

No. 22-6171

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

DEC 13 2022

OFFICE OF THE CLERK

Kyle M. Parks

— PETITIONER

(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eighth Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kyle M Parks

(Your Name)

P.O. Box 33 USP

(Address)

TERRE HAUTE IN 47808

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED FOR REVIEW

(1) Whether Mr PARKS was improperly denied a REVIEW of INEFFECTIVE ASSISTANCE OF COUNSEL AND PROSECUTORIAL MISCONDUCT by the District Court under 28 U.S.C. § 2255 RELIEF COLLATERAL REVIEW

(2) Whether Mr PARKS WAS RENDERED EFFECTIVE ASSISTANCE OF TRIAL COUNSEL, DIRECT APPEAL COUNSEL AND POSTCONVICTION COUNSEL UNDER STRICKLAND V. WASHINGTON SIXTH AMENDMENT

(3) Whether Mr PARKS WAS A SUBJECT OF LAW ENFORCEMENT AND PROSECUTORIAL MISCONDUCT, DURING INVESTIGATION, SUPPRESSION, TRIAL, SENTENCING AND 28 U.S.C. § 2255 RELIEF.

IN THE Supreme Court of the United States

October Term 2022

Kyle M. Parks - Petitioner

Vs

United States of America - Respondent

United States Court of Appeals for the Eighth Circuit

Petition for Writ of Certiorari

THE PETITIONER, Kyle MAURICE PARKS, through PRO SE respectfully
PRAY THAT A WRIT OF CERTIORARI OR APPROPRIATE RELIEF TO REVIEW
THE JUDGEMENT OF THE UNITED STATES COURT OF APPEALS FOR THE
EIGHTH CIRCUIT IN CASE NO. 22-2724, ENTERED ON NOV, 28, 2022
MR PARKS' petition for panel AND EN BANC REHEARING WAS ALSO
DENIED. SEE ENCLOSED.

Opinion Below

Within days of the Eighth Circuit's decision to deny relief of successive filing, Mr. Parks is seeking relief from his JAN 11, 2016 conviction from his 18 USC §§ § 1591(a) 1594(a) and 2421 conviction

A COA was denied without opinion on or about NOV 20, 2022, rehearing en banc was also rejected on NOV 28, 2022. After the District Court denial of relief under 28 U.S.C. § 2255 and within a timely manner a request for review under collateral attack was submitted. The District Court refuse to afford the petitioner his Sixth Amendment right well-establish by this very court. The Anti-Terror

ISM AND EFFECTIVE DEATH PENALTY ACT (AEDPA) IS A
TRADITIONAL UNDERSTANDING OF THE RIGHT TO HABEAS CORPUS UNDER
DUE PROCESS.

Jurisdiction

THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI had original Jurisdiction over Mr Parks' case under 4:15-CR-00553, § 2255 # 4:18-CV-1923 (Defense Counsel Joseph M. Hogan) 18 USC §§ 1591(A) 1594(A) and 2421(A) respectively. Hogan served as Appellant Counsel in the filing of Direct Appeal, No request for Certiorari was filed by Mr. Hogan on behalf of Parks. All relevant App are as follow. App 1-4 Eighth Circuit order filed under # 22-27211, App 5-6 copy of inmate six month account statement, App 7 memorandum and order from United States District Judge acknowledging no copies of Ohio search warrant can be founded

(1)

Additionally DOCKET entry 35 issue of Ohio Office
SEARCH AND WARRANT. # 79 ALLEGE HEARING OF PRE-
trial waiver (NO TRANSCRIPT OF HEARING) App 8
REPORT from lead AGENT F.B.I. NIKKIE BADOLATO in
SUPPORT OF EXONERATION ENHANCEMENTS, EMAIL USED AND
OWNERSHIP OF CELL PHONES AND PHONE NUMBERS. ADVERTIS-
MENT, PROVIDE AND MAINTAIN ARE ELEMENTS OF CHARGE
CRIME. App 9-11 TESTIMONY OF OFFICER PAUL YADLOSKY
AND SGT ADAM KAVANAUGH IN SUPPORT OF PERJURY AND
OBSTRUCTION OF JUSTICE. App 12 DOCUMENTS IN SUPPORT
OF FABRICATION OF EVIDENCE BY LAW ENFORCEMENT. YADLOSKY
AND KNABLE LITSE REPORT. PLEASE NOTE DATE OF
REPORT WRITTEN BY DAVID KNABLE (ONE YEAR AFTER EVENT
OF ARREST) App 13-16 COUNSEL'S HOGAN WAIVER OF PRETRIAL
(2)

