

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Submitted March 22, 2023*

Decided March 23, 2023

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-2616

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

Appeal from the United States District
Court for the Southern District of Illinois.

v.

No. 06-cr-30049-SMY

GARY E. PEEL,
Defendant-Appellant.

Staci M. Yandle,
Judge.

ORDER

Gary Peel appeals the denial of his petition to vacate his criminal convictions through the esoteric writs of *coram nobis* and *audita querela*. We agree with the district court that Peel is impermissibly attempting to relitigate issues presented in previous collateral attacks, and we therefore affirm.

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

APPENDIX - A

In 1974, Peel took sexually explicit photographs of his then-wife's 16-year-old sister. Decades later, Peel and his wife divorced, and he filed for bankruptcy. Peel's ex-wife opposed his efforts to alter a roughly \$750,000 obligation to her under their divorce settlement, and she filed an adversarial proceeding in the bankruptcy case. Peel then threatened to make the photos of her sister public if she did not drop her claim. This brought on federal charges.

A jury found Peel guilty of bankruptcy fraud and obstruction of justice for his attempt to extort concessions in the bankruptcy case, *see* 18 U.S.C. §§ 152(6), 1512(c)(2), and two counts of possessing child pornography for retaining the explicit photos, *id.* § 2252A(a)(5)(B). Peel appealed, and we agreed that the conviction for either obstruction of justice or bankruptcy fraud had to be dismissed because dual punishments for the same unlawful threat violated the Double Jeopardy Clause. *United States v. Peel*, 595 F.3d 763, 767 (7th Cir. 2010). But we affirmed Peel's convictions and sentences for possessing child pornography, rejecting his argument that he was innocent because having sexually explicit photos of a minor did not violate federal law when he took them. *Id.* at 769–71.

On remand, the district court dismissed the obstruction-of-justice conviction and imposed the same total prison sentence of 144 months. In his appeal, Peel again insisted that he was not guilty of possessing child pornography because of the absence of federal prohibition at the time he took the photos. We rejected that argument and affirmed. *United States v. Peel*, 668 F.3d 506, 509–10 (7th Cir. 2012).

Beginning in 2011, before the second appeal was final, Peel filed a string of unsuccessful motions to vacate his convictions. In his first proper motion under 28 U.S.C. § 2255, he raised dozens of arguments, including that his convictions were unlawful because (1) possessing child pornography was not federally illegal in 1974; (2) his ex-wife had filed, then later withdrawn, a fraudulent adversarial claim in the bankruptcy case; and (3) his trial and appellate counsel were constitutionally ineffective for failing to raise these arguments. The district court rejected Peel's assertions, explaining that possessing the photographs was illegal no matter when they were taken, his ex-wife never withdrew her bankruptcy objections, and the merits of her claim were irrelevant to Peel's fraud. *Peel v. United States*, No. 06-CR-30049-WDS, 2013 WL 1799040 (S.D. Ill. Apr. 29, 2013). While in federal custody, Peel repeated the same arguments in many other motions, variously styled, and a petition under § 2241 and § 2255(e), all of which were denied on the merits or dismissed for lack of jurisdiction.

Then, after serving his prison sentence and three years of supervised release, Peel returned to federal court seeking the rare writs of *coram nobis* and *audita querela*. A petition for a writ of *coram nobis* is a means to collaterally attack a criminal conviction when a defendant is no longer in federal custody. *United States v. Delhorno*, 915 F.3d 449, 452 (7th Cir. 2019). And a writ of *audita querela* might in rare cases provide relief based on some defense arising after the imposition of the judgment. *United States v. Johnson*, 962 F.2d 579, 582 (7th Cir. 1992). Though he invoked these new procedural vehicles, Peel presented the same arguments he had raised in his direct appeals and prior collateral attacks: he lawfully took explicit photos of a 16-year-old, his ex-wife's actions in the bankruptcy proceeding undermine his fraud conviction, and his lawyers were ineffective for failing to raise these issues before his convictions were final.

The district court denied the petition, rejecting each argument in turn. First, Peel did not have new evidence, and his arguments had already been made, and rebuffed, several times. Second, he possessed child pornography as late as 2006, well after the pertinent statute was passed (1978) and amended to define "minor" as anyone under age 18 (1984). Third, Peel already raised his ineffective assistance of counsel claims numerous times. Peel timely moved for reconsideration, repeating the arguments from his petition, but the court concluded that his assertions of legal error were groundless.

On appeal, Peel argues that the district court erroneously refused to vacate his convictions or at least hold evidentiary hearings. Once again, he repeats his three primary arguments. (They are not specific to the denial of his motion to reconsider, so we do not address that ruling separately. See *White v. United States*, 8 F.4th 547, 552 (7th Cir. 2021).) None of Peel's arguments justifies the relief he seeks.

A writ of *coram nobis* is reserved for "extraordinary cases" when "(1) the error alleged is 'of the most fundamental character' as to render the criminal conviction 'invalid'; (2) there are 'sound reasons' for the defendant's 'failure to seek earlier relief'; and (3) 'the defendant continues to suffer from his conviction even though he is out of custody.'" *Delhorno*, 915 F.3d at 452–53 (citation omitted). But a *coram nobis* petition cannot be used to relitigate issues already raised under § 2255 and rejected. *United States v. Hassebrock*, 21 F.4th 494, 498 (7th Cir. 2021). That is all Peel attempts to do here.

The obscure writ of *audita querela* also has no role here. As we have said before, we question whether, "given the availability of *coram nobis* and § 2255," this writ has any relevance to criminal proceedings. *Johnson*, 962 F.2d at 583. If anything, it might "plug a gap in a system of federal postconviction remedies." *United States v. Kimberlin*,

675 F.2d 866, 869 (7th Cir. 1982). But there is no gap here. Peel could—and did—raise the same arguments in his collateral attacks.

We caution Peel that further attempts to relitigate his convictions could result in sanctions.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Case No. 06-cr-30049-SMY
)
GARY PEEL,)
)
Defendant.)

ORDER

YANDLE, District Judge:

Defendant Gary Peel served a 12-year prison sentence followed by a 3-year term of supervised release for bankruptcy fraud and possession of child pornography. This matter is now before the Court for consideration of Peel's "Motion for Writ of Error under the All Writs Act" (Doc. 272). Peel seeks complete exoneration and to have his convictions vacated. For the following reasons, the Motion is **DENIED**¹.

Procedural Background

Following a jury trial and guilty verdicts in 2007, Peel was sentenced to 144 months imprisonment – 60 months for bankruptcy fraud, 144 months for obstruction of justice, and 120 months for possession of child pornography, with all sentences to run concurrently. A first direct appeal led to vacatur of the obstruction count and resentencing. *United States v. Peel*, 595 F.3d 763 (7th Cir. 2010). On remand after direct appeal, this Court dismissed the conviction for obstruction of justice, recalculated the amount of the intended loss relevant to the bankruptcy fraud, recalculated the applicable guidelines sentencing range, and resented Peel to 144 months

¹ Peel filed a Motion for Dispositive Ruling on May 2, 2022, requesting a ruling on his pending Motion for Writ of Error (Doc. 277). The Motion is **TERMINATED** as **MOOT**.

(which included consecutive sentences of 24 months for bankruptcy fraud and 102 months for possession of child pornography). The Seventh Circuit affirmed in a second direct appeal. *United States v. Peel*, 668 F.3d 506 (7th Cir. 2012).

In both his first and second appeals, Peel contested the criminality of his possession of the nude photographs of the then 16-year-old minor. The Seventh Circuit rejected his contention that the photos should not be characterized as child pornography in 2005-2006 because at the time he took them in 1974, the statute under which he was convicted had not yet been enacted and the photos were not illegal when they were taken. The child pornography statute was amended in 1984 to provide that a minor under age 18 was a “child,” thus criminalizing Peel’s possession of the photos when he was charged and convicted. Noting that Peel had forfeited this argument because he did not raise it at trial, the Seventh Circuit nevertheless addressed the merits and rejected Peel’s argument that his possession of the originally legal pictures should be “grandfathered” and that he should not be subject to prosecution under the amended version of the statute. *Peel*, 668 F.3d at 509 (citing *Peel*, 595 F.3d at 770).

