

21-8284

Case No. _____

FILED
JUN 23 2022

IN THE SUPREME COURT OF THE
UNITED STATES

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
ORIGINAL

**In Re: MATTHEW L. STASZAK,
Petitioner.**

**ON PETITION FOR WRIT OF MANDAMUS TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

**Petition for Writ of Mandamus to Mandate
the Lower Court to Conduct
an *In Camera* Inspection**

**Submitted by: Matthew L. Staszak Reg# 24227-171
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QUESTION PRESENTED FOR THE COURT

I. WHETHER THE SUPREME COURT SHOULD ISSUE THE WRIT OF MANDAMUS TO MANDATE THE LOWER COURT'S REVIEW OF A FORENSIC REPORT SURROUNDING PETITIONER'S SUBSTANTIATED ACTUAL INNOCENCE CLAIMS, WHERE THE LOWER COURT OBSTRUCTED JUSTICE BY PROHIBITING ITS REVIEW OF THAT REPORT VIOLATING PETITIONER'S DUE PROCESS.

LIST OF THE PARTIES

Parties appear in the caption citing on the cover page.

JURISDICTION

This Court has jurisdiction under Title 28, U.S.C. Section 1651(a).

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B -- Receipts / Bills of Sale containing Asurion, Verizon Wireless and MasterCard transactions, (8-pages)

C -- Declaration of Matthew L. Staszak in support of Motion for Reconsideration dated June 1, 2022, USCA (7th Cir.), (9-pages)

D -- Motion for Clarification filed on June 14, 2022, & June 15, 2022, USCA, (7th Cir.), Denial, (5-pages)

E -- Plea Agreement (Doc. 70, p. 11, para. 5), United States v. Staszak, (S.D. Ill), (1-page)

F -- Second Superseding Indictment, (4:12-cr-40064-JPG; Doc. 53), United States v. Staszak, (S.D. Ill), (4-pages)

G -- Stipulation of Facts (Doc. 69), United States v. Staszak, (S.D. Ill), (2-pages)

H -- Disbarment/Suspension ORDER of Former United States Attorney for the Southern District of Illinois, Stephen R. Wigginton (1-page)

AUTHORITIES

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STATUTES & CONSTITUTIONAL AMENDMENT

Title 28 U.S.C. Section 1651(a). The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law..... i.

Title 28 U.S.C. Section 2244(b)(3)(E). The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition or rehearing or for a writ of certiorari.....2-3

United States Constitution Fifth Amendment: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

RULES

Rule 20.1 Issuance by the Court of an extraordinary writ authorized by 28 U.S.C. Section 1651(a) is not a matter of right, a discretion sparingly exercised. To justify the granting of any such writ , the petition must show that the writ will aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtain in any other form or from any other court..... 8-9

PETITION FOR WRIT OF MANDAMUS

Matthew L. Staszak, Petitioner, ("Staszak"), petitions this Court for a Writ of Mandamus to mandate the lower court to properly conduct an *in camera* review of Staszak's Motorola Droid X2 cellphone device, bearing serial number, (SJUG6250), surrounding his Actual Innocence claims he previously asserted and substantiated in *Matthew Lee Staszak v. United States*, Case No. 22-1887, (7th Cir.).

STATEMENT OF THE CASE

On May 27, 2022, Staszak was denied his due process right by the lower court to allow a Motion to Entertain a Second or Successive Motion for Collateral Review that was originally filed by Staszak as a Motion for a Certificate of Appealability, ("COA") under his actual innocence claims. (App'x. A). Staszak provided the lower court substantiated receipts and sworn Affidavits surrounding the purchase of his Droid X2 cellphone, (that was purchased via an Asurion insurance claim on October 29, 2011). (App'x. B). These receipts were unearthed by Staszak's father and provided as new evidence surrounding Staszak's claims. Staszak has shown via his bills of sale / receipts, and his sworn Declaration filed with the Seventh Circuit Court of Appeals on June 6, 2022, that he was falsely accused and falsely charged surrounding his (Count 1) offense. (App'x. C). The lower court in its order states: "Staszak also asserts that the government

hid from him a forensic report opining that he had not recorded a sexually explicit video on his cellphone. He does not attach that report to his application." (App'x. A, p. 2). *McQuiggan v. Perkins*, 133 S. Ct. 1924 (2013)(In other words, a credible showing of actual innocence may enable a prisoner to pursue his constitutional claims.). Staszak provided both a credible and a *prima facie* showing of his actual innocence surrounding (Count 1) with his Affidavits and his receipts.

REASONS FOR GRANTING THE WRIT OF MANDAMUS

I. THE SUPREME COURT SHOULD ISSUE THE WRIT OF MANDAMUS TO MANDATE THE LOWER COURT'S REVIEW OF A FORENSIC REPORT SURROUNDING PETITIONER'S SUBSTANTIATED ACTUAL INNOCENCE CLAIMS, WHERE THE LOWER COURT OBSTRUCTED JUSTICE BY PROHIBITING ITS REVIEW OF THAT REPORT VIOLATING PETITIONER'S DUE PROCESS.