motions without Parks knowledge or consent. PLEASE
NOTE: Time of Alleged hearing and Time of Departure from
Federal Holding Center. Magistrate committed fraud
upon Parks false entry of federal issue. App 17-20
Documents of Parks to Counsel to investigate Red
Rook Inn footage, And to promote appeal 154
- 162 counsel refused.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2255

(A) A PRISONER in custody under sentence
of a COURT established by Act of Congress claim-
ing the right to be released upon the ground that
the sentence was imposed in violation of the Constitu-
tion or laws of the United States or that the court was
(3)

without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

18 U.S.C. § 3553

(1) A person who is convicted of 18 U.S.C. § 1594

(A), mandatory 10 years to life

(3) A person who is convicted of 18 U.S.C. § 1591(A)

(C) mandatory 10 years to life

(D) A person who is convicted of 18 U.S.C. § 2421

(F) mandatory minimum of no more than 10 years

STATEMENT of the Case

In 2016, Parks was convicted by a jury in the Eastern District of Missouri of violating 18 U.S.C. § 1591/courts one, three and five) sex trafficking of a minor. 18 U.S.C. § 1594 (courts two and four) attempted sex trafficking. 18 U.S.C. § 2421 (courts six, seven, eight and nine) sex trafficking

On April 2016 the district court found that Parks was subject to enhancements for (1) Using of

Email to secure Advertisement on backpage.com. (2) The

use of a computer or internet device. (3) Unduly influence due to 10 year age difference. (4) Witness tampering. (5)

Perjury at testimony. The court sentence Parks

to a term of 300 months (x 3) And 120 months

(x 6)

TO BE RAN CONCURRENT, CONVICTION AND SENTENCE
WERE AFFIRMED ON APPEAL; SEE U.S. V. PARKS 17-1914
PARKS FILED HIS 28 U.S.C. § 2255 IN THE EARLY PART
OF 2018, SIX ISSUES, ALL REJECTED BY THE COURT. CLAIM
OF EVIDENCE PLANTING: TO WIT CELL PHONES USED TO SECURE
ALL ADVERTISEMENT ON backpage.com. THE COURT IN ITS
DENIAL AGREED THAT CELL PHONES WERE PLANTED, HOWEVER
OWNERSHIP OF PHONES WERE NOT A ELEMENT OF THE CHARGE
OFFENSE

SHORTLY AFTER A REQUEST TO OBTAIN A COA
WAS FILED, DURING THE F.B.I.'S LOCKDOWN FOR THE
COVID-19 PANDEMIC

THE COURT OF APPEALS REQUESTED
A FILING FEE WHICH THE DEFENDANT WAS UNABLE
TO

comply, therefore appeal was dismissed for failure to execute. PARKS returned to the district court, filed motion to review under ineffective assistance of counsel and prosecutorial misconduct. The district court in doing so ordered the clerk not to except any pleading by PARKS (4:18-CV-1923) Over a period of six months Mr PARKS filed a 60(B), 60(B)(2) writ of error all returned stating close criminal case. A appeal was filed to the eight circuit after the district court informed Mr PARKS that the court was not in possession of Ohio search warrant or transcripts of Docket 35 or 79. The eighth circuit affirmed "summarily" and denied request for COA, evidentiary hearing and appointment of counsel for new trial.

