21-1202

NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL D. SMITH,

Petitioner, (pro se)

v.

Frances Catron Cadle, Roberta Bottoms, Andrew Sparks, Charles Widom,David Marye, Wade Napier, Kerry Harvey, James Todd, Joseph Hood,Chad Harlan, Kyle Trimble, Carmen Bishop, John Cullen, United States,Kentucky Department of Financial Instututions, U.S. Department of Justice,U.S. Postal Service, Unknow others, seen and unseen Respondents.

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

PETITION FOR WRIT OF CERTIORARI

MICHAEL D.SMITH
486 Delbar Lane
Lancaster, KY 40444
(859) 304-2136

2-22-22

QUESTION PRESENTED

Will the government officials of the Eastern District of Kentucky and state officials be allowed to violate 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, creating a crime that was not there, forced the jury to vote guilty, after holding it for about 18 hours, in a hot room, with a government agent on the jury, after the grand jury returned a NO BILL OF INDICTMENT, the court had NO JURISDICTION OR AUTHORITY to have a trial or touch anyone, and sentence innocent people to prison for 10 years, to cover it all up, and have complete impunity for their criminal actions.

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. Dismissing a civil lawsuit against the United States, and government officials acting under color of law who lied, mislead, and tried to create a crime that was not there to send innocent people to prison.

DECISION FROM 6TH CIRCUIT

Michael Smith v. Frances Catron Cadle, et al., Case No. 3:21-008-DCR, Eastern District of Kentucky. Judgment Dismissing, entered March 2, 2021. Rule 59 Alter, Amend or Vacate was DENIED March 30, 2021. Original criminal case was Eastern

APPENDIX

District of Kentucky Case No. 3:08-cr-00031 JMH.

Michael Smith v. Frances Catron Cadle, et al., Case No. 21-5370 of the U.S. Court of Appeals for the Sixth Circuit, Judgment Dismissing entered November 18, 2021.

ALSO FILED IN COURT RECENTLY

Shena Smith (3rd party claiment), 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 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 Petition for Writ of Certiorari to this Supreme Court, asking for it to Vacate my case with my Writ of Error, Case No. from the Sixth Cir, 21-5371. Original case in district court was 3:08-cr-00031 JMH.

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 the 6th Cir. upheld the Eastern District of Kentucky district court when it denied and dismissed my civil action against the United States and government officials, who caused the District Court, to have 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 jusdiction 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.

Willams 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?

6) FTCA (Federal Tort Claims Act) (August 2, 1946, ch.646, Title IV, 60 Stat. 812, 28 U.S.C. Part VI, Chapter 171 and 28 U.S.C. 1346. United States can be sued for damages.

7) 42 USC §1983 Civil Rights Violations. Every person who, under color of law, subjects, or causes to be subjected, any citizen of the US, to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured.----.

8) Bevins v. Six Federal Agents, 403 US 388 (1971) for every wrong there is a remedy.

9) KRS 502.020 Liability for conduct of others.

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 clerking 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, the court did this to me.

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

Bulloch 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.

Heck v. Humphrey, 512 U.S. 477 (1994), to receive damages the conviction must first be reversed or sentence invalidated. When the grand jury returned a NO BILL OF INDICTMENT the case was decided in my favor and when the only charges in the

fake indictment used at trial was dismissed 2 weeks into the trial, the case was decided in my favor, so Heck does not apply to my case and is misplaced.

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 have a trial, 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, trial without a crime, 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. There was NO other crimes listed in the fake indictment, the trial should have stopped but it went on looking for some trumped up crime as it went. It never did find a crime, a trial without a crime!

We had about 15 good gas wells we could not get hooked up to transmission lines, owned by Columbia Transmission and EQT, and the ones hooked up they would not let us run gas, they put locks on some of them. The state oil and gas inspectors were giving us violations on them calling them "Improper Abandoned Wells". 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 asked the defense attorney to bring it up for her, and he did. 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 miscarrage of justice. The indictment would have been the first and the most

important paper in a defendants file, to show the charges, so it was impossible for them NOT to see there was nothing but a NO BILL OF INDICTMENT, and they all agreed to have the trial anyways. They would, make a lots of money by getting favorable rulings from the judge in the future.