After the denial by the lower court Staszak swiftly moved for a Motion to Reconsider, but the lower court would not entertain it, and instead committed manifest error or obfuscated the record citing 28 U.S.C. Section 2244(b)(3)(E) which had nothing to do with Staszak's Motion to Reconsider and his Declaration in support of his motion. Section 2244(b)(3)(E) refers to "rehearing" and "writ of certiorari" (which Staszak has not and did not file). The lower court is not charged to shield prosecutors, investigators,

and the lower district courts. Staszak's only request to the lower court was to simply review the government's report in comparison to his receipts for the purchase of his cellphone (being the Droid X2). The lower court both refused and failed to do so. This inspection of the Government's report and review of Staszak's cellphone, by the lower court, would have surely shown that it was a literal impossibility Staszak committed the (Count 1) offense.

On June 14, 2022, Staszak went one step further and filed a Motion for Clarification surrounding Title 28, U.S.C. Section 2244(b)(3)(E) that the Court used in error as its excuse not to reconsider the matter. The lower court on June 15, 2022, still deferred to take any action whatsoever in complete violation of Staszak's right to due process of law. (App'x. D).

Staszak has been deprived of his First, Fourth, Fifth, Sixth, and Eighth Amendment rights resulting from a fraudulent prosecution by the Government resulting in a Manifest and Fundamental Miscarriage of Justice where Staszak was illegally sentenced in error by the district court.

The newly discovered evidence of his authentic and verified Verizon Wireless Account, Asurion Insurance Company, and USAA MasterCard shows that it was literally

impossible Staszak to have owned or possessed the Droid X2 cellphone to commit the falsely charged and stipulated (Count 1) offense. Staszak in "June or July 2011" owned a Droid X, (not a Droid X2), with a completely different serial number. Nevertheless, Judge Gilbert, who sentenced Staszak on February 5, 2014, actually stated on the record that he did not have all the "facts" and that he was sentencing Staszak into a vacuum. In error, Judge Gilbert executed Staszak's sentence as a result of fraud on the court under Staszak's coerced and induced guilty plea.

The lower court is well-aware of Staszak's plea agreement. Staszak signed that agreement due to the threats of "charges" against his parents had Staszak refused to be subservient to the Government's demands that he plead guilty to all counts. Staszak pled guilty under duress and lied to Judge Gilbert during his Plea Colloquy (Rule 11) proceedings. In other words, per Staszak's plea agreement the appellate and district courts know Staszak cannot obtain the Government's report he needs. (App'x. E). The lower court actually has the "authorization" to review evidence pertaining to Staszak *in camera*. See *Windsor v. Martindale*, 175 F.R.D. 665, 671-72 (D. Colo. 1997)(directing production *in camera*); *Freeman v. Fairman*, 917 F. Supp. 586, 589 (N.D. Ill 1996) (declining to order discovery after inspecting the document *in camera*). An *in camera* inspection is appropriate in chambers of the forensic examination / report in question comparing Staszak's evidence, (being the receipts), to the Second Superseding

Indictment (Count 1) offense as to when the Droid X2 cellphone was first purchased, powered on, and later used by Staszak being after the date of October 29, 2011.

A. Count 1:

The (Count 1) offense falsely charged Staszak with Sexual Exploitation of a Minor. This is a fraudulent and pretended offense brought by the Government. The basis of the (Count 1) offense was upon numerous falsehoods and inaccurate statements that were provided primarily by minor K.G. and her mother. These statements were provided to the authorities being FBI SFO Mark A. Krug and Sgt. Patrick Parker in late May of 2012. Staszak is the Government's scapegoat to take the fall for an Amy Gayer, a Kyle Ferguson, and a Ryan Lee Wheeler who were the actual criminal actors involved with minor K.G. surrounding the (Count 1) offense brought against Staszak. (App'x. C, paras. 18-23).

No criminal offenses were committed or had occurred by Staszak as stipulated in (Count 1) word-for-word. (App'x. F & G). Staszak did not own or possess a Droid X2 cellphone until after the date of October 29, 2011, per Staszak's Declaration, his previous Affidavits, and the receipts. (App'x. C, paras. 9-17 & 24-30).

B. Wholly Insufficient Second Superseding Indictment Surrounding Count 1:

Staszak's Indictment is wholly insufficient, due to its fraud on the court of withholding exculpatory evidence that Staszak is actually innocent of (Count 1.) Staszak was prejudiced by the Government's misconduct of its total failure to comply with the Federal Rules of Evidence that mandates the Government to provide Staszak and his previous counsel (being Melissa A. Day), with any exculpatory evidence during the criminal proceedings. Instead of providing the exculpatory evidence, the Government hid it from Staszak's defense. For example, the Government claimed to Ms. Day and the lower district court (more than once) that it was going through Staszak's Droid X2 cellphone, but because there was so much information on the cellphone the Government needed more time to examine it. This means that the Government thoroughly went through Staszak's cellphone and it knew, or should have known, that Staszak's cellphone (the Droid X2) was not purchased until after October 29, 2011. At no time did the Government come forward to Staszak's defense attorney, or the district court claiming this exculpatory revelation. The above misconduct has completely jeopardized the Government's standing in all aspects. Staszak has and is suffering irreparable harm serving an illegal sentence.

