

21-1201  
NO. \_\_\_\_\_

FILED  
FEB 09 2022  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE  
SUPREME COURT OF THE UNITED STATES  
MICHAEL D. SMITH,

Petitioner, (pro se)

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the  
United States of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

MICHAEL D. SMITH

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2-22-22

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SUPREME COURT, U.S.

## QUESTION PRESENTED

Will the Eastern District of Kentucky be allowed to ignore our federal laws, Constitution and Bill of Rights and have a 5 week, mock trial on innocent people, filled with nothing but prosecutorial and judicial misconduct, forced the jury to vote guilty, after holding it for about 18 hours, after the grand jury returned a NO BILL OF INDICTMENT, the court had NO JURISDICTION OR AUTHORITY to touch anyone, and sentence innocent people to prison for 10 years, to cover it all up, and refuse to give me justice and vacate my case and conviction.

**PETITIONFOR A WRIT OF CERTIORARI**

Petitioner Michael Smith respectfully requests the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the 6th Circuit.

**DECISION FROM 6TH CIRCUIT**

USA v. Michael Smith, Case No. 3:08-cr-00031  
Eastern District of Kentucky. Judgment entered  
March 29, 2021.

USA v. Michael Smith, Case No. 21-5371,  
U.S. Court of Appeals for the Sixth Circuit,  
Judgment entered November 15, 2021.

**ALSO FILED IN COURT RECENTLY**

Shena Smith (3rd party claimant), my daughter filed a Writ of Mandamus in the Supreme Court, asking for the case to be vacated and her land returned to her, about January 14, 2022. That had nothing to do with this case, federal officials trying to

## **APPENDIX**

**Question Presented p. 3**

**Decision from the 6th Cir. p. 4 and 35-41**

**Decision from the Eastern District of Ky, p. 4 and 33-35**

**Jurisdiction p. 6-8**

**Federal Rules in Question p. 8-9**

**Table of Cases p. 9-11**

**Statement of the Case 11-29**

**Fraud on the Court p. 29-32**

forfeit anything they can get ahold of, looking for money to keep for themselves. I once read the Eastern District of Kentucky is among the poorest Districts yet forfeiture is 3 times the national average.

Michael Smith, filed in the Southern District of California, Rule 60 (d) 3, Fraud on the Court, about January 14, 2022, not on the record yet. I was told when one Circuit has no justice, I can file in another, it is silly to think the same court officials who did all of this to me would admit to the world what they have done and correct this mess.

Also filed is a civil case against all government officials who participated in this crime that I know of. Michael Smith v. Frances Cadle, et al, Case No.: 3:21-cv-00008, Eastern District of Kentucky

Michael Smith v. Frances Cadle, et al, Case No.: 21-5370, US Court of Appeals of the 6th Cir.

Michael Smith v. Gordon, et al, Garrard

County Circuit Court, Lancaster, Kentucky Case No.  
21-CI-00034, Civil lawsuit suing all lawyers who  
took part in this crime who knew of the prosecutorial  
and judicial misconduct and did nothing, knew there  
was no indictment but agreed to go along for favors  
from the court to make good and sure I went to  
prison.

Michael Smith v. Gordon, et al, Kentucky  
Court of Appeals Action No. 2021-CA-0713-MR.

This Petition was prepared pro se and hope  
this court will take into consideration that I have  
done the best I can and from past law, should not be  
held to the same standards as a lawyer, Haines v.  
Kerner, 404 U.S. 520 (1971). Puckett v. Cox, 456  
F.2d 233 (1972) 6th.Cir. USCA.

#### JURISDICTION

This Petition is being filed within the required  
90 days of 6th Cir. denial. Also pursuant to Supreme

Court Rule 10(a), the Appeals Court has decided an important federal question in a way that has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power, when it denied my Writ of Error, Coram Nobis appeal from District Court, that had a mock trial filled with nothing but prosecutorial and judicial misconduct, after the grand jury returned a NO BILL OF INDICTMENT, NO CRIME, after the trial there still was no crime other than the crime the government officials did to me, District court did not even have the jurisdiction to touch any of us. I can not find any case law where a judge had a trial after the grand jury returned a NO BILL of INDICTMENT, or kept the jury hostage for 18 hours in a hot room, forcing a guilty verdict. But it is so clear EVERYONE knows you can not do this in America.