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 (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 Okahoma 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 and in his opinion he wrote 8 times that we had misrepresented including well production to investors, 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 descretion 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 coving 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 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 would point her gun at my brother and their baby, and make him give her drug money. She was loosing her seat on the gravy train, and was full of vengeance and needing reward

money, she said she called the divorce Judge Petrie of Danville, KY, about every day wanting criminal charges on us, and she said he got her a lawyer, his friend Steve Milner, who said he was good friends with Mitch McConnell. Someone then contacted the U.S. Postal Inspector, Roberta Bottoms, she also convinced 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 million. She just could not let it go, she would do anything to get that kind of money even railroad an innocent people to prison.

My brother was in his divorce about 2003 and this is when US Postal Inspector Roberta Bottoms testified 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 Bulloch 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 U.S. Supreme Court has held that if a judge wars against the Constitution, or if he acts without jurisdiction, he has engaged in treason on the Constitution.

Courts have repeatedly ruled that judges have no immunity for their criminal acts.

The district court and the 6th Cir. did not address any of 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, 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. All of this is violating my Right to a Jury Trial, given in the 6th Amendment. 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.

ARGUMENT

As stated in the Complaint the claims against all the

defendants are listed, I am relying on the 42 U.S.Code 1983, Federal Tort Claims Act, and Bivins v. Six Unknown Federal Agents, and liablity for the acts of others causing damages, and damages against government officials for their criminal actions of sending innocent people to prison without an Indictment, or fair trial. Malicious Prosecution, etc. I contend Judge Hood does not have Judicial Immunity when he did not have the authority to even have a mock trial, or force a jury to find guilty by keeping it hostage for about 18 hours in a hot room or allowing the prosecutor to come over and start clerking for him after the trial.

I respectfully ask that this court to do the right thing and vacate this case, asked for in my Writ of Error, Coram Nobis. already filed in this court in a separate Cert, and return this law suit back to district court in another circuit, because of everything that has happened in this case it is clear there is NO JUSTICE for me in the Eastern District of Kentucky or the 6th Circuit Cout of Appeals, all these judges were picked by Mitch McConnell and will do anything to please him.

District court has stated ***Heck v. Humphrey, 512 U.S.***

477 (1994), in it's opinion the original case must first be vacated before a lawsuit and be filed, I contend this case was decided in my favor when the Grand Jury returned a NO BILL OF INDICTMENT, and when the judge dismissed all the Securities Fraud charges about 2 weeks into the trial, the case was decided in my favor, there was no other crimes listed in this fake indictment used at the trial, and everything else has been FRAUD ON THE COURT, and criminal by the court officials.

Also in *Heck* the Supreme Court debated and talked about they had a problem with a ***prisoner*** filing a civil case in court without filing through the appeals process, I have already filed my appeals process and 28 U.S.C. 2255 and permission to file them several times while in prison and I an NO LONGER IN PRISON, so Heck does not apply to my case.

District Judge Danny Reeves acts as if he does not know what the FBI letter was even talking about, when it is clear, "***Subject, Bill of Indictment, and that they looked where it should be and was unable to find it." There was no***

indictment! (FBI letter is exhibit here) Again prison officials told me the only thing the court had on me was a **NO BILL OF INDICTMENT,** but they would not give me a copy to file with and only knew for sure was from the FBI letter I received after getting out of prison. When the jury voting not to indict it was sent to the federal records in Washington DC, an I ask this court to look it up to see who is lying to the court, it is the Eastern District of Kentucky court and some judges who are protecting Hood and Mitch in the 5th Cir. I respectfully ask this court to do justice not coverup corrupution anymore.

All of the defendants' actions to send me to prison without an indictment, or a crime cannot be allowed to be immune from liablity. I ask this court to allow discovery, I have the fundimental right as an American citizen to have a fair day in court and the right to ask, every defendant under oath was there an indictment? and a jury trial and let a jury decide all "questions of Material Fact". 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.

I ask this court to adopt my original Complaint and additional filings on this case into this Petition.

