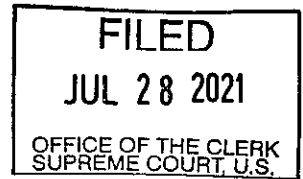


ORIGINAL

No. _____

21-5849



IN THE
SUPREME COURT OF THE UNITED STATES

Jason Eisenach — PETITIONER
(Your Name)

VS.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES Court of Appeals for the Eighth Circuit.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jason Eisenach
(Your Name)

FEDERAL Correctional Institution
(Address)

LISBON OHIO 44432
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

2005 ineffective assistance,

(1. I thought citizens are guaranteed a speedy trial. I was not given a speedy trial. why?)

(2. why did my public defender help the prosecution ~~into~~ by delaying the trial so the prosecution could have more time in getting more evidence against me?)

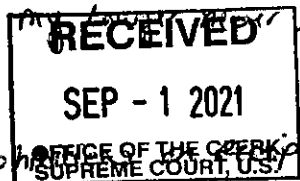
(3. why Did my attorney at the last second ask me to make a ~~the~~ Plea that was not knowingly, intelligently and voluntarily sound?)

(4. I asked my attorney many times if there were any victims, He said no, why was there no victims the entire time of investigation pretrial and sentencing, but then conveniently months later ~~while~~ in prison did I ~~receive~~ receive victims, should that not have been handled At sentencing as part of sentencing? I don't know who these victims are.

(5. why Did my public defender have me sign a stipulation that would have his client "me" stipulate to all elements of the offenses charged with? when I was planning on going to trial?

(6. After foolishly pleading guilty why was the prosecution still allowed to gather more ~~more~~ evidence? why did my attorney not stop it? Does it not make sense to plead to a charge when that person knows exactly what he's pleading too?

(7. What is the definition of Possession? The Dictionary says "to take ownership, to retain, to control. I never kept anything that I found. How could I be charged with possession if I deleted/destroyed it all? The Affirmative defense is that I took reasonable steps to destroy the images and to notify Law Enforcement. I did both. I mentioned it to the court.



8. United States vs Skatze: The Supreme Court has held that the prohibition (2007 6 circuit)

of child Pornography. includes a scienter requirement, and therefore encompasses only situations in which the defendant knows that the material he is receiving depicts minors engaged in sexually explicit conduct. That same person, however could be in violation of the possession provision, if they decide to keep it or retain it, thereby knowing possession. The stipulation I signed which stated I knew what the material was, allowed the prosecution to charge me with a Receipt charge. why did my counsel set me up?

Questions Presented continued

9. I believe I fell into the category of Double - Jeopardy being charged with both Possession and receipt. They both go hand in hand. That was one reason why I requested an evidentiary hearing. Why would my lawyer hide the findings from me? Does a Defendant not have the right to view all evidence against them?

⑩ 10. Definition of Possession: Fair Interpretation

I would like to ask the Court what is the Definitive Definition of Possession under the Fair Interpretation clause of the Universal Declaration of Human Rights?

This is an Issue that needs to be finally addressed by the Supreme Court. There are many cases that include.

1. Fabio Carani vs US - 492 F. 3d 867 ; 2007 (7th circuit)
 2. US v Myers, 355 F. 3d 1040, 1042 (7th Cir 2004)
 3. X-cite mint video inc. 51³ U.S. 64 76-78 115 S.Ct 464, 130 L.Ed. 2d 372 (1994).
 4. United States v Hall, 142 F.3d 988, 987 (7th Cir 1998)
- and many more, too many to list.

continued →

Questions Presented continued.

The fore mentioned cases. state. that possession in their definition is, the act of keeping, saving, retaining, owning, having control of, maintaining - and ~~and~~ destroying, deleting, getting rid of, no control of, not retaining and not owning. is not Possession.

Many Courts use definitions to their own advantage to get a conviction. and it's not fair to everyone. When it comes to the question of possession in relation to child Pornography. There is a big difference to those who willingly keep it versus those who do not.