It was fraud on the court and after this trial

the prosecutor Catron got a new job clerking for the trial judge, this is newly discovered my brother told me he saw it on her facebook account, that she now works for the district court. Everyone is entitled to an unbiased decision maker, not the prosecutor writing opinions of the court, in violation of separation of powers and ex parte communications. Williams v. Pennsylvania, Docket #15-5040, Puckett v. US 556, State of Texas v. Clinton Young.

#### **FEDERAL RULES IN QUESTION**

##### **1) FEDERAL RULES OF CRIMINAL PROCEDURE**

RULE 7.(c)(1) The indictment must be signed by an attorney for the government

##### **2) 5th AMENDMENT OF THE BILL OF RIGHTS**

No person shall be held to answer for an infamous crime, unless on a presentment or indictment of a Grand Jury;---due process of law and equal protection of the law.

##### **3) 6th AMENDMENT OF THE BILL OF RIGHTS**

Right to a jury trial and effective assistance of counsel, and confrontation clause.

4) Separation of Powers, Articles 1,2 and 3, of the Constitution.

5) *28 US Code 2255- Federal Custody*, (a) "A prisoner in custody---". It clearly states, "a prisoner", I am out of prison and so, no longer a prisoner so this is not what the law states for me, Writ of Error is what the law clearly states, to file after getting out of prison. I filed and was denied a bunch of times while in prison for another 2255, so how much sense does it make for the court to tell me, you have to file again?

#### TABLE OF AUTHORITIES/CASES

*Haines v. Kerner, 404 U.S. 520 (1971), Puckett v. Cox, 456 F.2d 233 (1972) 6th Cir.*; Pro se filer not held to the same standards as a lawyer.

*Willams v. Pennsylvania, Doc# 15-5040, Puckett v. U.S. 556, State of Texas v. Clinton Young*, separation of powers, when prosecutor was also

clerk for the judge, everyone is entitled to an unbiased decisionmaker, not the prosecutor.

*U.S. v. Morgan*, 346 U.S. 502 (1953); *U.S. v. Mayer*, 235 U.S. 55, 69, 35 S.Ct. 16, 59 L. Ed. 129.; was denied a fair trial, which violates fundamental rights, so the court granted him a Writ of Error vacating his case.

KRS 353.550 Improper Abandoned Wells-- states. "*gas wells shut in due to market conditions are not included*". So by Kentucky law, we should not have gotten any violations for this. Government has since changed this law to something else, but before the trial it was this law.

*U.S. v. Booker* 543 US 220, 125 S.Ct. 738, 160 L.Fd 2d 621 (2005); jury must find all the elements of the every crime and find each crime guilty, court can not get a guilty verdict on one small crime and then pretend there were more crimes and sentence the defendant on other crimes the jury did not convict.

*People v. Zajic*, 88 Ill. App.3d 477, 410 N.E. 2d 626 (1980).; the judge is not the court.

*Bullock v. U.S.* 763 F.2d 1115, 1121 (10th Cir. 1985), Fraud on the court.

*Kenner v. C.I.R.*, 387 F.3d 689 (1968). 7 Moore's Federal Practice, 2d ed., P. 512, 60.23. Fraud on the court.

#### STATEMENT OF THE CASE

June 2010 I was put on trial for securities fraud, June 2011 I was sentenced to 10 years in a Federal Prison Camp, Ashland, Kentucky, I was released Febuary 2020, after serving over 8 1/2 years in prison. Less than one month later I received a letter from the FBI, stating they "looked for an indictment but did not find one", Exhibit (1). I was told there was no indictment from the grand jury but my lawyer told me they had to take it before 3 grand juries before I was indicted, which I now know was a

lie. The distict court sealed and would let anyone see it without the judge approving it, so this is the first time I got PROOF there was no indictment. I have filed 14 times to vacate this case and 14 times the district court and 6th Circuit have denied the Application, calling them a second 2255, never considering them on their merits. But this is the first time I have proof from the FBI that there was no indictment to have a trial on us. The district court has done fraud on the court and a crime, it had no authority or jurisdiction to touch me or anything I owned.