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

Michael Smith (pro se)
486 Delbar Lane
Lancaster, KY 40444
(859) 304-2136

2-22-22

ORDERS OF THE COURT

Case:3:21-cv-0008-DCR Doc#10 Filed 3/02/21 page 1of 6- page ID#112

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

MICHAEL SMITH	)	
	)	
Plaintiff,	)	Criminal Case No.
	)	3:21-008-DCR
v.	)	MEMORANDUM
	)	OPINION AND
FRANCES CATRON	)	ORDER
CADLE, et al.,	)	
Defendants.	)	

*****

Michael Smith is a former prisoner, now residing in Lancaster, Kentucky. Proceeding without a lawyer, Smith recently filed a civil rights Complaint

and entities allegedly involved in his underlying federal criminal conviction. [Record No. 1] The undersigned has fully reviewed Smith's pleading and will dismiss it as baseless.

In 2008, a federal grand jury in this district charged Smith and other defendants with multiple criminal offenses for their role in a scheme to defraud investors in oil and gas leases. *See United States v. Smith,* Criminal Action No. 3:08-031-JMH

(E.D. Ky. 2008). At the conclusion of a four-week trial, a jury found Smith guilty of numerous counts, and another judge in this district sentenced him to 120 months in prison. *See id.* at Record No. 669. Smith appealed his conviction and sentence. However, the United States Court of Appeals for the Sixth Circuit affirmed the judgement. *See United States v. Smith*, 749 F.3d 465 (6th Cir. 2014). The United States Supreme Court then denied Smith's petition for issuance of a writ of certiorari. *See Smith*, Criminal Action No. 3:08-031-JMH at Record No. 878.

Smith then filed several pro se motions, including a motion to vacate his sentence pursuant to 28 U.S.C. § 2255. *See id.* at Record No. 920. He argued, among other things, that the government had failed to secure an indictment from the grand jury and that he received ineffective assistance of counsel. *See id.* The district court rejectded Smith's claims and

denied his motion. Thereafter, the Sixth Circuit denied his application for a Certificate of Appealability. *See id.* at Record Nos. 962, 967, 968, 980. Smith then requested permission to file a second or successive 2255 motion, but the Sixth Circuit denied that motion as well. *See id.* at Record No. 983.

Smith kept filing numerous pro se submissions in his criminal case. For example, he filed one motion in which he referenced a YouTube video, claimed that the Eastern District of Kentucky is "the most corrupt district" in the country, and said that his case "illustrates one of the worst cases of government abuse, cruelty, deceit, and treachery targeting one family to destroy them in order to obtain their small but growing oil business." *Id.* at Record No. 991. Smith also called his indictment "mysterious," alleged multiple instances of prosecutorial and judicial misconduct, and suggested that he was innocent of his crimes of conviction. Id. The district transferred

Smith's motion to the Sixth Circuit promptly denied that as well. *See id.* at Record No. 1027.

And while Smith was filing *pro se* submissions in his criminal case (albeit to no avail). he was also initiating wholly separate civil actions with this court. Smith filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. 2241 in which he argued, among other things, that he was "falsely convicted and imprisoned" because the grand jury that indicted him did not actually return a true bill. See *Smith v. Streeval,* Civil Action No. 0: 19-022-HRW, at Record No. 1 (E.D. Ky. 2019). The coourt, however, denied Smith's petition because his claims could not be properly pursued under 2241. *See id.* at Record No. 4. Smith did not appeal that decision. Instead, he filed yet another 2241 petition with this Court. *See Smith v. Zantout,* Civil Action No. 0:20-009-DLB (E.D. Ky. 2020).

In his second 2241 petition, Smith again

attempted to collaterally attack his underlaying convictions and sentence, reasserting many of the same claims. See id. at Record No. 1. He argues, *inter alia*, that the grand jury that indicted him did not actually return a true bill, his trial involved "so much misinfornation + Lies." and his case "has and is all fraud in the Court." Id. at 3-5. This petition was denied as another impermissible collateral attack on his convictions and sentence. See id. at Record No. 4,5. Although Smith appealed that determination, he later moved to voluntarily dismiss the appeal. The Sixth Circuit granted his request. See id. at Record No. 16.