In the second appeal, Peel also argued that his punishment for illegally possessing child pornography that was legal when he created it violated the First Amendment’s free speech clause and the *Ex Post Facto* clause of Article I of the Constitution. *Peel*, 668 F.3d at 510. The Seventh Circuit found both arguments frivolous and noted that Peel forfeited the arguments because he failed to raise them in his first appeal.

In August 2011 Peel moved to vacate the judgment under 28 U.S.C. § 2255. Among his claims, Peel argued that insufficient evidence existed to support his bankruptcy fraud conviction and the sixteen-level loss enhancement assessed under the sentencing guidelines. *See Peel v. United States*, 11-cv-660-WDS, at Doc. 1. He also asserted that his defense team was ineffective

for failing to offer critical testimony and evidence to contradict the prosecution's "blackmail" motivation theory. *Id.* This Court denied Peel's claims for relief.

Peel filed a second habeas petition pursuant to 28 U.S.C. § 2255 in March 2012, in which he asserted that he sought to protect the minor's First Amendment right to pose for sexually explicit photographs at age sixteen. *Peel v. United States*, 12-cv-275-WDS, at Doc. 1, 1-1. He also reasserted his claim that his defense attorneys were ineffective in failing to offer critical testimony and evidence to contradict the prosecution's "blackmail" motivation theory. *Id.* Each of Peel's claims were considered by this Court and found to be groundless; his request for habeas relief was denied, and the Court declined to issue a certificate of appealability. On appeal, the Seventh Circuit combined Peel's claims and denied his motions to recall the mandate filed in appellate cases 07-3933, 11-2776, and 13-2124. *Peel v. United States*, 13-2124, Doc. 14. Peel's request for hearing en banc was also denied. *Peel v. United States*, 13-2124, Doc. 16. In February 2014, the United States Supreme Court denied Peel's Petition for Writ of Certiorari. *Peel v. United States*, 13-2124, Doc. 19.

In 2014, while incarcerated in Kentucky, Peel filed a habeas corpus petition in the United States District Court for the Eastern District of Kentucky. *Peel v. Sepanek*, Case No. 14-cv-77, 2014 WL 3611151 (E.D. Ky. July 21, 2014). He argued that the child pornography statute (18 U.S.C. § 2252A(a)(5)(B)) violates the Equal Protection Clause, the Due Process Clause, the *Ex Post Facto* Clause, and the Eighth Amendment, and that he should have been sentenced under a lower guidelines range based on newly discovered evidence that established a lower value for the photographs he had possessed. *Peel*, 2014 WL 3611151, at *2. That court denied Peel's request for habeas relief, finding that his claims could have been brought on direct appeal or in his initial § 2255 challenge, and as such, they did not fall within the narrow scope of the "savings clause"

found at 28 U.S.C. § 2255(e) and could not be brought under § 2241. *Peel*, 2014 WL 3611151, at *3.

Next, in October 2015, Peel filed an emergency motion in the Seventh Circuit seeking immediate release from custody, or in the alternative, permission to file a successive § 2255 petition to challenge the calculation of his intended loss. *Peel v. United States*, 15-3269, Doc. 1, p. 1, (7th Cir. 2015). Peel argued that the facts relied upon by the sentencing court were “premised on erroneous information and [goes] to the heart of whether said sentence falls outside the range recommended by the 2007 United States Sentencing Guidelines.” *Peel v. United States*, 15-3269, Doc. 1, p. 4, (7th Cir. 2015). The Seventh Circuit denied Peel’s request and his request for rehearing, noting that he had previously challenged the intended loss calculation – both on direct appeal and in his first § 2255 petition. *Peel v. United States*, 15-3269, Docs. 2, 3 (7th Cir. 2015).

In April 2016, the Seventh Circuit considered and denied Peel’s Application filed pursuant to 28 U.S.C. 2244(b)(3). *Peel v. United States*, 16-1665 (7th Cir. 2016). The Seventh Circuit found, “Peel proposes challenging his 2007 convictions for bankruptcy fraud and possession of child pornography. But the arguments Peel makes concerning his conviction for possession of child pornography are the same arguments that were rejected in his direct appeal.” With respect to his bankruptcy fraud conviction, Peel argued that the “bankruptcy court’s rejection of his ex-wife’s claim undermines his fraud conviction.” *Id.* However, the Seventh Circuit held that “the bankruptcy court’s decision does not implicate Peel’s innocence as required by § 2255(h)(1). Rather, the conviction is based on Peel’s blackmailing of his ex-wife to get her to drop the bankruptcy claim before the bankruptcy court’s ruling.” *Id.*

Over the years, Peel has also filed several miscellaneous motions in this closed criminal case making the same or substantial similar arguments; all of which were denied. He also sought

habeas relief from the Supreme Court, again to no avail. *In re Peel*, 137 S. Ct. 1835 (2017). Most recently, he requested relief pursuant to 28 USC 2241 and 2255(e). *Peel v. Zarrick*, --WL--, 18-2731 (7th Cir. 2021). His appeal was again denied (*Peel v. Zarrick*, --WL--, 18-2731, Doc. 29, October 4, 2021), as was his Petition for Writ of Certiorari. *Peel v. Zarrick*, --WL--, 18-2731, Doc. 34, (7th Cir. 2021).

One month following the Supreme Court's latest denial, Peel filed the instant motion seeking exoneration under the common law writs coram nobis and audita querela. He argues that he is not guilty of bankruptcy fraud because his conviction was predicated upon "false" information; that he is not guilty of possessing child pornography because the minor was an adult; that his counsel were ineffective; and various *Brady* violations.

Discussion

The writ of audita querela is a remedy for judgment debtors, *United States v. Kimberlin*, 675 F.2d 866, 869 (7th Cir. 1982), and "has no apparent relevance to criminal sentences." *Melton v. United States*, 359 F.3d 855, 856 (7th Cir. 2004). The writ cannot be used in place of a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. *United States v. Johnson*, 962 F.2d 579, 582 (7th Cir. 1992).

Peel argues that he is entitled to a writ of audita querela because false evidence was utilized to procure his bankruptcy conviction and maintains that he has been procedurally barred from challenging this conviction on the merits by this Court, the appellate court, and the Supreme Court. This alleged false evidence – the revalued amount of his ex-wife's claim – has been presented and considered on the merits and rejected on several occasions; the most recent in *Peel v. Zarrick*, No. 18-2732, 2021 WL 3059765, at *1 (7th Cir. June 4, 2021), *cert. denied*, 142 S. Ct. 262, 211 L. Ed. 2d 121 (2021). This Court rejects Peel's latest repackaging of this exhausted argument.

A writ of coram nobis is a means to collaterally attack a criminal conviction based on alleged errors of law or fact that affect the fundamental character of the conviction, including inadequate counsel. *Chaidez v. United States*, 568 U.S. 342 (2013). A petition requesting such a writ is similar to a habeas corpus petition. It seeks the same type of relief, *United States v. Bonansinga*, 855 F.2d 476, 478 (7th Cir. 1988), but is available only when a defendant is no longer in custody and thus can no longer take advantage of habeas corpus relief. *Stanbridge v. Scott*, 791 F.3d 715, 720 n.3 (7th Cir. 2015). The writ of coram nobis is to be used only in “extraordinary cases presenting circumstances compelling its use to achieve justice,” where alternative remedies are not available. *United States v. Denedo*, 556 U.S. 904, 911 (2009), citing *United States v. Morgan*, 346 U.S. 502, 511 (1954) (internal quotation marks omitted). A successful coram nobis petition must satisfy three prongs: (1) the error alleged is “of the most fundamental character” as to render the criminal conviction “invalid”; (2) there are “sound reasons” for the defendant’s “failure to seek earlier relief”; and (3) “the defendant continues to suffer from his conviction even though he is out of custody.” *United States v. Wilkozek*, 822 F.3d 364, 368 (7th Cir. 2016).

