT AND STIPULATION OF FACTS, WHILE UNDER DURESS BY THREATS OF CHARGING HIS PARENTS CLAIMED AS THIRD-PARTIES, AND WHERE NO PROBABLE CAUSE EXISTED IN ORDER TO PROSECUTE AND CHARGE

THIRD-PARTIES WHERE LOWER COURTS ERRED IN
DENYING 2255 RELIEF.

All plea agreements are "*contracts*" as the Supreme Court held in *Sanatobello v. New York*, 404 U.S. 257, 262-63 (1971). This said, the existence of a conflict of interest within a negotiation of the "contract" would affect the validity of the contract itself. If a party to the contract commits fraud while negotiating a contract, the contract is void. "*as if it never existed.*" "*A contract tainted by fraud...is void ab initio.*" See *Godly v. United States*, 5 F.3d 1473 (Fed. Cir. 1993).

Fraud occurs when parties to an agreement have an obligation and duty to speak, but fails to disclose the truth. The Government in Staszak's criminal case, represented by Lead Assistant U.S. Attorney Kit R. Morrissey, ("Morrissey"), and Day both had a duty and obligation to inform the Court there was a conflict during Staszak's Rule 11 hearing. Both Day and Morrissey had ample opportunity to do so, but instead, deliberately withheld dire information from Judge Gilbert during the questioning process of Staszak's Rule 11 proceedings that an agreement was made that the Government would not prosecute Daniel L. Staszak and Norena A. Staszak, ("Staszak's parents"). During this time, Staszak was pleading guilty to the Counts while under duress.

Day and Morrissey are officers of the court and have a sworn duty to uphold the truth. Day and Morrissey engaged in fraud by knowingly and intentionally remaining silent on the dire issues before Judge Gilbert. They omitted information that there was an arranged deal that Staszak was pleading guilty so that the Government would not charge his parents. *See* Affidavits of Matthew L. Staszak, (A-20), Daniel L. Staszak, (A-21), and Norena A. Staszak, (A-22). This was intentional deception by Day and Morrissey in order to conceal this agreement from Judge Gilbert. In addition, the Government further omitted any reference or information of not charging Staszak's parents within his (14)-page Plea Agreement. *See* Plea Agreement pp. 1-14, (A-15). An email exists between Morrissey and Day that describes the deception and fraud committed. *See* Day/Morrissey email, (A-16). The Day/Morrissey email in part reads as follows: Day to Morrissey: *"I have one question, you mentioned foregoing charges against those who aided him while on fugitive status -- does that include any extended family, parents or friends?"* Morrissey's response: *"Yes, as to parents and possibly extended family."* The email correspondences between Day and Morrissey occurred just prior to Staszak's guilty plea, and Judge Gilbert was left in the dark. *See* Affidavit of Melissa A. Day, (A-19), p. 9.

These above issues are substantially covered and discussed in *United*

States v. Whalen, 976 F.2d 1346 (10th Cir. 1992). In *Whalen*, the petitioner alleged in a Section 2255 motion that the government coerced him into pleading guilty by threatening to prosecute his wife. He asserted that although he subsequently learned that the government had no intention of charging his wife, he believed the threats at the time were made, and therefore pleaded guilty. *Id.* at 1348-49. *Blackledge v. Allison*, 431 U.S. 63, 74-75 (1977)(holding that a defendant may still claim that his "representations at the time his guilty plea was accepted were so much the product of such factors as misunderstanding, duress, or misrepresentation" that they rendered his "guilty plea a constitutionally inadequate basis for imprisonment."). *Id.* at 75. See *Dupuy v. Samuels*, 465 F.3d 757, 762-63 (7th Cir. 2006)(where government threatens to prosecute a defendant's wife knowing that she is innocent is a case of duress, that is of pressure exerted to obtain a result to which the party applying the pressure had no right to exert); and *United States v. Spilmon*, 454 F.3d 657, 659 (7th Cir. 2006)(the prosecution of a person that the prosecutor believes to be innocent is coercive, and government threat to prosecute a third party knowing the party is innocent is duress). The Government in Staszak's case has never produced any evidence to the contrary, therefore it knew that Staszak's parents were innocent of the crime of aiding and abetting, all-while threatening to charge his parents had he not plead guilty.