Smith then served the remainder of his sentence and was released from federal prison. Notwithstanding the foregoing, Smith has now initiated yet another civil action with this Court. This time, he has filed a pro se civil rights Complaint in which he names at least sixteen different defendants,

including those officials and entities allegedly nvolved in his criminal case. [Record No. 1] Smith names as defendants the former United States Attorney for the Eastern District of Kentucky, multiple federal prosecutors and law enforcement officials, the federal judge that presided over his criminal case, a former federal magistrate judge, the Kentucky Department of Financial Institutions, the United States Department of Justice, the United States Postal Service, and many others. [Id.]

Smith asserts in his Complaint that various defendants "used deception [and] fraud on the court to create a crime that never existed" and held "a trial after the Grand Jury heard all the evidence and decided to return NO TRUE BILL, no indictment" because "it saw no crime..." [Id. at1]. He then alleges that "everything and everyone who touched this case after the Grand Jury refused to indict committed a crime" because "the court had no Jurisdiction." [Id. at

1-2]. Smith claims this was a violation of, among other things, "UN World Law" and the U.S. Constitution's Bill of Rights because the Court held a "trial without a crime." [Id. at2].

Smith also contends that "[o]thers during the trial and appeals process used deception and lies to cover everything up to make sure an innocent person was kept in prison rather than have federal agents to be caught in their wrong doing." [Id.}. Then, over the course of 15 pages, he alleges multiple instances of prosecutorial and judicial misconduct during the course of his criminal case [see id. ar 1-15]. At one point, he states that "I have people wanting to make a movie about all they have done to me, he said I will be paid well. I am sure Russia, China and North Korea will be glad to talk to our leaders after seeing this movie, lauging about your hypocrisy." [Id. at 14] Finally, Smith quotes Presidents Theodore Roosevelt and Abraham Lincoln and indicates that he is seeking

at least $360 million in damages and a "jury trial on all issues." [Id. at 14-15]

As an initial matter, the Court recognizes that Smith is no longer a federal prisoner, and has paid the applicable filing and administrative fees in this case. Therefore, this Court does not formally screen his Complaint pursuant to 28 U.S.C. 1915A or 1915(e)(2). However, this Court "may, at any time dismiss a Complaint *sua sponte* for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. More specifically, dismissal under this rule is appropriate when the allegations of a Complaint ar totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion." *Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir. 1999).

In the context of his extensive litigation history, Smith present claims that are not arguably plausible. At bottom, he has repeatedly attempted to attack his

underlying conviction and sentence through numerous filings with this court, the Sixth Circuit, and the United States Supreme Court. but to no avail. And it is clear that his present allegations ar nothing more than a repackaged, collateral attempt to litigate issues that are simply no longer open to discussion. Thus, Smith's Complaint is subject to summary dismissal for lack of subject matter jurisdiction.

Finally, it is also worth noting that Smith's claims are obviously not cognizable in light of *Heck v. Humphrey*, 512 U.S. 477 (1994). *Heck*, the Supreme Court made it clear that, to recover damages for "harm caused by actions, whose unlawfulness would render a conviction or sentence invald," a plaintiff must first establish that his "conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a...tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." Id.

at 486-87 (footnote omitted); see also *Robinson v. Jones*, 142 F.3d 905,907 (6th Cir. 1998) (*Heck*'s holding applies to actions brought pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971)). In other words, a plaintiff cannot bring a civil rights case that would necessarily challenge the validity of an underlying conviction or sentence unless that conviction or sentence has been overturned or invalidated.

Here, Smith's allegations against the defendants would call into question the validity of his convictions and sentence, if substantiated. However, Smith's convictions have not been overturned or invalidated, as required for him to proceed. Accordingly, it is hereby

ORDERED as follows:

1. Smith's complaint [Record No. 1] is **DISMISSED** with prejudice.

2. All pending motions are **DENIED** as moot.

3. This action is **DISMISSED** and **STRICKEN** from the Court's docket.

Dated: March 2, 2021

//s/

Danny C. Reeves, Chief Judge
United States District Court
Eastern District of Kentucky

Case 3:21-cv-8-DCR Doc#:14 Filed 3/30/21 PageID 140

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
(at Frankfort)