Peel contends that he is entitled to a writ of coram nobis on his conviction for possession of child pornography because “there was no child” when the photographs were taken in 1974 ... the victim was a “16-year-old adult”. But as the Seventh Circuit noted a decade ago:

A 16-year-old is not an adult; and in the first appeal the defendant rightly did not argue that because the photos of his sister-in-law were not criminal when he took them they could not constitute sexual abuse of a minor. In fact under Illinois law in 1976 the sister-in-law was a child and in having sex with her the defendant was guilty of contributing to the sexual delinquency of a minor...a misdemeanor form of statutory rape. The law has since been amended to make the kind of conduct in which he engaged a felony.

United States v. Peel, 668 F.3d 506, 510 (7th Cir. 2012). Simply put, Peel has not and cannot raise a fundamental error in his conviction for possession of child pornography because he is, in fact,

guilty of the crime. *United States v. Wilkozek*, 822 F.3d 364, 368 (7th Cir. 2016) (a “fundamental error that invalidates a criminal proceeding is one that undermines our confidence that the defendant is actually guilty”). His request for coram nobis is denied.

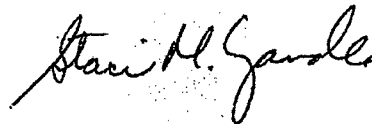
Like his assertions of innocence, Peel has argued his ineffective assistance of counsel and *Brady* violation claims on numerous occasions. And once again, he cannot establish errors of “the most fundamental character” which would have justified habeas corpus relief when habeas corpus relief on these specific issues were sought and denied.

Conclusion

For the foregoing reasons, Defendant Gary Peel’s Motion for Writ of Error Under the All Writs Act (Doc. 272) is **DENIED**.

IT IS SO ORDERED.

DATED: June 13, 2022

A handwritten signature in black ink, appearing to read "Staci M. Yandle", is written over a circular embossed seal of the United States District Court for the Northern District of Illinois.

STACI M. YANDLE
United States District Judge

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

May 2, 2023

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-2616

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

Appeal from the District Court for the
Southern District of Illinois.

v.

No. 3:06-cr-30049

GARY E. PEEL,
Defendant-Appellant.

Staci M. Yandle,
Judge

ORDER

Appellant filed a petition for rehearing and rehearing en banc on April 10, 2023. No judge in regular active service has requested a vote on the petition for rehearing en banc, and all judges on the original panel have voted to deny the petition for rehearing.

Accordingly, the petition for rehearing and rehearing en banc is **DENIED**.

APPENDIX - C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 06-cr-30049
)	
)	
GARY E. PEEL,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

YANDLE, District Judge:

This matter comes before the Court on the Defendant Gary E. Peel's Motion to Reconsider (Doc. 287), Motion to Expedite Ruling on the Motion to Reconsider (Doc. 288), and Supplement to the Motion to Reconsider (Doc. 289).

Following guilty verdicts in his 2007 jury trial, Peel was sentenced to 144 months imprisonment – 60 months for bankruptcy fraud, 144 months for obstruction of justice, and 120 months for possession of child pornography, with all sentences to run concurrently (Doc. 183). His first appeal to the Seventh Circuit resulted in vacatur of the obstruction count and resentencing. *United States v. Peel*, 595 F.3d 763 (7th Cir. 2010). On remand, this Court dismissed the obstruction of justice charge, recalculated the amount of intended loss relevant to the bankruptcy fraud conviction, recalculated the applicable Guidelines sentencing range, and resented Peel to 144 months, including consecutive sentences of 24 months for bankruptcy fraud and 120 months for the possession of child pornography (Doc. 228). The Seventh Circuit affirmed the resentencing on Peel's second appeal. *United States v. Peel*, 668 F.3d 506 (7th Cir. 2012).

In 2011, Peel moved to vacate the judgment under 28 U.S.C. §2255. See *Peel v. United States*, 11-cv-660-WDS, at Doc. 1. He argued that insufficient evidence existed to support his bankruptcy fraud conviction and the sixteen-level loss enhancement assessed under the sentencing guidelines, and asserted that his defense team was ineffective for failing to offer critical testimony and evidence to contradict the prosecution's "blackmail" motivation theory. *Id.* This Court denied Peel's claims for relief (*Id.* at Doc. 6).

Peel then filed a second habeas petition pursuant to 28 U.S.C. §2255 in March 2012, seeking to protect the minor's First Amendment right to pose for sexually explicit photographs at age sixteen and reasserting his claim that his defense attorneys were ineffective in failing to offer critical testimony and evidence to contradict the prosecution's "blackmail" motivation theory. See *Peel v. United States*, 12-cv-275-WDS, at Docs. 1, 1-1. The Court found each of these claims to be groundless (*Id.* at Doc. 36). On appeal, the Seventh Circuit combined Peel's claims and denied his motions to recall the mandate filed in appellate cases 07-3933, 11-2776, and 13-2124. *Peel v. United States*, 13-2124, Doc. 14. Peel's request for hearing en banc was also denied. *Peel v. United States*, 13-2124, Doc. 16. In February 2014, the United States Supreme Court denied Peel's Petition for Writ of Certiorari. *Peel v. United States*, 13-2124, Doc. 19.

Peel then filed a habeas corpus petition in the United States District Court for the Eastern District of Kentucky. *Peel v. Sepanek*, Case No. 14-cv-77, 2014 WL 3611151 (E.D. Ky. July 21, 2014). He argued that the child pornography statute (18 U.S.C. §2252A(a)(5)(B)) violates the Equal Protection Clause, the Due Process Clause, the Ex Post Facto Clause, and the Eighth Amendment; and, he also argued that he should have been sentenced under a lower guidelines range based on newly discovered evidence that established a lower value for the photographs he had possessed. *Peel*, 2014 WL 3611151, at *2. The Court denied Peel's request for habeas relief,

finding that because his claims could have been brought on direct appeal on in his initial §2255 challenge, they did not trigger 28 U.S.C. §2255(e)'s "savings clause" and therefore, could not be pursued under §2241. *Peel*, 2014 WL 3611151, at *3.

Next, in October 2015, Peel filed an emergency motion in the Seventh Circuit seeking immediate release from custody, or in the alternative, permission to file a successive §2255 petition to challenge the calculation of his intended loss. *Peel v. United States*, 15-3269, Doc. 1 at p. 1 (7th Cir. 2015). The Seventh Circuit denied Peel's request and his request for rehearing, noting that he had previously challenged the intended loss calculation – both on direct appeal and in his first §2255 petition. *Peel v. United States*, 15-3269, Docs. 2, 3 (7th Cir. 2015).

In April 2016, the Seventh Circuit considered and denied Peel's Application filed pursuant to 28 U.S.C. §2244(b)(3). *Peel v. United States*, 16-1665 (7th Cir. 2016). The Court rejected his arguments challenging his 2007 conviction for possession of child pornography as the same arguments rejected on his direct appeal. *Id.* With respect to Peel's argument that the "bankruptcy court's rejection of his ex-wife's claim undermines his fraud conviction," the Seventh Circuit held that "the bankruptcy court's decision does not implicate Peel's innocence as required by §2255(h)(1)." *Id.* Rather, "the conviction is based on Peel's blackmailing of his ex-wife to get her to drop the bankruptcy claim before the bankruptcy court's ruling." *Id.*

Throughout the years, Peel has also filed several miscellaneous motions in this closed criminal case making the same or substantially similar arguments; all of which were denied. He also sought habeas relief from the Supreme Court (denied in *In re Peel*, 137 S. Ct. 1835 (2017)), additional relief pursuant to 28 U.S.C. §§2241 and 2255(e) (denied in *Peel v. Zarrick*, --WL--, 18-2731 (7th Cir. 2021)), and another Petition for Writ of Certiorari (denied in *Peel v. Zarrick*, --WL--, 18-2731 (7th Cir. 2021)).