I then filed a Writ of Error, Corbam Nobis to have my case vacated, I am having damages to my reputation and paying restitution. *US v. Morgan, 346 U.S. 502 (1953)*, *If Morgan can establish that he was deprived of his common law right to be represented by counsel at the trial in the Northern District and he in no way waived that right, there would be a*

*proper case for allowing a writ of error coram nobis,*  
*since such a denial is an error of fundamental*  
*character rendering the trial invalid. See U.S. v.*  
*Mayer, 235 U.S. 55, 69, 35 S.Ct. 16, 59 L. Ed. 129.*  
*Judge Brennan's order dismissing his application*  
*should accordingly be reversed. So for no indictment,*  
*prosecutorial and judicial misconduct and fraud on*  
*the court, wrongful conviction, malicious prosecution,*  
*I clearly had my fundamental rights violated and*  
*am entitled to have my case vacated.*

Most of the following has been brought before  
this court before, but is included to show the  
miscarriage of justice done to me and my family.

Two weeks into this trial, the prosecutors  
asked the judge to dismiss the securities fraud  
charges, COUNTS 24 AND 25, after telling the jury  
all the details of the crimes, the judge said that  
because there had been no evidence of the crimes

shown the court he would dismiss them and he did. Then the judge refuses to tell the jury these charges are dismissed, (Docket page 42 of 134, hearing held on 6/30/2010, R. 298. (Transcript of hearing held on 6/28/2010, R. 850, Page ID# 12286-12292)), and because the charges are dismissed they could not be mentioned again and so we were not allowed to say one word in our defense, Violation of the confrontation clause in the 6th Amendment. We were not allowed to prove to the jury, everything the prosecutors just told you was not true, in fact it was all lies. 06/30/2010 Doc 298 Page42 of 134.

Also this fake indictment used at the trial states in the **MANNER AND MEANS**, page 5, paragraph 6, *"that overwhelming majority of potential investor were not accredited investors, and salemen told investors the programs were registered securities, salemen made no effort to determine whether the investors qualified as accredited*

*investors, etc".* All lies, at the trial it was proven that every investor had to sign a contract that they were ACCREDITED, so none of this was true, and we did no crime.

We had about 15 good gas wells we could not get hooked up to transmission lines, owned by Columbia Transmission and EQT, the state oil and gas inspectors were giving us violations on them. The Inspectors were trying to take our wells and at the trial the prosecutors were telling the jury these violations were proof of us being crooks and 6th Circuit Judge Gilman wrote in his opinion, using another name to get well permits from these violations were a show of dishonesty.

But *KRS 353.550 Improper Abandoned Wells* ---states, "*gas wells shut in due to market conditions are not included". So by Kentucky law, we should not have gotten any violations for this.*

KRS 353.550 has since been changed to another law

now, done after I made this point in one of my petitions or motions, federal agents want anyone looking this law up will see that is not true, but it was true, until it was changed.

So there was NOT ONE CRIME listed in the fake indictment used at the trial, and after it was proven lies, the trial went on, the judge would not stop it, he was going to find a crime somewhere or brainwash the jury into begining to see one with a 5 week trial.

Within the last year, I just learned that the record had another proof that our lawyers were working for the government, Doc#777, Gambrel trial transcript, filed 12/16/11, Page ID#9501-9502,: Defense atty.  
Lyons asked a witness, a surveyor (Gambrel) his last question, then prosecutor Catron asks the judge "may I have just a moment with Mr. Lyons, please"? "Court: Yes ma'am".  
Then Catron confers with Lyons. Then Lyons asks Gambrel, "in 2001 did you have your surveyors license suspended?"

Gambrel: "yes". --- Then Catron on Redirect, asks Gambrel,  
"and you learned your lesson from that, Mr. Gambrel?"  
Prosecutor was showing the jury this man should not  
be believed when he says nothing bad about me.  
Doc#777, Gambrel trial transcript, filed 12/16/11,  
Page ID#9501-9502.