ARGUMENT(S)

A. COURT'S DENIAL OF EVIDENTIARY HEARING; ABUSE OF DISCRETION

B. INEFFECTIVE ASSISTANT OF COUNSEL

C. ERRONOUS ENHANCEMENTS

D. COUNSEL'S FAILURE TO MOVE FOR SUPPRESSION OF OTTIE EVIDENCE.

E. COUNSEL'S FAILURE TO CALL, SECURE OR SUBPOENA WITNESSES

F. COUNSEL'S WAIVER OF PRE-TRIAL MOTIONS, WITHOUT CONSENT OF DEFENDANT

G. COUNSEL'S FAILURE TO ARGUE MULTIPLICITY.

FACT IN SUPPORT OF PROSECUTORIAL MISCONDUCT

A. PROSECUTOR VIOLATION OF CONFRONTATION CLAUSE

B. DUE PROCESS VIOLATION AT CLOSING ARGUMENTS

C. ERRONOUS ENHANCEMENT AT SENTENCING

D. PROSECUTOR FAILED TO FILE PRE-REQUISITE REPORT I.E. EXPERT WITNESS

E. SUBORNATION OF PERJURY

Reasons for granting the writ

Under the rule of filing a § 2255 motion, a ineffective assistance claim(s) ordinarily will be litigated in the first instance in the district court. Rarely will the Eighth Circuit review the issue on direct appeal. In 1948, Congress passed 28 U.S.C. § 2255 "to afford federal prisoners a remedy identical in scope to federal habeas corpus" "this practice was validated when the Supreme Court promulgated and Congress adopted a separate set of rules that addressed federal prisoners motion for collateral relief. *BF*

The petitioner shows cause and prejudice. *Massaro v.*

U.S. 538 U.S. 500, 155 L. Ed. 2d 714, 123 S. Ct 1690 (2003)

See *U.S. v. Frady*, 456 U.S. 152.

(1)

Ordinarily a claim of ineffective assistance of counsel that depends on evidence outside the trial record can be made only by gathering all the records to sidestep a bare assertion ruling. Section 2255 provides a one-year limitation period that begins on the latest of four possible dates for a collateral review of his conviction and sentence. Prosecutorial misconduct can be asserted at any time upon discovery; *Wood v. Carey*, 525 F. 3d 886, 887 (9th Cir 2008); follow *Ching v. United States*. (Unconstitutional rulings is never final.) Younger Doctrine

The court ordinarily defers an ineffective assistance of counsel claim to 28 U.S.C. § 2255 proceeding. After the records has been fully

developed. U.S. v. McAdory, 501 F. 3d 868, 872-73 (8th Cir 2007); See also UNITED STATES v. PATTERSON, 595 F.3d 1324, 1328 (11th Cir 2010)

DENIAL OF Evidentiary hearing ABUSE OF discretion

AN evidentiary hearing is required in a § 2255 proceeding unless the "motion and files of the case conclusively show that the prisoner is entitled to no relief, Fontaine v. US, 411 U.S. 213, 215, 36 L. Ed 2d 169 (1973); (district court erred in refusing to conduct evidentiary hearing where petitioner's allegations concerning fabrication of evidence, illegal warrantless search ERRONEOUS ENHANCEMENT, evidence planting was NOT contradicted by the record or so INHERENTLY INCREDIBLE as to permit them to be ignored, U.S. v. Blaylock, 20 F. 3d 1458, 1465 (9th Cir 1994)

OR WHERE RECORDS DOES NOT NEGATE CLAIMS OF INEFFECTIVE ASSISTANCE AND ALLEGATION, IT YET WOULD WARRANT RELIEF, EVIDENTIARY HEARING IS REQUIRED. *Watson v. U.S.* 493 F.3d 966, 964 (8th Cir 2007)

DISTRICT COURT ERRED IN NOT HOLDING A HEARING WHERE FACTUAL DISPUTE EXISTED; *Roskela v. U.S.* 235 F.3d 1148 (8th Cir 2001). RECORDS CONTAINED SHARPLY CONFLICTING EVIDENCE.