Most recently, Peel filed a motion seeking exoneration under the common law writs of coram nobis and audita querela. He argued that he was not guilty of bankruptcy fraud because his conviction was predicated upon “false” information; that he is not guilty of possessing child pornography because the minor was an adult; that his counsel was ineffective; and, various *Brady* violations (Docs. 272). His motion was denied in its entirety (Doc. 286). Peel subsequently filed a Motion to Reconsider (Doc. 287), Motion to Expedite Ruling on the Motion to Reconsider (Doc. 288), and Supplement to the Motion to Reconsider (Doc. 289), which are now before the Court.

Generally, a motion filed within ten (10) days of judgment or ruling is treated as a motion to alter or amend under F.R.C.P. 59(e). To prevail on a motion for reconsideration under Rule 59(e), the moving party must present either newly discovered evidence or establish a manifest error of law or fact. *LB Credit Corp. v. Resolution Trust Corp.*, 49 F.3d 1263, 1267 (7th Cir. 1995). However, a Rule 59 motion may not be employed to simply rehash previously rejected arguments (see *Musch v. Domtar Industries, Inc.*, 587 F.3d 857, 861 (7th Cir. 2009); see also *Neal v. Newspaper Holdings, Inc.*, 349 F.3d 363, 368 (7th Cir. 2003); *Caisee Nationale de Credit Agricole v. CBI Industries, Inc.*, 90 F.3d 1264, 1270 (7th Cir. 1996)), which is what Peel attempts here.

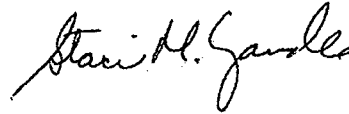
A “manifest error is not demonstrated by the disappointment of the losing party...” *Sedrak v. Callahan*, 987 F.Supp. 1063, 1069 (N.D. Ill. 1997). While Peel takes umbrage with various aspects of the Court’s ruling, he fails to demonstrate that the Court actually disregarded, misapplied, or failed to recognize controlling precedent.

Conclusion

For the foregoing reasons, Gary E. Peel’s Motion to Reconsider and Supplement (Docs. 287, 289) are **DENIED**. The Motion to Expedite Ruling on the Motion to Reconsider (Doc. 288) is **TERMINATED** as **MOOT**.

IT IS SO ORDERED.

DATED: September 7, 2022

A handwritten signature in black ink, appearing to read "Staci M. Yandle", is written above a horizontal line.

STACI M. YANDLE
United States District Judge

FILED**MAR 22 2006****IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS****CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS OFFICE**

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

GARY E. PEEL,)

Defendant.)

CRIMINAL NO. 06-30049-DRH

Title 18

United States Code,

Sections 152(6), 1512(c)(2),

and 2252A(a)(5)(B).

**SOUTHERN DISTRICT OF ILLINOIS
CERTIFIED TRUE COPY**By *[Signature]*
Deputy ClerkDate 11/17/11**INDICTMENT****THE GRAND JURY CHARGES:**

1. In 1974, **GARY PEEL**, took sexually explicit photographs of his then-wife's 16 year old sister, D.R. **GARY PEEL** retained these pictures until 2006.

2. In November of 2003, **GARY PEEL** and his wife divorced and a state court settlement was entered in which **GARY PEEL** was required to meet certain financial obligations to his ex-wife.

3. In July of 2005, **GARY PEEL** filed for bankruptcy in United States Bankruptcy Court, Southern District of Illinois (East Saint Louis), Bankruptcy Petition #: 05-33238. Such filing caused state court proceedings to be stayed pending resolution of the Federal Bankruptcy proceedings. In the bankruptcy action, **GARY PEEL** sought discharge of financial obligations to his ex-wife, whom he listed as a creditor. **GARY PEEL's** ex-wife opposed the discharge. Both **GARY PEEL** and his ex-wife were represented by respective counsel in the bankruptcy action. The bankruptcy action was brought under Title 11 of the United States Code.

4. On January 20, 2006, **GARY PEEL** telephoned his ex-wife and informed her that he had a sexual relationship with his ex-wife's sister, D.R., during the marriage. **GARY PEEL**

APPENDIX - E

further informed his ex-wife that he had taken pictures of D.R. that he referred to as "sexually explicit." **GARY PEEL** informed his ex-wife that a copy of the pictures would be found in her mailbox at her residence. **GARY PEEL** informed his ex-wife that if she did not abandon the bankruptcy challenge, cease in her attempts to depose **GARY PEEL**'s current wife, and agree to a new financial settlement, he would mail the pictures of D.R. to his ex-wife's parents.

5. On January 20, 2006, **GARY PEEL**'s ex-wife retrieved from her mailbox a one-sheet color copy of four color photographs. Such photographs depicted D.R. naked and in various poses, including a lascivious display of the genitals and pubic area of D.R.

6. In cooperation with law enforcement, **GARY PEEL**'s ex-wife placed telephone calls to **GARY PEEL**. In said telephone calls and in cooperation with law enforcement, **GARY PEEL**'s ex-wife appeared to succumb to **GARY PEEL**'s demand to forego the bankruptcy challenge and to consider a new settlement agreement. In said telephone calls **GARY PEEL**'s ex-wife repeatedly told **GARY PEEL** that she would not be discussing a settlement with **GARY PEEL** if it were not for the photographs of her sister and **GARY PEEL**'s threats to mail the photographs to her parents. In said telephone calls, **GARY PEEL**'s ex-wife told **GARY PEEL** that she did not want her attorneys to see the pictures. **GARY PEEL** counseled his ex-wife that if the existence of the pictures were disclosed to her attorneys that they would request copies, that there would be court orders for production and that "it begins to get more visible."

7. In cooperation with law enforcement, **GARY PEEL**'s ex-wife told **GARY PEEL** that she wanted assurances that the originals would be turned over to her if she signed a new settlement agreement. **GARY PEEL** agreed to meet his ex-wife on January 31, 2006, and at such meeting did show his ex-wife original photographs of D.R. Such photographs were then placed in

a sealed envelope and **GARY PEEL** and his ex-wife signed across the sealed portion. **GARY PEEL** explained that he would provide his ex-wife with the envelope containing the photographs after his ex-wife signed a new settlement agreement. At the conclusion of the meeting, agents of Federal Bureau of Investigation retrieved the envelope and original photographs from the person of **GARY PEEL**. Such photographs depicted D.R. naked and in various poses, including a lascivious display of the genitals and pubic area of D.R.

8. On January 31, 2006, agents of the Federal Bureau of Investigation retrieved from the waste basket in **GARY PEEL**'s office at his place of employment, two additional one-page color copies of color photographs of D.R. Each of the two copies contained the same four pictures of D.R. as contained in the color copy that **GARY PEEL** had placed in his ex-wife's mailbox. These two copies had been torn into a number of pieces.

9. On January 31, 2006, agents of the Federal Bureau of Investigation retrieved a Hewlett Packard multi-function, color printer/scanner/copier from the residence of **GARY PEEL**. Agents of the Federal Bureau of Investigation learned that this Hewlett Packard printer was manufactured outside of the State of Illinois. Agents of the Federal Bureau of Investigation learned that the paper copies of the photographs of D.R. were produced on paper that was manufactured outside of the State of Illinois. Agents of the Federal Bureau of Investigation learned that the original photographs of D.R. were produced on materials that had been manufactured outside of the State of Illinois.

COUNT 1

Bankruptcy Fraud

Paragraphs 1 through 9 are incorporated and re-alleged as part of Count 1.

Between on or about January 20, 2006, and on or about January 31, 2006, within St. Clair County, within the Southern District of Illinois,

GARY PEEL,

defendant herein, did knowingly and fraudulently give, offer, receive, and attempt to obtain money and property, remuneration, compensation, reward, advantage, and promise thereof for acting and forbearing to act in a case under Title 11; all in violation of Title 18, United States Code, Section 152(6).