Day and Morrissey must abide by the *Seventh Circuit's Standards for Professional Conduct*. However, they defied and failed to meet those standards. Day and Morrissey shall not "*knowingly misrepresent, mischaracterize, misquote, or miscite facts or authorities in any oral or written communication to the court.*" under the Seventh Circuit Standards. *See Id.* (avail. at <http://www.ca7.uscourts.gov/rules-procedures/rules/rules.htm#standards>). Here, Day and Morrissey went one step further, where they purposely withheld detrimental information from Judge Gilbert, where actual irrefutable evidence exists of this fact. *See e-mail exchanges*, (A-16). Moreover, it is self-evident that the inducements resulting from the threats to prosecute Staszak's parents would carry into the Rule 11 and further in to his Rule 32 hearings, including that Staszak would have to mislead the Court during those proceedings in order to continue to protect his parents.

Strickland's emphasis is that the core of the Sixth Amendment right to effective assistance is a requirement that Day stand up as an adversary to the prosecution, (Morrissey). Instead, Day advised Staszak to plead guilty based upon threats of prosecution against his parents by Morrissey. Day was ineffective when she used threats coming from Morrissey of third-party prosecutions in order to coerce Staszak into pleading guilty. Further, Day failed to conduct an investigation to confirm whether probable cause actually existed, thus inducing

Staszak's guilty plea. This looks bad because Day failed to recognize that the Government never had a case on (Counts 1, 2, and 3), nor did it possess the requisite probable cause to charge Staszak's parents. Day's own affidavit confirms that Staszak's intent throughout the proceeding was to go to trial. On at least five occasions, in Day's affidavit, she references Staszak's decisions and intentions to have a trial. *See* Affidavit of Day, (A-19 pp. 2, 3, 4, 5, 6 & 7).

Had Day performed in accordance with reasonable standards of professionalism she would have stood up against the Government's acts of extortion, refused to allow Staszak to plead guilty, properly reported the threats coming from the Government to Judge Gilbert, and adequately fought Staszak's case at a trial. Whereas, Judge Gilbert could not have reasonably accepted a guilty plea from Staszak had the information been exposed during the Rule 11 concerning threats against his parents. There is no question that competent work by Day would have produced a different major outcome of Staszak's case. *United States v. Wright*, 43 F.3d 491, 499 (10th Cir. 1994). But, because such bargaining "can pose a danger of coercion" and "increase the leverage possessed by prosecutors," the government must abide by "a high standard of good faith" in its use of such tactics.

Id.; *See also United States v. Nuckols*, 606 F.2d 566, 569 (5th Cir. 1979).

The other issue involves probable cause. The Government in Staszak's case lacked probable cause in order to prosecute his parents. Prosecutors must act in good faith. And in order to act in good faith, Morrissey must have had probable cause to indict Staszak's parents as third-parties, or offer lenity, or communicate a threat to prosecute. *United States v. Marquez*, 909 F.2d 738, 742 (2nd Cir. 1990) ("Where the plea is entered after the prosecutor threatens prosecution of a third party, courts have afforded the defendant an opportunity to show that probable cause for the prosecution was lacking when the threat was made."); *Martin v. Kemp*, 760 F.2d 1244, 1247-48 (11th Cir. 1985)(holding that defendant demonstrated that the "government did not observe a 'high standard of good faith' based upon probable cause to believe that the third party had committed a crime"; *United States v. Diaz*, 733 F.2d 371, 375 (5th Cir. 1984)("Good faith is established when the prosecutor has probable cause to bring charges."; *Harman v. Mohn*, 683 F.2d 834, 837 (4th Cir. 1982)(stating that "absent probable cause to believe that the third person has committed a crime, offering 'concessions' as to him or her constitutes a species of fraud" (quoting *Nuckols*, 606 F.2d 569; and *Wright*, 43 F.3d. at 499))(we hold that the standard of good faith requires probable cause: "To lawfully threaten third persons with prosecution during the course of plea negotiation, the government must have probable cause that those third persons

committed the crime that the government threatens to charge").

Staszak's case is very similar of that regarding a package deal. But the Government fails to include the information of the deal within the Plea Agreement, then further provides no information to Judge Gilbert regarding the details of the deal. *United States v. Bennett*, 332 F.3d 1094 (7th Cir. 2003) the court held that the government must advise the district court of any package deals during the Rule 11 Plea colloquy of any defendant involved in the deal.

The reason the Government failed to reveal to Judge Gilbert that Staszak's Plea Agreement was based on the Government's foregoing of charges against his parents is: (1) because the Government did not have probable cause to charge his parents; (2) Morrissey did not have an adequate explanation regarding probable cause to charge his parents; and (3) Day did not have an adequate explanation as to why her client was pleading guilty when threats had been lodged against him. Since Day did not conduct an investigation as whether or not probable cause existed to charge Staszak's parents, and simply relied on the Government's accusations and claims that it possessed probable cause, Day was not positioned or prepared to discuss this had Judge Gilbert questioned her regarding it.