ATTACH PLEASE RECEIUE DOCUMENTS IN SUPPORT OF NUMEROUS DISPUTES AND CONFLICTS.

REASON(S) TO GRANT RELIEF UNDER INEFFECTIVE ASSISTANCE OF COUNSEL

(A) COUNSEL HOGAN'S FAILURE TO INVESTIGATE DEFENSE OR EVIDENCE

IN REGARDS TO CLAIM OF EVIDENCE PLANTING BY DETECTIVE MATTHEW BLACK, DOCUMENTS AND REPORTS RELEASE BY DET. JAREN QUEEN REVEAL PRIMA FACIE (IN EVIDENCE)

REPORTS SHOWING THAT ON THE NIGHT OF THE ALLEGE EVENT BEFORE MR PARKS WAS ARRESTED, DET BLACK, SGT KAVANAUGH AND OTHER OFFICERS OF THE ST CHARLES POLICE DEPARTMENT WAS INDEED IN POSSESSION OF ALL CELL PHONES ALLEGE TO HAVE BEEN SEIZE IN MR PARKS' VAN ON THE MORNING OF DECEMBER 4, 2015. HAD COUNSEL INVESTIGATE THIS CLEAR MIS-CONDUCT BY LAW ENFORCEMENT, EVIDENCE IN CHIEF WOULD HAVE BEEN DEEM FAULT OF THE POISONOUS TREE, ALL TESTIMONY DIRECTLY OR INDIRECTLY WOULD HAVE BEEN INADMISSIBLE PORTER V. MCCOLLUM, 558 U.S. 30, 40, 130 S. CT 447, 452, 53, 175 L. ED. 2D 398 (2009); THE CRITICAL ISSUE IS WHETHER, APPLYING PREVAILING PROFESSIONAL NORMS, TRIAL COUNSEL CONDUCTED AN OBJECTIVELY REASONABLE INVESTIGATION FOR MITIGATING EVIDENCE. (B) THIS BELIEF ALSO APPLY TO CLAIM OF ILLEGAL WARRANTLESS SEARCH OF OHIO OFFICE. COUNSEL

First duty as an attorney is to protect his client
his/her first act of service is to obtain all warrants
and affidavits for inspection and copies. Had
Mr Hogan displayed the minimum amount of protection
for Mr Parks the issue of Ohio search would not
have lasted 6 1/2 years. Mr Hogan was ineffective
for not seeking probable cause and warrant of
Ohio office, that has now become known doesn't
exist. (see app 7) Brownlee v. Haley, 306 F.3d 1043,
1067-75 (11th Cir 2002). Had Mr Hogan invoke on
petition the government pursuant to Fed. R. Civ. P.

26(a) all documents, reports, papers, note etc of Ohio
search and allege investigation of Mr Parks in Ohio
by way of doccs Tecum, Ohio Agent and officer Young

would have been compelled by mandate disclosure to produce requested documents. As it is now known all evidence obtained by a warrantless search can not be used at trial against the victim, Wong Sun v. U.S., 371 U.S. 471, 484, 9 L. Ed. 2d 441, 83 S. Ct 407 (1963); Mapp v Ohio, 367 U.S. 643, 655, 6 L. Ed 2d 1081, 81 S. Ct 1684, 86 (Ohio Law Abs) 513 (1961)

(C) ENORMOUS ENHANCEMENTS, This failure by counsel Hogan to not investigate is down-right shocking, Over a year before sentencing lead F.B.I AGENT NIKKIE Badolato release her report as to who, what time what date and which cell phones were used to secure all advertisement on backpage.com. This information was doubly important because the element of advertisement would have combat the governments.

burden of proof beyond reasonable doubt as to every element of the charge offense. *Garrison v. Burt* No 10-1709, 637 F. 3d 849, 2011 U.S. App Lexis 4487, 2011 WL 781219 at *4 (8th Cir May 8, 2011)