C. Former United States Attorney Stephen R. Wigginton:

Since 2010 through 2015, United States Attorney Stephen R. Wigginton, ("Wigginton"), caused significant issues and utter disarray within the U.S. Attorney's Office for the Southern District of Illinois, ("USAO"), and including his inner circle of family and friends. Officials with the USAO have actually used words of "toxic and "unbearable" describing Wigginton's unethical behavior and poor leadership of the USAO.

Staszak was indicted twice in 2012, and again in 2013, under the unethical leadership of Wigginton, of-then U.S. Attorney, for the Southern District of Illinois, where Wigginton factually signed-off on Staszak's Indictment with AUSAs Kit R. Morrissey and Angela Scott, *See* (App'x. H). During this time, Wigginton was known to be an alcoholic and was drinking excessively and further having sex (even during USAO working hours) with the then-AUSA Criminal Division Chief, before 2012-2014, during 2012-2014, and after 2014 when Staszak was sentenced.

Wigginton was directly involved with the returning of Staszak's Indictment as he clearly signed the Indictment, (in pen), along with the signatures of AUSAs Morrissey and Scott clearly displayed. There is no question, by Wigginton's proven misconduct,

suspension, and further ongoing criminal behavior that he is liable for the fraud on the court (along with AUSAs Morrissey and Scott) concerning Staszak's Indictment that was returned that Staszak used his "Droid X2" phone, bearing serial number, (SJUG6250), to commit any offense surrounding (Count 1).

RULE 20.1 COMPLIANCE

Granting Staszak the Writ of Mandamus will aid in this Court's appellate jurisdiction as it will actually resolve any further potential abridgment caused by limits placed upon Staszak. Staszak has been sentenced to 240-months imprisonment for a fraudulent case presented by USA Stephen R. Wigginton and AUSAs Kit R. Morrissey and Angela Scott by corrupt means upon a coerced plea agreement that was signed by Staszak under duress on August 5, 2013, because he was relayed information that the Government would "arrest," "charge" and "prosecute" his parents for the alleged offense of aiding and abetting.

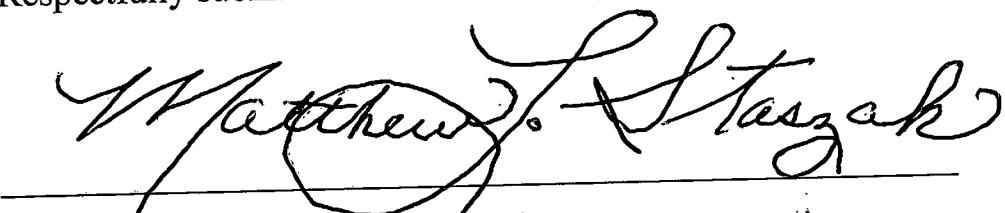
An *in camera* inspection will show that the officials involved in the investigative and prosecutorial process were fraudulent and negligent in their sworn duties showing

their distinct intentions, motives, preparations, planning, and of their further knowledge surrounding the official misconduct committed in Staszak's criminal prosecution. The relief sought by Staszak cannot be obtained in any other form or from any other court. Staszak's Rule 20.1 Compliance meets an extraordinary circumstance warranting the exercise of this Court's discretionary powers. The Seventh Circuit failed to inspect the forensic examination and/or report surrounding Staszak's actual innocence and refused to grant an evidentiary hearing after Staszak had provided a *prima facie* showing of his actual innocence. *See United States v. Smith*, 984 F.2d 1084, 1086 (10th Cir. 1993) (abuse of discretion to not conduct *in camera* review of witness statements because defendant made *prima facie* showing); *United States v. Garcia* 562 F.3d 947, 952-53 (8th Cir. 2009)(abuse of discretion to not conduct *in camera* review of coconspirator's presentence report because report not public record and may contain impeachment material). Staszak clearly showed that an *in camera* review would reveal falsity of his (Count 1) offense and the exculpatory value towards his strongest defense. *See United States v. Moon*, 802 F.3d 135, 148-50 (1st Cir. 2015)(court properly refused to conduct review of search warrant affidavit for informant's identity or proof of controlled buys, because defendant failed to show "that *in camera* review would reveal falsity or any evidence of value to [the] defense").

CONCLUSION

WHEREFORE, for the above foregoing reasons, Staszak respectfully requests that the Supreme Court **MANDATE** the United States Seventh Circuit Court of Appeals to inspect the Government's forensic report with an expert to review what exact date and time the Motorola Droid X2 cellphone device, bearing serial number (SJUG6250), was actually first powered on for its use by Staszak, and upon the Court's inspection showing the cellphone was not used until after the date of OCTOBER 29, 2011, that this Court **MANDATE** the Seventh Circuit to exercise its "equitable discretion" per *McQuiggan* by **VACATING** Staszak's sentence in its entirely and unconditionally releasing him from confinement forthwith.

Respectfully submitted on this 22nd day of June, 2022.



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