Day was ineffective when she relayed threats of third-party prosecutions in order to coerce Staszak into pleading guilty. It is well-established from Day's own

affidavit that threats were relayed from the Government to Day, and that she, without investigation to confirm whether probable cause existed, used threats to induce Staszak's guilty plea. Therefore, the Plea Agreement is fraudulent, and Staszak's due process was violated.

III. THE SUPREME COURT SHOULD GRANT THE WRIT WHERE PROSECUTORIAL MISCONDUCT AND INEFFECTIVE ASSISTANCE OF COUNSEL OCCURRED WHERE COUNSEL FAILED TO INVESTIGATE AND FOLLOW THE LAW PERTAINING TO 18 SECTION 2423(B); I.E., COUNSEL FAILED TO DISCOVER THAT COUNT 2 NEVER OCCURRED; THAT COUNT 3 DOES NOT CONSTITUTE A FEDERAL OFFENSE, AND WHERE DUE PROCESS IS VIOLATED WHEN THE GOVERNMENT PROSECUTED 18 SECTION 2423(B) WHICH DO NOT CONSTITUTE FEDERAL OFFENSES AS STIPULATED WHERE LOWER COURTS ERRED IN DENYING 2255 RELIEF.

Day rendered ineffective assistance when she advised Staszak to execute a Plea Agreement and Stipulation of Facts, and to enter a guilty plea to (Count 2) when she had been advised by Staszak that the allegations contained in (Count 2)

had never occurred; where evidence from Staszak's Naval medical records indicate negative test results for a sexually transmitted disease, ("STD"), months after March 22, 2011, indicating that Staszak never contracted a STD from K.G.; where Day failed to investigate the law pertaining to 18 U.S.C. Section 2423(b) and (f); where Day failed to investigate the jurisdictional nexus in (Count 2), and also failed to discover that (Count 3) does not constitute a federal offense.

Staszak was denied his right to due process when the Government indicted him with violations that it knew, or should have known, did not constitute federal offenses, and further that the Government lack subject matter jurisdiction to prosecute under 18 U.S.C. Section 2423(b).

In Staszak's indictment (Count 2) charges that on or about March 22, 2011, he traveled in interstate commerce from North Carolina to Illinois, for the purpose of engaging in "*illicit sexual conduct*", that being a sexual act with a person under 18 years of age, in violation of 2423(b). Had Day investigated the facts surrounding (Count 2), she would have discovered the Government lacked a jurisdictional nexus between a federal statute and Staszak's conduct, thus depriving the Government of subject matter jurisdiction as to (Count 2) creating that Day had failed to challenge the jurisdictional basis of (Counts 2 & 3).

In regards to (Count 3), Section 2423(f) defines "*illicit sexual conduct*"

as (1) a sexual act (as defined in 18 U.S.C. Section 2246) with a person under 18 years of age that would be in violation of *Chapter 109A* [18 U.S.C. Sections 2241 *et seq.*] if the sexual act occurred in the special maritime and territorial jurisdiction of the United States; or any commercial sex act (as defined in *Section 1591*) with a person under 18 years of age. In Staszak's case, there was no "*illicit sexual conduct*" as defined in Section 2423(f). To show "*illicit sexual conduct*" there must be (1) a sexual act with a person under **18**, **and** (2) the sexual act must be in violation of *Chapter 109A*. *Chapter 109A* is comprised of eight sections. Of the four sections that involve a sexual act, none apply to Staszak. *Section 2241* requires force, threats, or drugging; *Section 2242* requires threats or incapacitation; *Section 2243* requires the minor to be *under 16*; and *Section 2244* requires *sexual abuse*. None of these factors were present in the sexual act that allegedly occurred between Staszak and K.G. In the recitation of the "*Factual Basis*" at Staszak's Rule 11 Plea Colloquy hearing, the Government claims the evidence would show that Staszak and K.G. engaged in "*sexual intercourse involving genital to genital intercourse.*" See (Rule 11 Transcript, A-17). Sexual intercourse, unless accompanied by some form of abuse, such as force, threats, drugging, or incapacitation does not constitute *illicit sexual conduct* under Section 2423(f), unless the minor is *under 16 years of age*. There can be no violation of

Section 2423(b) unless there is also a violation of *Chapter 109A*. Since K.G. was *factually 16* at the time of the alleged incident, there was no violation of *Chapter 109A*, and no violation of Section 2423(b). Staszak was prejudiced by Day's deficient performance as she clearly failed to investigate the law pertaining to 18 U.S.C. Section 2423(b) and (f). The Supreme Court held in *Russello v. United States*, 464 U.S. 16, 23 (1983), that "where Congress includes particular language in on section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion and exclusion."