10. Universal Declaration of Human Rights.

Article 19. - which states: Everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers. Black's Law Dictionary 10th Edition

Will the Court please address why those who find information and material deemed illegal are held accountable when they themselves had nothing to do with the crime and kept nothing, no material at all with said crime? How can people be Constitutionally liable for the conduct of others? Where does it say in the Constitution, that if I see or witness a crime or any other Act, that I too will be held accountable and prosecuted for said crime or Act? ↓

Child Pornography is a horrible infection that is everywhere on the Internet, people will always come across it. People will always look at things no matter what it is, either good or evil. When did this country start imprisoning its citizens just because they saw and witnessed something that they had absolutely had nothing to do with?

This Great Court needs to seriously address all these facts and concerns. Child Pornography will continue to grow and many people, including those who were horribly victimized will suffer for it, as long as the powers that be allow it to continue.

11

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

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

RELATED CASES

1. *Tollet v Henderson*, 411 U.S. 258, 267, 93 S.Ct. 1602, 36 L.Ed.2d 235 (1973)
2. *Hill v Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985)
3. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)
4. *United States v Regenos* 405 F.3d 691, 693 (8th Cir. 2005)
5. *United States v Thompson*, 872 F.3d 560, 566 (8th Cir. 2017)
6. *Lee v. United States*, 137 S.Ct. 1958, 1965 (2017).
7. *United States v McCoy* 410 F.3d 124, 130-135 (3d Cir. 2005)
8. *United States v Worthey*, 716 F.3d 1107, 1113 (8th Cir. 2013)
9. *United States v O'Keefe*, 461 F.3d 1838, 2006 U.S. App. Lexis 21414, 19 Fla.2d (11th Cir.)
10. *United States v Martin Co. Myers*, 355 F.3d 1040, 2004 (7th Cir.)
11. *United States v Morrissey*, 895 F.3d. 541 (8th Cir. 2018)
12. *United States v Fabio Carani*, 492 F.3d 867, 2007 (7th Circuit)
13. *United States v Jesse K Hall*, 142 F.3d 988 1998 (7th Circuit)
14. *United States v Moreland* 665 F.3d. 137 (5th + 11th Circ. 2011)

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3. Strickland v Washington, 466 U.S. 668, 104 S.Ct. 2052, 802 Ed. 2d 674 (1984)	e/c
4. United States v Paganos 405 F.3d 691, 693 (8th Cir, 2005)	e/c
5. United States v Thompson, 872 F.3d 560, 566 (8th Cir, 2017)	e/c
6. Lee v United States, 137 S.Ct. 1458, 1465 (2017)	e/c
7. United States v McCoy 410 F.3d 124, 130-135 (3d Cir, 2005)	Pg 8
8. United States v Worthey, 716 F.3d 1107, 1113 (8th Cir 2013)	e/c
9. United States v O'Keefe, 461 F.3d 1338, 2006, U.S. App. 10x15 2144, 19. (11th Cir)	e/c
10. United States v Martin C. Myers, 355 F.3d 1040, 2004 (7th Cir)	e/c
11. United States v Morrissey, 845 F.3d 541 (8th Cir 2018)	e/c
12. United States v Fabio Carani 442 F.3d 867, 2007 (7th Circuit)	e/c

STATUTES AND RULES

13. United States v Syssle K Hall 142 F.3d 988 1998 (7th Circuit)	e/c
14. United States v Moreland 665 F.3d 137 (5th + 11th Cir 2011)	e/c
15. U.S. v Myers 355 F.3d 1040, 1042 (7th Cir 2004)	e/c
16. X-Cellent Video Inc. 513 U.S. 64 76-78 115 S.Ct. 464 1302 Ed. 2d 372 (1994)	e/c

STATUTES AND RULES:

28. U.S.C. § 2255. Denied effective assistance of counsel.

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at 0:20-CV-00678-OSD; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at 0:16-Cr-00267-DSO-~~2021~~; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was ~~April 12, 2001~~ Feb. 12, 2001

[] No petition for rehearing was timely filed in my case.

[☒] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: April 12, 2001, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5th Amendment. My original statement I made to investigators was used against me, I was not warned to remain silent. My Attorney Mr Hunter never brought up the issue as being against my rights when it was. No Miranda rights warning.