Catron was not allowed to bring up a new subject on REDIRECT, that the opposing attorney had not brought up so she had the defense attorney to bring it up for her, PROOF THE DEFENSE ATTORNEYS WERE WORKING FOR THE PROSECUTORS. Also every defense lawyer knew there was no indictment but said nothing and filed nothing to stop the miscarriage of justice.

Our attorneys kept trying to force us to plead guilty, I told them, SHOW ME A CRIME WE DID, AND I WILL TALK TO YOU ABOUT PLEADING, WE DID NOT DO ANYTHING CRIMINAL. None of the lawyers could show us even (1) one crime, that is

why we went to trial and why we have fought this case with everything we have, we didn't do anything. We will not plead guilty to a crime we did not do.

My son Shaun Smith was tricked into pleading guilty by his lawyer Bill Hayes, when he told him, he had talked to the judge and the prosecutors don't know anything about it but he will receive NO prison time if he pleads guilty. But Trial Judge Hood sends my son, Shaun Smith to a prison in Oklahoma with one cell with about 250 prisoners with ONE TOILET, it was so full everyone could not even lay down at the same time. My little boy was TORTURED, trying to force me not to appeal my case and showing the Abomination the federal courts have done. I believe Judge Hood did not intend any of this wrongdoing to get out in the public, at sentencing, he seemed upset with the prosecutors and told them, "*you were supposed to make a deal with this man*". Hood was hoping that he could force me into pleading to

something AFTER the trial and everything would be covered up.

Prosecutors in their brief to the 6th Circuit on direct appeal, stated over 60 FALSE citations of the record pretending the evidence of guilt was just overwhelming, when, there was nothing criminal shown at the trial, just FRAUD on the court by the government. When Judge Gilman wrote the opinion for the court, denying a new trial, he rewrote what prosecutors stated, that we had misrepresented well production to investors, he stated it 8 times in his opinion, the main reason for being guilty.

We did not mislead or lie to anyone. The jury found us NOT GUILTY of wire fraud, meaning everything said by everyone in the case, the jury found no crime, but the 6th Circuit pretended it was all true to justify keeping innocent people in prison to cover up wrong doing of the federal agents and the court. It's not fair for the jury to find us not

guilty of a crime and the court just bring it back up again and find us guilty. Violation of a fair jury trial given in the 6th Amendment and due process and equal protection of the law, in the 5th Amendment.

This also happened in the sentencing after the trial, Judge Hood sentenced us to prison as if every program and every dollar raised was fraud, even after the jury found us guilty of just a few of the deals. The jury was FORCED to find us guilty by fraud on the court and Judge Hood met with the jury a few minutes before the verdict, he FORCED at least one juror to change their vote, violation of a jury trial given in the 6th Amendment.

My court appointed appeals lawyer McKenna used US v. Booker 543 US 220, 125 S Ct. 738, 160 L.Fd 2d 621 (2005), in his brief, "*the judge has discretion to lower prison time*", but he never stated what the important reason for the case from the Supreme Court was, that a court can not sentence

anyone without the jury finding all the elements of the crime and finding every case guilty, so if this had been done on my case I would have gotten far less time than 10 years. My appeals lawyer was not even trying to help me. Also I told my Appeals lawyer of wrongdoing of the court and he would not talk to me again, he did not want to hear it, he was making his living getting contract work from the court, and accusing the court of wrong doing would cut into his bank account.

Doc#572-2, Bottoms trial transcript, filed 5/26/11, Page ID#4190-4198, when defense atty, Lyons was attempting to impeach this witness and question the validity of the so called 'indictment' by asking U.S. Postal Inspector, Roberta Bottoms about her grand jury testimony re: Target being unlicensed sales people. This resulted in an objection from prosecutor, Catron and a bench conference.

Defense atty, Gordon: "We challenge the proof here", judge Hood, Court: "Don't start. It's about to cost you money.

Don't start." (Judge Hood did not want the INDICTMENT brought up, he knew all the lawyers knew there was no indictment and agreed to go to trial without it, Hood did not want anyone else to know he was having a trial without an indictment, he was covering it up) he continued to make it clear that the securities charges had been dismissed and the jury wasn't notified, but the jury instructions would fix that. Judge Hood continued to agree with the prosecutor.