When Congress enacted Section 2423(b) it specifically omitted the word "*minor*" and substituted in its place the phrase "*illicit sexual conduct*." The definition of illicit sexual conduct places certain conditions on what constitutes a "*minor*", and permits some sexual activities for individuals under the age of 18; (*i.e.*, such as Armed Forces service members under the *Uniform Code of Military Justice*, ("UCMJ"), such as Staszak, etc). The intent of Congress was clear: it was to criminalize travel across state lines to engage in *illicit sexual conduct*, not just *any* sexual conduct, but only "*illicit sexual conduct*", that is, conduct which comports with the restrictions placed by Congress, through its inclusion of *Chapter 109A*, on certain sexual conduct. Day claims in her Affidavit that K.G.

was 16 years of age and Staszak was 28 years of age. See (Day Aff. A-19, p. 11).

Section 2243 has two conditions: (1) the minor has attained the age of 12 years but has not attained the age of **16 years; and** (2) is at least four years younger than the person so engaging. Day clearly failed to apply *Chapter 109A*. Furthermore, *Section 2243* only applies to minors under the age of 16.

Several Circuits have upheld that the defendant must actually cross the state line to violate Section 2423(b), that intent is not initiated until an actual crossing of a border, and all acts prior to that is mere preparation. The Seventh Circuit indicates that crossing a state border was required before intent could be shown. See *United States v. Bradley*, 675 F.3d 1021, 1026 (7th Cir. 2011). This evidence shows that Staszak crossed a border about halfway between Camp Lejeune, North Carolina, and Marion, Illinois on May 29, 2011. K.G. was 16 years of age for several hours prior to Staszak obtaining a hotel room on May 29, 2011, and K.G. was not present while Staszak obtained a hotel room on the afternoon of May 29, 2011. Therefore, Staszak's conduct did not violate federal law, prosecutors committed misconduct, there was a lack of jurisdiction basis, and a lack of subject matter jurisdiction in order to prosecute Staszak on (Counts 2 & 3).

CONCLUSION:

Staszak presents three questions for why his conviction and imposed sentence are unlawful. Those questions are deeply-rooted in his claims that his guilty plea is invalid because of prosecutorial misconduct, ineffective assistance of counsel, misunderstanding of the law and failure to investigate the law. Staszak's 2255 denial generated dark incentives for prosecutors to bring no-holds-barred prosecutions on untenable charges against defendants, and allowing ineffective assistance of counsel to run rampant. The Seventh Circuit was not inclined to play along by resolving nothing and denying everything. When a case or controversy comes within the judicial competence, the Constitution does not permit judges to look the other way; those judges must call foul when constitutional lines are crossed, no matter the cause presented. An old adage comes to mind: *"Even a dog distinguishes between being stumbled over and being kicked."* No attorney in our country should advise a client to plead guilty to any charge, or charges that the client did not commit, or where a charge or charges do not meet a federal offense.

WHEREFORE, for all of the reasons set forth in this petition, it is humbly prayed this Supreme Court accept jurisdiction over Petitioner Matthew Lee Staszak's petition on the merits and for the entry of relief as the Court deems just.

Respectfully submitted,

A handwritten signature in black ink, reading "Matthew L. Staszak". The signature is written in a cursive style with a large, looping initial "M".

Matthew Lee Staszak, Petitioner, pro se

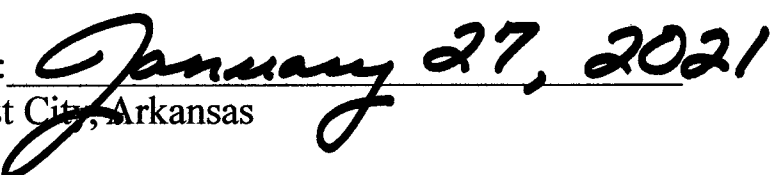
Reg. No. 24227-171

Federal Correctional Complex (Low)

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Forrest City, Arkansas 72336-9000

Dated:

A handwritten date in black ink, reading "January 27, 2021". The word "January" is written in a cursive style, and the date "27, 2021" is written in a more straightforward style.

Forrest City, Arkansas