FACTUAL and Procedural History

THE TRAFFICKING VICTIMS PROTECTION ACT OF 2000 (TVPA) CRIMINALIZES AMONG OTHER ACTS, SEX TRAFFICKING BY FORCE, FRAUD OR COERCION 18 U.S.C. § 1591(A). THE 2012 VERSION OF THE STATUTE, WHICH APPLIES HERE, PROVIDES

WHOEVER KNOWINGLY-

(1) IN OR AFFECTING INTERSTATE OR FOREIGN COMMERCE, OR WITHIN THE SPECIAL MARITIME AND TERRITORIAL JURISDICTION OF THE UNITED STATES, RECRUITS, ENTICES, HARBOURS, TRANSPORTS, PROVIDES, OBTAIN ADVERTISE, SOLICITS OR MAINTAINS BY ANY MEANS A PERSON OR

(2) BENEFITS FINANCIALLY OR BY RECEIVING ANYTHING

of value. from participation in a venture which has engaged
in an act described in violation of paragraph (1)

Mr Hogan's inability to investigate every element cost Mr Parks
his defense in recruits (Count 3 and 5); Harbors (Counts 1-9)

advertiser (Counts 1-8 and 9), A opportunity to present a complete
defense; LUNBERRY V. HORNBEAR, 605 F.3d 754 (CA9 2010)

Due Process includes a right to a meaningful opportunity
to present a complete defense "CRANE V. Kentucky, 476 U.S.

683, 690, 106 S. CT 2142 (1984), That constitutional right

is violated by the exclusion of probative admissible evidence

that another person may have committed the crime, (VIEW
EMAIL PLACEMENT, CELL PHONE USED AND HOTEL RENTER) (FEMALE

KO) The latter two elements are needed to satisfy
INTERSTATE COMMERCE. SEE jury instruction No 21

Failure to investigate ad placement resulted the defendant to receive a additional six point enhancement

(D) Counsel Failure to Move for Suppression of Evidence

Counsel Hogan Failure to move to suppress evidence, when the evidence would have been suppressed if objected to, can constitute deficient performance. *Ward v. Dretke*, 420 F.3d 479, 488 (5th Cir 2005), *Kimmelman v. Morrison* 477 U.S. 365, 375, 91 L. Ed 2d 305 (1986); The Fourth Amendment claim of Counsel's Failure to seek suppression of Ohio evidence demonstrate actual prejudice. *Kellogg v. Scurr*, 741 F.2d 1099, 1104 (8th Cir 1984) Had Ma Hogan sought suppression of all Ohio evidence, when the government would not have been able to produce the warrant, suppress was guaranteed. Suppression hearing, issue of Ohio search was never address.

(E) Failure to Call, Secure or Subpoena
Witnesses

Counsel Hogan did not subpoena or attempt to call even one witness, Had Hogan subpoena F.B.I agent Nikkie Zadolato author of report of email used All 404(B) evidence and request to enhance would have been denied. Hodgson v. Warren, 627 F.3d 591, 600-01 (6th Cir 2010); Harris v. Reed, 894 F.2d 871-878-79 (9th Cir 1990) (decision not to put on any witness in support of viable theory of defense constitutes IAC claim. Based on her report ms Zadolato would have had to admit (1) Parks cell phones was not used to secure and advertisement related to allege victims (2) the cell phone, email and bitcoin account used was that of K.O. testimony contrary to any other assertion

would have been perjury. *Goodman v. Bertrand*, 467 F.3d 1022, 1030-31 (7th Cir 2006)

Officer Paul Yadloosky's testimony would have been relevant to actual innocence. Officer Yadloosky testified at the evidentiary hearing but not a trial, DECK Officer David Knoble was a standing Magistrate Judge John Bodenhause wrote in his report to deny suppression of Van search, that Yadloosky's testimony was inconsistent. (See Yadloosky's testimony at suppression) So much so that Prosecutor Marcus did not call him at trial. (See numerous reports enclosed) Counsel Hogan failure to obtain expert witness testimony to rebuttal the government's *Burn v. Lassiter*, 513 Fed Appx 327, 346 (4th Cir 2013)

(F) Lastly

COUNSEL WAIVER OF PRETRIAL
MOTIONS WITHOUT PARKS KNOWLEDGE
OR CONSENT

ENCLOSE REPORT FILED ON 9-9-2016 BY ATTORNEY
JOSEPH M. HOGAN, WAIVING MR PARKS DUE PROCESS
EIGHTH AMENDMENT RIGHT WAS DONE WILLFULLY WITH
MALICE AND A FORTHUGHT TO HARM MR PARKS.