COUNT 2

Obstruction of Justice

Paragraphs 1 through 9 are incorporated and re-alleged as part of Count 2.

Between on or about January 20, 2006, and on or about January 31, 2006, within St. Clair County, within the Southern District of Illinois,

GARY PEEL,

defendant herein, did knowingly and corruptly attempt to obstruct, influence, and impede an official proceeding; all in violation of Title 18, United States Code, Section 1512(c)(2).

COUNT 3

Possession of Child Pornography

Paragraphs 1 through 9 are incorporated and re-alleged as part of Count 3.

On or about January 20, 2006, within St. Clair County, within the Southern District of Illinois,

GARY PEEL,

defendant herein, did knowingly possess material that contains an image of child pornography that was produced using materials that have been mailed and shipped and transported in interstate and

foreign commerce, namely a color paper copy containing images of D.R. that was placed in the mailbox of Gary Peel's ex-wife; all in violation of Title 18, United States Code, Section 2252A(a)(5)(B).

COUNT 4

Possession of Child Pornography

Paragraphs 1 through 9 are incorporated and re-alleged as part of Count 4.


On or about January 31, 2006, within St. Clair County, within the Southern District of Illinois,

GARY PEEL,

defendant herein, did knowingly possess material that contains an image of child pornography that was produced using materials that have been mailed and shipped and transported in interstate and foreign commerce, namely a color photograph of D.R. that was located on the person of Gary Peel; all in violation of Title 18, United States Code, Section 2252A(a)(5)(B).

A TRUE BILL


FOREPERSON


KEVIN F. BURKE
Assistant United States Attorney


RANDY G. MASSEY
Acting United States Attorney

Recommended Bond: \$10,000.00

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	06-30049-WDS
)	East St. Louis, Illinois
)	March 22, 2007
GARY E. PEEL,)	
)	
Defendant.)	

JURY TRIAL - VOLUME VII
BEFORE THE HONORABLE WILLIAM D. STIEHL
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: United States Attorney's Office
by MR. KEVIN F. BURKE, AUSA
and MS. JENNIFER D.L. HUDSON, AUSA
Nine Executive Drive
Fairview Heights, Illinois 62208

For the Defendant: Federal Public Defender's Office
by MR. PHILLIP J. KAVANAUGH, III, FPD
MR. STEVE WILLIAMS, AFD and
MR. DANIEL CRONIN, AFD
650 Missouri Avenue
Suite G10A
East St. Louis, Illinois 62201

Court Reporter: Daveanna Ramsey, CSR
U.S. District Court
750 Missouri Avenue
East St. Louis, Illinois 62201
(618) 482-9124

Proceedings recorded by mechanical stenography; transcript
produced by computer.

APPENDIX - F

1 MR. WILLIAMS: That's fine.

2 THE COURT: And I will overrule the objection to 33,
3 and will give it.

4 (Sidebar ends.)

5 (Open court, jury present.)

6 THE COURT: Ladies and gentlemen, I'm very sorry about
7 the delay and the time of starting. We've had a few problems
8 that had to be worked out, and after the case is over, I can
9 explain all of this to you, but I won't do it at this point.

10 Now the parties have requested the Court, I believe,
11 to take judicial notice.

12 MR. WILLIAMS: Yes, Your Honor.

13 MR. BURKE: That's correct, Your Honor.

14 THE COURT: And the Court does take judicial notice of
15 the fact that in 1973 and 1974, the age of consent for sexual
16 activity was 16. This is not an issue in this case.

17 Ladies and gentlemen, you have seen and heard all the
18 evidence in the case, and I will now instruct you on the law
19 applicable to it. You have two duties as a jury: Your first
20 duty is to decide the facts from the evidence in the case. And
21 this is your job and your job alone. Your second duty is to
22 apply the law that I give you to the facts.

23 You must follow these instructions even if you
24 disagree with them. Each of the instructions is important, and
25 you must follow all of them. Perform these duties fairly and

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	06-30049-WDS
vs.)	East St. Louis, Illinois
)	March 20, 2007
GARY E. PEEL,)	
)	
Defendant.)	

JURY TRIAL - VOLUME V
BEFORE THE HONORABLE WILLIAM D. STIEHL
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: United States Attorney's Office
by MR. KEVIN F. BURKE, AUSA
and MS. JENNIFER D.L. HUDSON, AUSA
Nine Executive Drive
Fairview Heights, Illinois 62208

For the Defendant: Federal Public Defender's Office
by MR. PHILLIP J. KAVANAUGH, III, FPD
MR. STEVE WILLIAMS, AFD and
MR. DANIEL CRONIN, AFD
650 Missouri Avenue
Suite G10A
East St. Louis, Illinois 62201

Court Reporter: Daveanna Ramsey, CSR
U.S. District Court
750 Missouri Avenue
East St. Louis, Illinois 62201
(618) 482-9124

Proceedings recorded by mechanical stenography; transcript
produced by computer.

APPENDIX - G

1 The discussions with the Defendant concerning his knowledge or
2 lack of knowledge of any illegal activities by Tom Lakin or any
3 judges in Madison and St. Clair County, or any other Madison
4 County attorneys, there's nothing to suggest that they were any
5 way linked to any promise not to indict the Defendant in this
6 criminal activity for which he has now been indicted.

7 To put it simply as I can, there is nothing in the
8 proffer that in any way goes to inculcate or exculpate the
9 Defendant other than what has already been placed into the
10 record and the evidence received into the case.

11 There is nothing to suggest that Special Agent Kelly
12 in any way changed his testimony from the time he testified at
13 the October hearing to the time of this proffer, and that in
14 any way that testimony is inconsistent. And so while the
15 proffer is in the record, and that ends that.

16 *(Discussion held off the record between the*
17 *Court and counsel.)*

18 *(Open court, jury present.)*

19 MR. BURKE: We'll call Donna Rodgers, Your Honor.

20 DONNA RODGERS, GOVERNMENT'S WITNESS, SWORN

21 DIRECT EXAMINATION

22 BY MR. BURKE:

23 Q. Ma'am, would you please state your name.

24 A. Donna Rodgers.

25 Q. Where do you live?

1 A. Columbia, South Carolina.

2 Q. What is your current occupation?

3 A. I'm a Special Events Marketing Coordinator.

4 Q. For whom?

5 A. For KW Associates.

6 Q. Okay. When were you born?

7 A. July 17, 1957.

8 Q. How many siblings do you have?

9 A. I have two.

10 Q. And what are their names?

11 A. Dana and Debbie.

12 Q. Debbie, is she older or younger than you?

13 A. She's older.

14 Q. How much older?

15 A. Ten years.

16 Q. Where did you grow up?

17 A. I was born in East St. Louis. I lived in Fairmont City,
18 and then I lived in Edwardsville, Illinois.

19 Q. Where did you go to school?

20 A. I went to Fairmont City, I can't remember the name of the
21 public school, first grade, and then I went to parochial
22 school, it was called Holy Rosary School, and then I went to
23 Edwardsville High School.

24 Q. When did you enter Edwardsville High School, in what grade,
25 was that ninth grade?

1 that.

2 Q. How old are you in these pictures taken at the law firm?

3 A. Sixteen.

4 Q. Okay.

5 MR. BURKE: Thank you. I have no further questions.

6 THE COURT: Mr. Cronin.

7 CROSS EXAMINATION

8 BY MR. CRONIN:

9 Q. Good afternoon, Ms. Rodgers. Ms. Rodgers, you testified
10 that it was a painful transition for you going into high
11 school; was that correct?

12 A. Yes.

13 Q. And that that transition included some self-esteem issues?

14 A. Yes.

15 Q. At the same time, would it be fair to say that to some
16 extent you were to overcome some of those self-esteem issues?

17 A. I don't know what you mean.

18 Q. Well, for example, you were able to participate in Student
19 Government?

20 A. That's true.

21 Q. In fact, you were voted class president your senior year?

22 A. That's not true.

23 Q. You were a member of the National Honor Society?

24 A. That's correct.

25 Q. And that was through your junior year? I'm sorry, is that

1 A. I know that it was cool weather.

2 Q. And you've also said that when your sexual relationship
3 began with Gary, it was warmer by then; isn't that correct?