CATRON: "However, the basis of the U.S. objection is that Mr. Lyons seems to be attacking the validity of the indictment. (Continue to next page, Page ID# 4194). That is something not on trial here. That should have been addressed pretrial, whether or not there are deficiencies in this indictment, whether there is some problem with the investigation that resulted in ineffective or inefficient or illegal indictment. The indictment is not on trial here".

Line 23-5, MR LYONS: Your Honor please, at the time that I got into this case, there was no mechanism for me to challenge this indictment whatsoever. This case---(next page, Page ID# 4195), was already set for trial. I could not

have filed a motion for --to dismiss this indictment".

THE COURT: "I can't dismiss the indictment sitting here, ----Because I have heard evidence of fraud."

(Which was NOT TRUE.) This is proof there was NO indictment and all the lawyers KNEW it and were co-conspirators in this crime, and filed nothing to stop this trial.

Also the FBI letter clearly states they looked for an indictment and did not find one, there was NO INDICTMENT. Prison officials also told me there was nothing but a NO BILL of INDICTMENT on me, but they would not give me a copy of it, so I had NO proof of it.

Prison officials said they were afraid they would have handcuffs put on them, if they let me go home, I have seen too many people like you in prison. President Trump gave me a pardon while I was in prison, but it had to be OKed by the Judge Hood, who refused to let me go home, I was told I could go home any day I wanted, if I would sign a paper agreeing to TIME SERVED, I would not do it. I am too old to start over now, and my health has went down alot while in prison, they let my Oxygen get down into the 50's before

getting me to a hospital. I have been told when the grand jury returned a No Bill of Indictment on me, the grand jury foreperson and prosecutor would go out before the judge and it would be entered into the record and no one can change it, it is there to stay.

Judge Hood stated on his order, Doc# 1046 Filed 03/29/21 Page 2 of 2, Page ID# 14139, "--**CERTIFIES** that the indictment was properly brought with the signature of the foreperson of the grand jury,--". If Hood had only a signature of the grand jury foreperson, he does not have an indictment, but a NO BILL OF INDICTMENT from the grand jury, Rule 7, (1)(B)(c)(1), "*the indictment **MUST** be signed by an attorney for the government*".

I can go on and on and counter everything the government and judges have stated, it did not happen as they state, I am innocent of everything they accused me of, I told all my workers many times and many testified at trial that I told them, "don't be lying to these people, they are rich and very smart, you can not keep your lies straight so don't be doing it."

**The 6th Circuit has stated that I am still on  
probation and in custody and so I can't file a Writ of  
Error.**

28 U.S. Code 2255- Federal Custody (a) "A prisoner in custody---". These words are clear, to everyone what they mean. A prisoner in prison, I am out of prison, so asking again as I have many times, permission to file another 2255 is not what the law states, after I am out of prison. The 6th Circuit is just putting another stump in front of an innocent person to try to make him trip and fall, calling it the law, a law they have twisted it's meaning, created to stop JUSTICE. It is ludicrous to even think that the very people who did all this wrong to me would reverse themselves and tell the world all the wrong they have done, it has to be someone else to look at this case.

I was railroaded to prison with fraud on the court.

## WHERE THIS CASE STARTED AND WHY

My younger brother was going through a divorce from a mentally ill, drug addict who carried a gun with her, she was loosing her seat on the gravy train, and was full of vengeance and needing reward money, she said she called the judge about every day wanting criminal charges on us, and she called the IRS, etc, wanting something done, she also convince them I had \$100,000,000 hid, so if they could get anything on me, they were all going to be rich with FORFEITURE MONEY. My CPA told me US Postal Inspector Bottoms came to his office several times asking where the \$100,000,000 was, he told her there was no \$100 millions. She just could not let it go, she would do anything to get that kind of money even railroad an innocent person to prison.

The judge got the ex-wife a lawyer who went to church with him, this lawyer was very close friends with a high up elected federal official in Kentucky, (I know his name but fear problems should I write it here), this man has most if not all the federal judges in Kentucky appointed and

probably most on the 6th Circuit, this is why all this happened to me.