Fraud, MISREPRESENTATION BY A FIDUCIARY (Quoting)
COSTNER 317 F. 3d AT 888; MARVIN LUMBER AND CEDAR
CO V. PP6 INDUSTRIES, INC 223 F. 3d 873, 891
(8th CIR 2000); CIRCUMSTANTIAL EVIDENCE CAN BE USED
FOR INTENT; CHESUS V. WATTS, 967 S.W. 2d 97, 111
(MO. APP W. D.) 1998

ON 9-19-2016 MAGISTRATE JUDGE JOHN
M. BOCKENHAUSEN FILED A ORDER STATING THAT PARKS AND

counsel had appear before him at which time the defendant waived as knowingly and voluntarily made. Yet Sheriff's Office Federal Transport expenses sheet used by the United States Marshal Service states Mr Parks did not leave the Federal holding center unit until 1500 hours, three hours after the conclusion of the allege hearing and waiver. Magistrate Judge Bodenhausen filed a false entry with the clerk. See enclose order of no transcripts "docket hearing 79". All documents were obtain via freedom of information Act. The district court is the court of records, missing records which we have in the case at BAA does not allow for a effective appellate review. U.S. v. Cashwell 950 F. 2d 699, 704 (11th Cir 1992); Specific prejudice

U.S. V. ANZALONE 886 F.2d. 229, 232 (9th Cir 1989); U.S.

V. CARRILLO, 902 F.2d 1405, slip op., 4457, 4466 (9th Cir 1990);

SEE ALSO U.S. V. WORKCOFF, 137 U.S. App D.C. 263, 422, F

2d 700-702, 1031 (9th Cir 1994); U.S. V. SMITH 591 F. 2d

1105, 1108-09 (5th Cir 1979)

Failure to object to Multiplicitous Indictment

There is a very close relationship between §§ 2421 and 2423(A). The language of the latter provision is virtually identical to that of the former with the exception that section 2423(A) applies only when the individual transported "has not attained the age of 18 years" Thus, the offense defined in § 2421 is best regarded as a lesser included offense of section 2423(A) The Supreme court in Bell v. U.S., 349 U.S. 81, 83

84, 75 S. CT 620, 99 L. Ed. 905 (1955)

It has held the proper unit of prosecution in a case under either section is the act of transportation, not the number of individuals transported. Thus, the Supreme Court has specifically held that the transportation of more than one person in one vehicle at the same time can justify only one count under § 2421.2. Counsel's failure or non-desire to object is prejudice *U.S. v. Jones*, 403 F. 3d 604 (8th Cir 2005). The government attorney conceded to this issue in his motion to oppose relief § 2255 (see pg 12)

Conclusion

Counsel Hogan can hardly be said to have enforced

THE ADVERSARIAL bridge between defense and prosecutor.
Mr Hogan also served as appellant counsel, for
the sake of judicial economic all of the claims expressed by Parks also is asserted under ineffective assistance of appellant counsel. Hogan argue two issues on direct "collective Doctrine and confrontation E.g. K.D. and R.W. Mr Hogan is a seasoned, sophisticated criminal litigator. Over 25 years, Hogan was a prosecutor partner and head attorney "Hogan Law Group" Concealment of evidence planting, warrantless search are issue a first year student of law dream of. Mr Hogan's failure to simply without embellishment tell the court "Evidence was planted in my client's van and no search warrant has been founded for Ohio entry. Case close! Remand for new trial.