MICHAEL D. SMITH,	)	
	)	
Plaintiff,	)	Civil Action No. 3:21-8-DCR
	)	
v.	)	**MEMORANDUM**
	)	**ORDER**
FRANCES CATRON CADLE, et al.,	)	
	)	
	)	
Defendant,	)	
	)	

*** *** *** ***

The court recently dismissed Plaintiff Michael Smith's pro se Complaint because it is paterntly frivolous. [Record No. 10] Smith has now filed a motion to reconsider this decision pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. [Record No. 13] His motion will be denied because Smith has not identified any valid basis for disturbing the undersigned's previous decision.

Rule 59(e) permits the Court to alter a previous decision based on "(1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice." *Brumley v. United Parcel Serv., Inc.*, 909 F.3d 834, 841 (6th Cir. 2018). Earlier, the Court observed that Smith's claims are not cognizable in light of *Heck v. Humphrey*, 512 U.S. 477, 487 (1994), which generally provides that a plaintiff cannot bring civil rights claims that would necessarily challenge the validity of an underlying conviction or sentence unless

that conviction or sentence has been overturned or invalidated. Smith contends that Heck does not bar his claims because is no longer in prison and cannot bring a habeas corpus action. However, Smith was imprisoned for a substantial period of time and previously filed a habeas challenge, which was denied on the merits. Accordingly, Heck's favorable-termination requirement still applies. See Powers v. Hamilton Cnty. Public Defender Com'n, 501 F.3d 592, 600 (6th Cir. 2007) (citing Spencer v. Kemna, 523 U.S. 1, 21 (1998)(recognizing an exception to the favorable-termination requirement when liltigants are unable, as a matter-of-law, to have their convictions impugned through habeas review)).

Further, the Court did not err in dismissing Smith's Complaint for lack of subject matter jurisdiction under Apple v. Glenn, 183 F.3d 477 (6th Cir. 1999). The crux of the plaintiff's claims is that the various defendants "used deception [and] fraud on the

court to create a crime that never existed" and held a trial after the grand jury declined to indict him. But as the plaintiff is aware, his conviction in Frankfor Criminal Action 3:08-31-JMH was affirmed by the United States Court of Appeals for the Sixth Circuit and upheld during his challenge under 28 U.S.C. 2255.

The Court previously explained that Smith's allegations conerning the lack of a grand jury indictment in his criminal case are totally implausible, frivolous, devoid of merit, and no longer open to discussion. See Apple, 183 F.3d at 479. In support of his present motion, Smith provides what purports to be the Federal Bureau of Investigation's ("FBI") response to a Freedom of Information Act ("FOIA") request, indicating that there were no records responsive to a particular request. [Record No. 13-1] Smith does not explain what information he requested or why the FBI's lack of records is relevant to his motion for reconsideration.

Based on the foregoing, the defendant has not identified any basis for altering the Court's dismissal of his Complaint. Accordingly, it is hereby

ORDERED that the plaintiff's "59 Motion to Vacate or Amend" [Record No. 13] is **DENIED.**

Dated March 30, 2021

//s//
Danny Reeves Chief Judge
United States District Court
Eastern District of Kentucky

Case 21-5370 Doc: 8-2 Filed 11/18/2021 Page 2 of 6

NOT RECOMMENDED FOR PUBLICATION

No. 21-5370

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MICHAEL SMITH) FILED
) Nov 18, 2021
Plaintiff-Appellant,) Deborah S. Hunt,

Clerk

	)
v.	) ON APPEAL FROM THE
	) US DISTRICT COURT
FRANCES CATRON	) FOR THE EASTERN
CADLE, et al.,	) DISTRICT OF
Defendant- Appellees	) KENTUCKY
	)

ORDER

Before GIBBONS, STRANCH, and LARSON, Circuit Judges.

Michael Smith, a pro se Kentucky plaintiff, appeals the district court's judgment sua sponte dismissing his fee-paid federal civil rights complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject-matter jurisdiction. 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 December 2008, a federal grand jury in the Eastern District of Kentucky returned an indictment charging Smith and several others with conspiracy to commit mail fraud, in violation of 18 U.S.C 1349.