My brother was in his divorce about 2003 and this is when US Postal Inspector Roberta Bottoms testified 2003 is when she started this case, but after several years and no evidence of wrong doing she started to create a crime, so she and Kentucky Financial Institute official Chad Harlan got on VRI forum on the internet pretending to be cheated investors, slandering me and telling nothing but lies, they contacted all my investors telling them we were all crooks and did not drill any oil or gas wells, all their money was spent on helicopers, big boats, etc. All LIES. They also contacted other states and convinced about 5 to issue Cease and Desist orders to me trying to shut me down and create a crime. They got in so deep they had to send me to prison to justify it all, they had no case, NO CRIME.

Roberta lied on a search warrant stating I owned 2 houses that my dad and mom owned and always have owned, she searched them and took my dad's life's savings, and refuse to give it back, I had a lawyer to try to get it back, he

said if you ask for it back they will file charges against you, they consider that money their money, he said it would cost a lot of money to file to get it back.

Someone told me a lawyer in Middlesboro, KY grew up with Judge Hood in Ashland, KY and prosecutor Catron was an old girlfriend, and that he can help get dad's money back. I met with the lawyer, Bill Hayes, and he told me he could help me. Then a short time latter I was arraigned in federal court. (I am so sure Bill Hayes talked to prosecutor Catron and told her to go ahead and charge him I am his lawyer, I will force him to plead to something after I get all the money I can get from him, I will find out where he has all his money). After I paid Bill Hayes over \$100,000, he then flips on me and said he has talked to the prosecutors and they have enough evidence to send me to prison and that I need to plead guilty and the years in prison will not be much, if not I may get 80 years in prison if I go to trial. He talked very disrespectful and threatened me if I didn't plead guilty. I told him, SHOW ME A CRIME AND I WILL TALK TO YOU ABOUT A PLEA DEAL, I DIDN'T DO ANYTHING. He

could not show me anything criminal, and I told him I will not plead to something I did not do.

So it was not because of any crime I did but a bunch of high up officials wanting to rob me, who got in so deep in corruption it had to be covered up.

### **FRAUD ON THE COURT**

Fraud on the Court, the judge is not the court, *People v. Zajic*, 88 Ill. App.3d 477, 410 N.E.2d 626 (1980).

Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud the court". In *Bullock v. U.S.*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury...It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function- thus where the impartial functions of the court have been directly corrupted."

"Fraud on the court" has been defined by the 7th Cir. to "embrace that species of fraud which does, or attempts to,

defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, 60.23. The 7th Cir. further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final." Under Illinois and Federal law, when any officer of the court has committed "fraud upon the court, "the orders and judgment of that court are void, of no legal force or effect.

The district court and the 6th Cir. did not address all the prosecutorial and judicial misconduct, holding a jury for 18 hours in a hot room and meeting with the jury a few minutes before the verdict, I take that as an admission that it DID happen, because I was there and IT DID happen. So the courts have considered all this and rules court can not find anything wrong with misleading, lying to and FORCING a jury to find guilty. It is an abomination that we have federal judges, guardians of our free country to do what they have

done to me and my family.

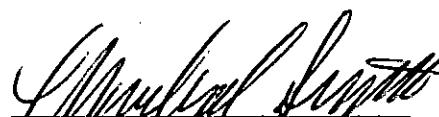
All the case law used by the 6th Cir in it's denial does not even apply to my case they too have done FRAUD ON THE COURT. If this court does not correct this abomination, you are setting a system of government that is just like China and North Korea, and though you may be high enough that you may never feel it's effect, you children and grand children better be very afraid. When we stop using the jury and grand jury it becomes federal agents can stop and rob anyone, take their houses, cars and all their childrens houses and cars and nothing is going to happen to them.

Notice on Hood's Dismissal that he does it with a bunch of other filings, [DE 1038], is the Writ of Error, he was trying to dismiss it without me knowing what it was, pretending it was a motion to see the indictment. Another Fraud on the Court. Also Prosecutor Catron quit her job with the executive branch of govenment and went to work for Judge Hood, the Judicial Branch, denying me due process, and an unbiased decision maker. Also this is ex parte communications, which is not allowed. This alone is enough

to grant me a vacate of my case and conviction.