4 A. Yes.

5 Q. And you said it may have been spring time?

6 A. Yes.

7 Q. And that would have been Spring of 1974?

8 A. No.

9 Q. Okay.

10 A. I'm having a little trouble hearing you.

11 Q. I'm sorry, ma'am, I'll speak up. Is this better?

12 A. Thank you.

13 Q. You're welcome. You've said that the sexual relationship
14 may have begun in the Spring; is that correct?

15 A. Yes.

16 Q. And that would have been the Spring of 1974?

17 A. Yes.

18 Q. And for thinking back on these things, it can be difficult
19 to remember exactly when some of these events occurred, isn't
20 it?

21 A. Yes..

22 Q. And of course we're talking about events that occurred over
23 30 years ago?

24 A. Yes.

25 Q. And to try to help put things in context, you've tried to

1 A. That's correct.

2 Q. Now during the first half of the Summer of 1974, you were
3 16?

4 A. Before July 17th?

5 Q. Yes.

6 A. Yes.

7 Q. So after July 17th, obviously you were 17 years old?

8 A. That's correct.

9 Q. So without knowing those kinds of details, someone seeing
10 whether or not you have braces wouldn't know how old you were?

11 A. That's correct.

12 Q. Ms. Rodgers, you've explained to the FBI that your tan
13 lines in the photographs might also be an indicator of your age
14 when the photos were taken; is that correct also?

15 A. I don't recall that part.

16 Q. You do recall this afternoon talking about saddle shoes?

17 A. Yes.

18 Q. And those saddle shoes are visible in two of the
19 photographs that the prosecutor showed you?

20 A. Uh-huh.

21 Q. I'm sorry, ma'am?

22 A. Yes. I'm sorry.

23 Q. That's all right. Ms. Rodgers, I'd like to switch the
24 yearbooks one more time. I'm going to bring around your junior
25 yearbook.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
GARY E. PEEL, debtor,)
)
)
DEBORAH J. PEEL,)
Plaintiff,)
)
VS.) BK NO: 05-33238
)
GARY E. PEEL)
Defendant.)

COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBTS

Now comes Deborah J. Peel (plaintiff) by and through her attorneys,
Don Samson and the law firm of Sprague & Urban, and complaining of the
defendant/debtor, Gary E. Peel, as follows:

1. On July 22, 2005 the debtor, Gary E. Peel, filed a petition for relief under Chapter Seven (7) of the Bankruptcy Code.
2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. Section 1334 and 11 U.S.C. Section 523(a).
3. This is an action to determine the dischargeability of the debt pursuant to 11 U.S.C. Section 523(a)(5) and 523(a)(2) and to seek to deny the debtor's discharge pursuant to 11 U.S.C. 727(a)(3) and (a)(4).
4. That on June 13, 2003 the parties entered into a Marital Settlement Agreement in the case of Deborah J. Peel vs. Gary E. Peel, Case number 93-D-320 in the Circuit Court for the Twentieth Judicial Circuit, St. Clair County, Illinois (the "Circuit Court")

5. On June 18, 2003 the Circuit Court approved the terms and conditions of the marital settlement agreement.

6. Among other things, the Marital Settlement Agreement required the debtor to:

- A. From the sale of stock in Applied Logic, Inc., divide the proceeds evenly between the debtor and Deborah J. Peel (hereinafter "ex-spouse") and;
- B. Pay \$25,000.00 to ex-spouse in lieu of her interest in certain stocks held in an E*Trade account; and
- C. From the sale of stock in Global Marine a/k/a Global Santa Fe, divide the proceeds evenly between Debtor and Ex-Spouse; and
- D. From the refund of their Sunset Hills Country Club Membership, divide the proceeds evenly between Debtor and Ex-Spouse; and
- E. Pay \$200 per month to Ex-Spouse in lieu of her interest in a CNA insurance Annuity and pay all taxes attributable thereto; and
- F. Pay ex-spouse 1/3 of the proceeds payable on May 15, 2006 from her interest in a Trans America Occidental Life Insurance company annuity with a total projected payout of approximately \$32,618; and
- G. Reimburse ex-spouse for health insurance premiums in the approximate amount of \$1,000 per month; and
- H. Reimburse deductible co-payments and all other health costs not covered by ex-spouse's insurance policy; and
- I. Pay all premiums attributable to certain life insurance policies; and
- J. Pay accounts receivable collected from Applied Logic, Inc. in the

estimated amount of \$3,000 per month to the Bank of Edwardsville on account of a loan co-signed or guaranteed by debtor and ex-spouse, or in the event this account receivable continues to pay after the Bank of Edwardsville loan is satisfied, pay one half to ex-spouse; and

K. Pay all outstanding balances on current credit/debit cards and hold ex-spouse harmless therefrom; and

L. Pay all outstanding mortgage and loan balances due to the Bank of Edwardsville, including loans for purchase of Applied Logic stock and hold ex-spouse harmless therefrom; and

M. Pay all joint debts and obligations with ex-spouse before making any accelerated payments on any individual debts or obligations debtor owes; and

N. Reimburse certain expenses and pay \$1,000.00 per month to ex-spouse pending sale of the marital residence at 2017 Golf Course View, Edwardsville, IL, then pay \$2500 per month to ex-spouse until occurrence of certain specified events, including the sale of the parties stock in Applied Logic, Inc., and generation of a minimum return of \$2,500,000.00 to ex-spouse.

6. The financial obligations of debtor under the marital settlement agreement are in the nature of alimony, maintenance, or child support as a matter of federal law under 11 U.S.C. Section 523(a)(5) which excepts from discharge debts to former spouses for alimony to, maintenance for, or support of such spouse in connection with a separation agreement, divorce decree or other order of court.

7. The financial obligations of the debtor under the marital settlement agreement were incurred by the debtor in the course of a divorce decree entered into by the Circuit Court for the 20th Judicial Circuit of St. Clair County, Illinois.

8. That a copy of said Marital Settlement Agreement is attached to the defendant's response to complaint to determine dischargeability and marked as exhibit A and is incorporated herein.

9. That the terms and conditions of said Marital Settlement Agreement were voluntarily agreed to by the parties and the specific language of said document was created and drafted by the plaintiff/debtor.

10. That contained in paragraph IV, Subparagraph 1 pertaining to Maintenance/Periodic Loan, the plaintiff/debtor specifically noted and this provision was specifically agreed to by the parties and approved by the Circuit Court the following provisions pertaining to the issue of plaintiff/debtor bankruptcy:

In the event that Gary E. Peel should file for relief (in any form) in Bankruptcy Court, then in that event, (the filing) shall trigger an immediate reclassification of all payments made, or to be made, to or on behalf of Deborah J. Peel pursuant to this agreement, including the obligation to make "periodic loan" to Deborah J. Peel as "non-modifiable maintenance" and such payments shall be deemed non-dischargeable.

In the event that Gary E. Peel institutes an action in Bankruptcy Court, or any other bankruptcy proceedings are instituted in which Gary E. Peel's obligation to pay the debts he has assumed under this agreement, the obligations of Deborah J. Peel under this agreement, or the loan provisions of this paragraph, become a matter for judicial review, Gary E. Peel agrees to consent to any motion filed by Deborah J. Peel with the Bankruptcy Court requesting the Bankruptcy Court determine that each of such obligations to or on behalf of Deborah J. Peel to be non-dischargeable.