6th Amendment. Right to a speedy trial. My original charges were possession and Distribution of child pornography which there was little evidence. Thanks to my attorney who put off the trial, 10 months later, changed the count of Distribution to Receipt after I signed the stipulations. That stipulation substantially contained all of the elements of a receipt charge. MR Hunter was only there to make sure the prosecution had as much time as they needed to make a case against me. And if one charge didn't hold up, clearly they didn't have enough evidence of a distribution charge, They would charge me with something else.

6th Amendment. The Right to an Attorney. I didn't have an attorney, I had another prosecutor working against me. I would have done better representing myself. The only thing my Attorney did for me was to lie and to make me believe that my case could be ~~won~~ won. And when the time was right, to hand me over to the prosecution.

28. U.S.C § 2255. Denied effective assistance of counsel.

Statement of Case
2255 case history

In February 28, 2020 I submitted a motion to vacate, set aside and or correct a sentence under 28, U.S.C. §2255.

On October 23, 2020 Judge David S. Doty denied my 2255 motion.

On December 16, 2020 I filed an appeal to the judges order.

On February 12, 2021, I was denied my request for a certificate of appealability.

Statement of Case.

Case Summary: I was charged on October 4, 2016 with one count of Distribution and one count of Possession of Child Pornography. I pled not Guilty because the charges were simply not true. I was given a Public Defender, MR Craig Sumo Hunter from the Duluth Public Defenders office.

In that time and throughout Mr Hunter told me that no reasonable jury would find me guilty beyond a reasonable doubt, due to the fact that the material I found was something I didn't save or keep but instead deleted. It was something that I didn't pay for or distribute. I was not in communication with anyone involved with this kind of material or otherwise. This material was found with a free application from the Android app store and was not found on some illegal underground website but were in fact legal. For over eight months my lawyer took two continuances and those same eight months the prosecution had continued to charge me with both possession and distribution. My lawyer claimed he wasn't ready in those eight months. The time between the two continuances Mr Hunter had me sign a stipulation which contained many if not all of the elements of a receipt charge. On June 22, 2017 the Prosecution gave me a superseding indictment that replaced the Distribution charge with a receipt charge.

I again Pled not Guilty because the charge was not true. In the month of July, MR Hunter told me to go with him to meet with the prosecution, there at this meeting the prosecution gave me a deal of 5 years if I pled guilty to the new charges.

I said no because I was innocent, I was innocent of the Distribution charge which they dropped, and I was innocent this time with the receipt charge. MR Hunter then took his third and final continuance.

It was August of 2017, That MR Hunter told me I couldn't win my case. I could either go to trial or to plead guilty. As MR Hunter put it, I had a 30 second defense if brought to trial, and then most likely lose. MR Hunter's recommendation was to plead guilty and hope for the best. On Sept 1, 2017 I Pled guilty and then was put into Detention at a local jail until I was sentenced.

On December 13, 2017 a Judge David Doty gave me 96 months Imprisonment and another 15 years of Supervised release. MR Hunter did a poor job representing me, I believe that he was biased toward me and worked with the prosecution against me. Instead of having one Prosecutor against me, I had two.

STATEMENT OF THE CASE

Mr. Eisenach asks this Honorable Court to vacate his convictions and sentence on the basis that they were the result of ineffective assistance by a ~~per~~ prejudiced counsel. Specifically, former counsel was constitutionally deficient for unnecessarily delaying Mr Eisenach's original trial setting - including repeatedly waiving Mr Eisenach's constitutional and statutory right to a speedy trial - from the original January 17, 2017 setting, immediately prior to which point counsel assessed that "no reasonable jury would find 'Mr Eisenach' guilty beyond a reasonable doubt," until September 2017, when by August 2017, counsel assessed that "There was no way he could win 'Mr Eisenach's case'". Counsel was also constitutionally deficient for advising Mr Eisenach to stipulate to elements of the charged offenses. Counsel was also deficient for not challenging evidence by prosecution and evidence by investigators who failed to give Mr Eisenach the Miranda warning before his statement. Mr Eisenach's plea was unknowing, unintelligent and involuntary based on counsel's ineffective assistance.