I respectfully ask that this court to do the right thing and vacate this case, asked for in my Writ of Error, Coram Nobis. Just one of the above misleading of the jury should show that I was denied a fair jury trial, and there are many more I can show the court, the entire trial was fraud on the court, there was nothing there, I did not cheat, mislead or lie to anyone to take their money.

Everything in this petition is true and accurate to the best of my knowledge.



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#### ORDERS OF THE COURT

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION at FRANKFORT

US )  
 )  
Plaintiff, ) Criminal Case No.  
 ) 3:08-cr-31-JMH-1  
v. ) ORDER  
 )  
MICHAEL SMITH, )  
 )  
Defendant. )  
\*\*\*\*\*

The court has received several motions for the release of a certified copy of the unredacted indictment used in this matter. In particular, Defendant Michael D. Smith, proceeding pro se, has requested an unreacted copy of his indictment, arguing in state court that his conviction is invalid because of a faulty indictment. [DEs 1036, 1037, 1038, 1040]. Attorney Patrick Nash on behalf of the law firm Nash Marshall, PLCC (collectively "Nash")

has also filed a motion seeking a copy of the unredacted indictment for a in camera review in a state court matter. [DE 1043].

The Court, having reviewed the motions and all relevant documents decline to grant the request to release a copy of the unredacted indictment in this matter for review in state court. Smith brought multiple motions [DEs 895, 945, 951], challenging the indictment, all of which have been previously denied by his court. [See DEs 901, 902, 967].

Case 3:08-cr-00031-JMH-HAI Doc#:1046 Filed:

3/29/21 Page 2 of 2 Page ID# 14139

Accordingly, IT IS ORDERED as follows:

- 1) Defendant Smith's motions [DEs 1036m 1037, 1038, 1039, 1040] are DENIED;
- 2) Movant Patrick Nash's motion [DE 1043] is DENIED;
- 3) The court has reviewed the document in

question and **CERTIFIES** that the indictment was properly brought with the signature of the foreperson of the grand jury, resulting in the conviction of Smith on some, but not all, of the charges listed therin.

Moreover, Smith's conviction was affirmed on appeal [DE 875]; and

4) A **CERTIFIED** copy of this Order **SHALL** be provided to Defendant Smith, movant Nash Marshall, PLLC. and Chief Circuit Judge Hunter Daugherty for Garrard Circuit Court. Chief Judge Daugherty's copy **SHALL** be by certified mail.

This the 29th day of March, 2021.

Signed By:

Joseph M. Hood //s

Senior U.S. District Judge

Case 21-5371 Doc: 12-2 Filed 11/15/2021 Page 1 2of4

**NOT RECOMMENDED FOR PUBLICATION**

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

U.S.	) FILED
	) Nov 15, 2021
Plaintiff-Appellee	) Deborah S. Hunt, Clerk
	)
v.	) ON APPEAL FROM THE
	) US DISTRICT COURT
MICHAEL SMITH	) FOR THE EASTERN
	) DISTRICT OF
Defendant- Appellant	) KENTUCKY
	)

ORDER

Before SUTTON, Chief Judge; ROGERS and  
GRIFFIN, Circuit Judges.

Michael Smith, a pro se federal supervisee,  
appeals the district court's order denying his petition  
for a writ of coram nobis, motions for an unredacted  
copy of the indictment, and motion for a change of  
venue. This case has been referred to a panel of the  
court that, upon examination, unanimously agrees  
that oral argument is not needed. *See* Fed. R. App. P.  
34(a).

In 2010, a federal jury convicted Smith of conspiracy to commit mail fraud, in violation of 18 U.S.C. 1341. The district court sentenced Smith to 120 months of imprisonment and three years of supervised release, and we affirmed. See *U.S. v. Smith*, 749 F.3d 465 (6th Cir. 2014). Smith unsuccessfully pursued post-conviction relief.