If, for any reason, the bankruptcy court declines to find the obligations of Deborah J. Peel under this agreement to be non-dischargeable, then Gary E. Peel agrees to re-vest the Circuit Court for the Twentieth Judicial Circuit, St. Clair County, Illinois, with jurisdiction and consents to

CERTIFICATE OF SERVICE

The undersigned certifies that on the 9th day of November, 2005, a copy of the foregoing document, Answer to Complaint to Determine Dischargeability, was served upon the following either electronically or by first class mail, postage prepaid:

Steven T. Stanton
Attorney at Law
PO Box 405
Edwardsville, IL 62025

Carla Joan Randolph
Chapter 7 Trustee
327 Missouri Ave Suite 519
East St. Louis, IL 62201

Donald Samson
Attorney at Law
226 West Main Street, Suite 102
Belleville, IL 62220

/s/ Donald W. Urban

THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DEBORAH PEEL

CAUSE NO. 05-3326 (05-33238)

VS

GARY PEEL

DATE: January 6, 2006

PLACE: East St Louis

CHAPTER: 7

PRESENT: Honorable Gerald Fines, U.S. Bankruptcy Judge

COUNSEL FOR

PLAINTIFF: Donald Urban

COUNSEL FOR

DEFENDANT: Steven Stanton

MINUTE ORDER IN CHAMBERS ()

PROCEEDINGS: Motion to Dismiss Adversary Proceeding by Defendant

MINUTES OF COURT: Case is called for hearing on the Motion to Dismiss Adversary Proceeding. Donald Urban appears as counsel for the plaintiff, Deborah Peel. Steven Stanton appears as counsel for the defendant, Gary Peel. The Motion is Withdrawn. The portion of the Complaint pertaining to the 727 Objection to Discharge is Withdrawn.

Wayne A. Bannert

Clerk of Bankruptcy Court

By: /s/ Krista Doiron

Deputy Clerk

NOTE: THESE WRITTEN MINUTES ARE A CLERICAL ENTRY OF THE COURT PROCEEDINGS FOR RECORD KEEPING PURPOSES ONLY. THEY ARE NOT AND SHOULD NOT BE CONSTRUED AS THE ORDER OF THE COURT, WHICH WAS ORALLY DELIVERED. CONSULT THE TRANSCRIPT OF PROCEEDINGS FOR THE ACTUAL ORDER.

APPENDIX - I

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION

In re

GARY PEEL,

Debtor.

Case No. 05-33238

East St. Louis, IL

January 6, 2006

9:00 a.m. Docket

DEBORAH J. PEEL,

Plaintiff,

v.

GARY E. PEEL,

Defendant.

Adv. Proc. 05-3326-kjm

MOTION TO DISMISS
ADVERSARY PROCEEDING

GARY E. PEEL,

Plaintiff,

v.

DEBORAH J. PEEL,

Defendant.

Adv. Proc. 05-3226-kjm

MOTION TO COMPEL

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GERALD FINES,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For Deborah J. Peel:

Donald W. Urban
26 E. Washington Street
Belleville, IL 62220
(618) 233-8383

For Gary E. Peel:

Steve T. Stanton
P.O. Box 370
Maryville, IL 62062
(618) 931-3090

APPENDIX - J

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Electronic Court
Recorder:

C.O.
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ILLINOIS
750 Missouri Avenue
East St. Louis, IL 62201
(618) 482-9423

Transcription Service:

Kathy Rehling
311 Paradise Cove
Shady Shores, TX 76208
(972) 786-3063

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

EAST ST. LOUIS, ILLINOIS - JANUARY 6, 2006

MR. STANTON: Your Honor, we're resolved, in the meantime, if you want to --

THE COURT: Pardon me?

MR. STANTON: If you want to get one out of the way, we have everything resolved on ours.

THE COURT: Let's go for it.

MR. STANTON: It is the Case No. 5 and 6 on the docket, Peel versus Peel.

THE COURT: Oh, sure.

MR. STANTON: I'm Steve Stanton. I'm attorney for Gary Peel, the Debtor.

MR. URBAN: And I'm Don Urban. I'm one of the attorneys for Deborah Peel.

THE COURT: Let her call this first.

MR. URBAN: Oh, sorry.

THE COURT: Call both of these.

THE CLERK: Gary Peel versus Deborah Peel. Deborah Peel versus Gary Peel.

MR. STANTON: Your Honor, if we could just -- we can get it over with quickly. On the motion to compel, after it was filed, the parties got together, created a timetable. It looks like everything is going fine. If I could just withdraw that without prejudice in the event a problem arose in the future, --

1 THE COURT: Okay.

2 MR. STANTON: -- that would resolve that matter.

3 THE COURT: Okay.

4 MR. STANTON: And on the motion to dismiss, I believe
5 we can go on the complaint, on the adversary complaint filed
6 by Mrs. Peel as is, with one exception. And if Mr. Urban
7 could announce that.

8 MR. URBAN: Yes, Your Honor. We're going to withdraw
9 those portions of our pleadings that pertain to the 727 --

10 THE COURT: Okay.

11 MR. URBAN: -- objections.

12 THE COURT: How about a trial date? He already --
13 he's already answered on that one?

14 MR. STANTON: No, the answer is fine. I went ahead
15 and filed an answer --

16 THE COURT: Okay. Okay.

17 MR. STANTON: -- with the motion.

18 MR. URBAN: And Judge, we already have a trial date
19 that was set by Judge Meyers for February 3rd that we're
20 optimistic we'll have no problem holding here for you.

21 THE COURT: How long do you think this -- these two
22 trials will take?

23 MR. STANTON: Well, it should be conducted, I think
24 it should be conducted as one. I mean, that's the issue.
25 They're so interrelated.

1 THE COURT: Right.

2 MR. STANTON: And we've estimated a day.

3 THE COURT: Okay.

4 MR. STANTON: As we get closer to trial, we might be
5 able to refine that estimate.

6 THE COURT: Okay. Do we have a lot of things set
7 that day, or we never know what's going to happen?

8 THE CLERK: Yes. Right now, those are the only two.

9 THE COURT: No problem. Okay. That's set for the
10 3rd, right?

11 MR. URBAN: That's correct.

12 MR. STANTON: It's a tough case, but we are in the
13 middle of settlement negotiations. It's possible it'll
14 resolve, but these marital things are tough.

15 THE COURT: Right. They're personal, I see.

16 MR. STANTON: Yeah. Hopefully it'll be the last
17 thing --

18 THE COURT: One where they're suing each other in
19 different cases. That's -- that's unusual.

20 MR. STANTON: I think it was basically a gap. They
21 wanted to make sure they didn't miss out on the 523(a)(5).

22 MR. URBAN: Exactly.

23 MR. STANTON: Because we had filed under (a)(15).

24 MR. URBAN: Right.

25 MR. STANTON: And then they had the (a)(2) issue that

1 came out in the briefing. We figured we'd have to get it all
2 in.

3 THE COURT: So you're covered now?

4 MR. URBAN: Exactly.

5 THE COURT: Okay.

6 MR. URBAN: That's it exactly, Judge.

7 THE COURT: Okay.

8 MR. STANTON: Thank you for your time.

9 THE COURT: February 3, 9:00 o'clock, right here.

10 MR. URBAN: Thank you, Your Honor.

11 MR. STANTON: See you then.

12 (Whereupon, proceedings concluded after three minutes.)

13 --oOo--

14

15

16

17

18

19

CERTIFICATE

20 I certify that the foregoing is a correct transcript from
21 the electronic sound recording of the proceedings in the
above-entitled matter.

22 /s/ Kathy Rehling

05/05/2021

23

24

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

25

INDEX

1		
2	PROCEEDINGS	3
3	WITNESSES	
4	-none-	
5	EXHIBITS	
6	-none-	
7	RULINGS	
8	Motion to Compel Withdrawn	4
9	Objections Withdrawn	4
10	END OF PROCEEDINGS	6
11	INDEX	7
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 A. No.