Mr. Eisenach's plea was entered as a result of ineffective assistance and therefore neither knowing or voluntary. See, eg, *Tollett v. Henderson*, 411 U.S. 258, 267

(1973). Moreover, a conviction obtained by such a plea must be reversed.

See, e.g., *Hill v. Lockhart*, 474 U.S. 52 (1985). The Supreme Court recently

clarified that this requirement is not contingent on the defendant having a reasonable defense, or any objective likelihood of acquittal, because the error

which is being remedied is the "denial of the entire judicial proceeding to which I had a right," *Lee v. United States*, 137 S. Ct. 1958, 1965 (2017) MR Eisenach was

deprived of rights guaranteed by the Fifth and Sixth Amendments to the United States Constitution. MR Eisenach seeks to vindicate those rights in this court.

MR Eisenach has established entitlement to, and respectfully requests vacation of his convictions and sentence.

REASONS FOR GRANTING THE PETITION

Had counsel not unnecessarily delayed MR. Eisenach's trial - allowing the prosecution time to gather additional evidence and correct the count one charging error - and not unreasonably advised MR. Eisenach to stipulate to the elements of the offenses charged, there is a reasonable probability that I would have persisted in my plea of not "Guilty" and proceeded to trial by jury. After all, just as MR. Eisenach, "I" told the court at his change of plea hearing: "He 'I' was planning on going to trial, until my counsel's deficiencies left me with no other choice 'but to plead guilty'." Again MR. Eisenach's plea was entered as a result of ineffective assistance and therefore neither knowing or voluntary. See e.g. Tollett v. Henderson, 411 U.S. 258, 267 (1973). Moreover, a conviction obtained by such a plea must be reversed. See e.g. Hill v. Lockhart, 474 U.S. 52 (1985).

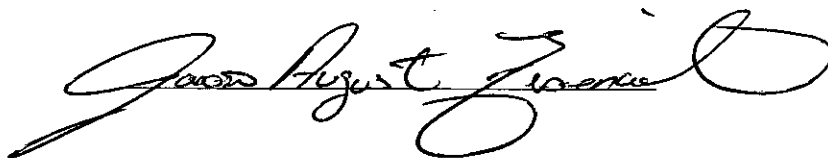
The Supreme Court recently clarified that this requirement is not contingent on the defendant having a reasonable defense, or any objective likelihood of acquittal, because the error which is being remedied is the "denial of the entire judicial proceeding to which I had a right." Lee v. United States, 137 S. Ct. 1958, 1965 (2017). I MR. Eisenach was deprived of rights guaranteed by the ~~FIFTH~~ FIFTH and SIXTH Amendments to the United States Constitution in connection with his (my) plea in this case. I MR. Eisenach seek to vindicate those rights in this Court. I MR. Eisenach have established entitlement to, and respectfully request vacation of my ~~convictions~~ convictions and sentence.

My case was handled very poorly and I was treated with extreme prejudice due to the nature of these horrible crimes. Mr Hunter did not take his job with any amount of seriousness, it wasn't his life on the line, he knew what was going to happen to me one day or another. He was only there to make sure that as the saying goes "To make sure the 'I's' were dotted and that the 'T's' were crossed and to bide time for the Prosecution so they could gather whatever evidence they needed to charge me with a crime. Unfortunately these Internet, computer crimes are on the rise, more and more people are continuing to find this material because there is so much of it on the Internet, and anyone who finds it and looks at it no matter what their intentions are, will be labeled a criminal, a pedophile, a sex offender because they simply looked at something. Most of the people that I have met while incarcerated, do not deserve to be in here. Good decent people who have not done anything to anybody, but now are labeled a threat to Society, all because they ~~saw~~ saw/viewed something they shouldn't have. With logic like that, anything, any crime viewed could be looked at as a crimeⁱⁿ itself, when the person viewing had absolutely nothing to do with the crime.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "James August Zerk", written over a horizontal line.

Date: 7-7-21