The indictment also charged Smith with twenty substantive counts of mail fraud, in violation of 18 U.S.C. 1341, two counts of wire fraud, in violation of 18 U.S.C. 1343, and one count of being an unregistered securities broker, in violation of 15 U.S.C. 78o(a)(1) and 78ff. All of the charges arose out Smith's execution of a scheme to defraud investors into purchasing shares of his oil-exploration business, causing a loss in excess of $14,000,000.

That case proceeded to a four-week jury trial. The government voluntarily dismissed the securities charge against Smith while the trial was underway. The jury convicted Smith of conspiracy to commit mail fraud and eleven substantive counts of mail fraud, but the district court vacated the jury's verdict on one of those eleven. The jury acquitted Smith of the remaining mail-fraud counts and the two counts of wire fraud. The district court sentenced Smith to

an aggregate term of 120 months of imprisonment, and we affirmed his convictions and sentence. See United States v. Smith, 749 F.3d 465, 474 (6th Cir. 2014).

Smith collaterally attacked his convictions on numerous occasions, first by filing an ultimately unsuccessful 28 U.S.C. 2255 motion to vacate and then by filing numerous unsuccessful applications to file successive motions to vacate. He also filed two 28 U.S.C. 2241 habeas corpus petitions attacking his convictions. Smith was particularly focused on the indictment. Despite the district court's finding that a redacted copy of the indictment was on the court's electronic docket and the original signed indictment was on file with the court, Smith repeatedly asserted the indictment was defective because it was not signed by a government attorney and because it did not state that it was a "true bill." See Smith v. United States, No. 17-5798 (6th Cir. Nov. 29, 2017)

(order); In re Smith, No. 17-6475 (6th Cir. Apr. 25, 2018) (order); In re Smith, No. 19-5185 (6th Cir. May 16, 2019) (order); In re Smith, No. 19-5958 (6th Cir. Jan 29, 2020) (order); Smith v. Zantout, No. 0:20-cv-0009 (E.D. Ky. Feb 7, 2020) (order); Smith even claimed that the grand jury had refused to indict him. See In re Smith, No. 19-5958, slip op. at 1. Smith completed his term of imprisonment in February 2020 and was released by the Bureau of Prisons.

In February 2021, Smith paid he district court filing fee and filed a pro se federal civil rights complaint against each of the government actors involved in his investigation, prosecution, and conviction in the fraud case, including judicial officers, the United States Attorney and Assistant United States Attorneys who prosecuted him, and the federal and state agents who investigated the offenses. He also sued the Department of Justice,

the United States Postal Service, and several John Doe defendants. Essentially contending that the defendants fabricated the charges against himn and secured his indictment and convictions by illegal means. Smith asserted claims for violations of his rights under Fourth, Fifth, Sixth, and Eighth Amendments pursuant to 42 U.S.C. 1983, Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), an the Federal Tort Claims Act.

Although Smith had paid the filing fee and had yet to serve the defendants, the district court relying on Apple v. Glenn. 183 F.3d 477, 479 (6th Cir. 1999) (per curiam), sua sponte dismissed his complaint under Federal Rule of Civil Procedure 12(b)(1) for lack of subject-matter jurisdiction, concluding that his allegations were "totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion." In

support of that conclusion, the court found that Smith's complaint was simply a repackaged attempt to collaterally attack his convictions on issues "that are simply no longer open to discussion." The district court also found that Smith's complaint was barred by Heck v. Humphrey, 512 U.S. 477 (1994), because, if substantiated, his claims called into question the validity of his convictions. The court dismissed Smith's complaint with prejudice.

Smith the filed a motion for reconsideration and tendered a letter that he had received from the FBI in response to his request for documents under the Freedom of Information Act. In this letter, the FBI informed Smith that it was unable to identify any records that were responsive to his request for information. Smith argued that the FBI's response supported his contention that the grand jury did not indict him and thus that he stated cognizable claims for relief. But as the district court noted, Smith did

not identify the information that he had requested from the FBI or explain why the FBI's lack of records supported his motion for reconsideration. The Court therefore denied the motion.