Smith was released from prison in February 2020 and started his term of supervised release. Asserting that the indictment lacked a "true bill" notation and the signatures of the grand jury foreperson and the attorney for the government, Smith filed motions in the district court for an unredacted copy of the indictment in November and December 2020. In January 2021, Smith filed two *coram nobis* petitions in the district court, claiming that he is actually innocent of the offenses of conviction and asserting various reasons why his trial was unfair. In between his *coram nobis*

petitions, Smith moved for a change of venue, claiming that the district judge was biased against him.

The district court denied all of these motions in a single order. The court did not specifically address Smith's coram nobis petitions or his motion for a change of venue, however. In denying Smith's motion for a copy of the indictment, the district court stated, "The Court has reviewed the documents in question and CERTIFIES that the indictment was properly brought with the signature of the foreperson of the grand jury, resulting in the conviction of Smith on some, but not all, of the charges listed therein." Smith's timely appeal followed.

The district court was not authorized to grant Smith coram nobis relief because he is still serving a term of supervised release, and thus the writ is unavailable to him. See U.S. v. Sferazza, 645 F. App'x 399, 404-05 (6th Cir. 2016); US v. Sandles, 469

F.3d 508, 517-18 (6th Cir. 2006); Blanton v. US, 94 F.3d 227, 231 (6th Cir. 1996).

Due to the important government interest in maintaining the secrecy of the grand jury process, Smith was not entitled to an unredacted copy of the indictment absent a particular demonstration "that grounds might exist for a motion to dismiss based on materials concerning the grand jury." US v. TePoel, 317 F. App'x 549,551 (7th Cir. 2009). Smith's unsupported and frivolous assertions of defects in the indictment do not satisfy this standard. See *id.* In any event, an indictment is not required to have a "true bill" notation, see US v. Johnson, No. 20-6201, 2021 WL 151471, at \*1 (6th Cir. Apr. 13, 2021), and the district court certified that Smith's indictment contains the requisite signatures, see Fed. R. Crim. P. 6(c), 7(c)(1). And even if the indictment was unsigned, the absence of signatures is a technical defect that does not render an indictment invalid as

long as it gave the defendant sufficient notice of the charges. See *Hobby v. US*, 468 U.S. 339, 345 (1984); *U.S. v. Davis*, 539 F. App'x 279, 283-84 (4th Cir. 2013) (collecting cases). Smith does not and never did claim that the redacted indictment failed to provide him with sufficient notice of the charges against him. Consequently, the district court did not err in refusing to provide Smith with an unredacted copy of the indictment.

Finally, we construe Smith's motion for a change of venue as arguing that the district judge should have recused himself from the case and conclude that he failed to establish grounds from which a reasonable person might question the judge's impartiality. See USC 144, 455(a); *Youn v. Track, Inc.*, 324 F.3d 409, 422-23 (6th Cir. 2003), Smith's motion was based in part on the district judge's allegedly unfair rulings in his trial proceedings, but a judge's adverse rulings are insufficient to require

recusal. US v. Sammons, 918 F.2d 592, 599 (6th Cir. 1990). Smith's motion otherwise relied on his conclusory and frivolous assertion that "[i]t is clear someone has been talking to the judge in the back ground [sic] to cause him to disregard the Constitution, Bill of Rights and Law, and to GET ME NO MATTER IT TAKES." The district court did not abuse its discretion in denying this motion. See *id.*

We AFFIRM the district court's order.

ENTERED BY ORDER OF THE COURT

//s  
Deborah S. Hunt, Clerk

FBI LETTER RECEIVED MARCH 2020

U.S. Department of Justice

Federal Bureau of Investigation  
Washington, D.C. 20535  
March 6, 2020

Mr. MICHAEL DALE SMITH  
\*\*12926-032

FEDERAL PRISON CAMP  
POST OFFICE BOX 6000  
SUMMIT ROAD  
ASHLAND, KY 41105-6000

Request No.: 1460220-000  
Subject: SMITH, MICHAEL  
(BILL OF INDICTMENT)

Dear Mr. Smith:

This is in response to your Freedom of Information/Privacy Acts (FOIPA) request. Based on the information you provided, we conducted a search of the places reasonably expected to have records. However, we were unable to identify records responsive to your request. -----

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Sincerely.

/s

David Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Information Management Division