On Appeal, Smith argues that the district court erred in concluding that his complaint was barred by Heck. He contends that the criminal charges against him were resolved in his favor when the grand jury allegedly refused to indict him and again when the district court dismissed the securities-fraud charges against him.

We review de novo the district court's sua sponte dismissal of Smith's complaint for lack of subject-matter jurisdiction pursuant to Rule 12(b)(1). *Lovely v. United States*, 570 F.3d 778, 781-82 (6th Cir. 2009). "Generally, a district court may not sua sponte dismiss a complaint where the filing fee has been paid unless the court gives the plaintiff the opportunity to amend the complaint." Apple, 183

F.3d at 479. A district court may, however, sua sponte dismiss a complaint for lack of subject-matter jurisdiction "when the allegations of a complaint are totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion." Id. The plaintiff is not entitled to an opportunity to amend his complaint in that situation. *See id.* But "[w]hen a district court is faced with a complaint that appears to be frivolous or unsubstatntial in nature, dismissal under Rule 12) (b)(1) (as opposed to Rule 12(b)(6)) is appropriate in only the rarest of circumstances," such as "where. . . the complaint is deemed totally implausible." *Id.* at 480. If the plaintiff's complaint is not "totally implausible," then he is entitled to notice and an opportunity to amend. *See id.* Sua sponte dismissals are "reserved only for patently frivolous complaints, which present no Article III case because there is "no room for the inference that the questions sought

to be raised can be the subject of controversy.'"' *Zareck v. Corr. Corp. of Am.*, 809 F. App'x 303, 305 (6th Cir. 2020) (quoting *Hagans v. Lavine*, 415 U.S. 528, 537 (1974)) (brackets omitted).

We conclude that Smith forfeited appellate review of the district court's judgment because he has not addressed its conclusion that his claims ar totally implausible, i.e. the main basis for the district court's dismissal of his complaint. *See Coleman v. Shoney's, Inc.,* 79 F. App'x 155, 157 (6th Cir. 2003) (holding that the pro se plaintiff forfeited review by failing to develop any argument demonstrating that the district court committed an error). And even if Smith has not forfeited appellate review of the district court's judgment, his claims were entirely implausible. Indeed, Smith's lawsuit and appeal are both based on the fundamentally implausible premises that the grand jury refused or failed to indict him and concluded that he did not commit any

crimes. The indictment on file in the district court and the jury's guilty verdicts indisputably demonstrate otherwise. Consequently, we conclude that the district court did not err in dismissing his complaint for lack of subject-matter jurisdiction. Given this conclusion, we do not need to address Smith's contention that the district court erred in holding that his claims were barred by *Heck.*

Finally, the district court did not abuse its discretion in denying Smith's motion for reconsideration because, as discussed above, the FBI's letter does not support his contention that the grand jury did not indict him. *See Intera Corp. v. Henderson*, 428 F.3d 605, 620 (6th Cir. 2005). Moreover, Smith's contention that the grand jury did not indict him is completely frivolous.

The district court did, however, err in dismissing Smith's case with prejudice. A dismissal with prejudice operates as an adjudication on the

merits, but "a federal court lacking subject-matter jurisdiction is powerless to render a judgment on the merits." *Thompson v. Love's Travel Stops & Country Stores, Inc.*, 748 F. App'x 6, 11 (6th Cir. 2018); see also *Frederiksen v. City of Lockport*, 384 F.3d 437, 428 (7th Cir. 2004) ("No jurisdiction" and "with prejudice" are mutually exclusive."). That does not, of course, mean the district court had to let this case continue; dismissal under *Apple* means dismissal without the opportunity to amend. 183 F.d at 480. But "[j]urisdiction is the powere to declare the law, and when it ceases to exist, the only frunction remaining to the court is that of announcing the fact and dismissing the cause." *Steel Co. v. Citizens for a Better Env't.* 523 U.S. 83, 94 (1998) (quoting Ex parte McCardle, 74 U.S. (7 Wall.) 506, 514 (1868)).

Accordingly, we **MODIFY the district court's judgment to be dismissed without prejudice and AFFIRM AS MODIFIED.**

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

Requst 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 Divisio