2 Q. Or when he left?

3 A. No.

4 Q. Thinking back over 30 years ago, you would have no way o
5 knowing how old he was at the time?

6 A. No, not at all.

7 Q. And you wouldn't know how old you were when he started t
8 firm?

9 A. No.

10 Q. Or left the firm?

11 A. No.

12 MR. CRONIN: Thank you. No further questions, Your
13 Honor.

14 THE COURT: All right. Any redirect?

15 MS. HUDSON: No, Your Honor.

16 THE COURT: Thank you, ma'am. You're excused. Call
17 your next witness, please.

18 MS. HUDSON: Don Urban.

19 DONALD URBAN, GOVERNMENT'S WITNESS, SWORN

20 DIRECT EXAMINATION

21 BY MS. HUDSON:

22 Q. Would you please state your full name.

23 A. Donald W. Urban.

24 Q. Where do you work, sir?

25 A. I'm an Attorney with a law firm of Sprague and Urban at 26

1 Q. Was that accomplished?

2 A. No, it wasn't. We had a trial scheduled for I believe the
3 first part of February, and that date was looming very quickly.
4 So when it became apparent that we were not going to reach a
5 settlement, we began trying to schedule a deposition of Deborah
6 Pontious-Peel. At that point in time, there was some
7 negotiations as to what's called a protective order so that we
8 could determine the perimeters of the deposition, things, of
9 that nature, and we frankly never got that nailed down.

10 Q. You brought up a protective order.

11 A. Yes.

12 Q. Who proseed a protective order?

13 A. I'm sure it would have been Steve Stanton.

14 Q. Were there any type of counter offers in regard to the
15 initial protective order?

16 A. Yes, I believe there were. I can't give you the specifics,
17 but yes, I believe there was some give and take on that.

18 Q. And any point in time was it your position or client's
19 position that, nope, we're not signing that thing ever?

20 A. Yes. Well, when -- that thing, were you referring to?

21 Q. The original.

22 A. The original one was quite extensive. And yes, so we did
23 reach a decision quickly that we weren't going to sign that.
24 We were prepared to sign a protective order, but that one was
25 way too strict.

1 end you requested some time to investigate and assess the
2 merits of the settlement; correct?

3 A. I'm sure.

4 Q. Up at the top, I'm sorry.

5 A. Okay. Yes, that's correct.

6 Q. And one of the other things that was being contemplated was
7 this deposition of Gary's wife, Deborah Pontious-Peel; correct?

8 A. Yes, that's correct.

9 Q. And a deposition of your client, Deborah Peel?

10 A. That's correct.

11 Q. Now after that settlement conference, you had another
12 conversation at some point along the way with Mr. Stanton,
13 where he indicated to you that there were additional problems
14 with disclosure of private facts in his estimation; correct?

15 A. Yes.

16 Q. And what he was referring to were private facts regarding
17 the settlement conference; correct?

18 A. Regarding this settlement conference?

19 Q. I'm talking about the settlement conference that took place
20 on January 3, 2006.

21 A. Okay. I'm confused by your question. If you're saying
22 that Mr. Stanton was concerned about the disclosures from the
23 January 3rd settlement conference, I don't believe that was the
24 case. But I know that he had concerns that information that
25 would be gained would be disclosed, and so that was the reason

1 for discussion of the protective order.

2 Q. Okay. And so you don't recall that specifically being an
3 issue --

4 A. No.

5 Q. -- in your conversations?

6 A. I really don't recall that.

7 Q. Okay. You don't recall one way or another?

8 A. Exactly.

9 Q. You don't recall whether or not there actually had been
10 another article in the *Madison County Record* about details
11 concerning the January 3rd settlement conference, would that be
12 a fair statement?

13 A. That's a very fair statement.

14 Q. Okay. But nevertheless, you were having these
15 conversations with Mr. Stanton, and at some point, he faxed to
16 you a proposed settlement -- or I'm sorry -- he faxed to you a
17 proposed protective order; correct?

18 A. That's correct.

19 Q. I'm going to show you what's been marked as Defendant's
20 Exhibit 22, and is that a copy of the settlement proposal-- is
21 that a copy of the proposed protective order that he sent to
22 you?

23 A. Protective order, yes. I believe it is, yes.

24 Q. And there is a cover sheet on it; correct?

25 A. Yes.

1 Q. And that cover sheet is a fax cover sheet?

2 A. That's correct.

3 Q. And in the memo itself, it says, "Dear Don, please review
4 the attached confidentiality agreement/protective order
5 regarding deposition", it says or, but I believe it means of,
6 "Deborah A. Pontious-Peel"?

7 A. Yes.

8 Q. Correct?

9 A. Yes, that's correct.

10 Q. Okay. And it goes onto say, "If we can reach an agreement
11 regarding confidentiality then my client's wife is available
12 for deposition on January 17, 2006 at 2:30 or January 18th at
13 3:00."

14 A. That's correct.

15 MR. WILLIAMS: Okay. Your Honor, I'm going to move to
16 admit Defendant's Exhibit 22.

17 MS. HUDSON: No objection.

18 THE COURT: Thank you. Defendant's 22 is admitted.

19 Q. (BY MR. WILLIAMS) So according to Mr. Stanton, they were
20 going to allow the deposition as soon as you could enter into
21 some kind of protective order; correct?

22 A. Yes, that's correct.

23 Q. Do you -- you said that you advised your client not to
24 accept this particular protective order?

25 A. Yes.

1 Q. It was overly expansive?

2 A. Much so.

3 Q. What did you propose to Mr. Stanton as an alternative to

4 this protective order?

5 A. I don't recall. I'm not sure we ever even got anything

6 back on the table as a counter suggestion. That's what we were

7 trying to put together at that time.

8 Q. Okay. So you don't, actually recall ever putting together,

9 an actual counter proposal, that would be fair to say, would it

10 not?

11 A. That would be. I don't have a recollection of that.

12 Q. And there was further discussion about this topic still at

13 a January 31st court hearing on the bankruptcy and the upcoming

14 trial, wouldn't that be fair to say?

15 A. That would be fair to say.

16 Q. And there still hadn't been a protective order?

17 A. No.

18 Q. And there still hadn't been a counter protective order --

19 or a counter proposal actually proposed from your side?

20 A. No.

21 Q. The Judge, though, said, hey, get an agreement on a

22 protective order, didn't he?

23 A. That's correct.

24 Q. That had not happened yet?

25 A. That had not happened.

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STEVEN T. STANTON

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Edwardsville, IL 62025

phone: (618) 931-3090

fax: (618) 931-3387

FAX TRANSMISSION COVER SHEET

Date: January 11, 2006

From: Steven T. Stanton

Re: GARY PEEL, CN 05-33238

To: DONALD URBAN & DONALD SAMSON

Fax No: (618) 233-5374 & (618) 235-0037

Sending Pages: (9) of (9) including this coversheet

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MEMO

Dear Don,

Please review the attached Confidentiality Agreement/Protective Order Regarding Deposition of Deborah A. Pontious-Peel. If we can reach an agreement regarding confidentiality, then my client's wife is available for deposition on January 17, 2006 at 2:30PM or January 18, 2006 at 3:00PM. Please advise if your client is available for deposition on either of these dates so we can conclude these matters.

Sincerely,
Steve

(Fax prepared by Lacera, legal secretary)

_____ Copy will follow by mail

Transmission completed X on 1-11-06 By: Lacera

APPENDIX - L

Gary E. Peel
9705 Fairmont Road (Rear)
Fairview Heights, Illinois 62208
May 18, 2023

Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

Re: *Gary E. Peel vs United States of America*
Petition for Writ of Certiorari

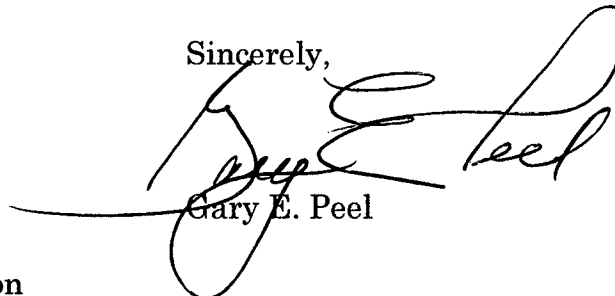
Dear Sir/Madam:

Enclosed for filing, please find the following:

- a) MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS,
- b) The original, plus ten (10) copies of a PETITION FOR WRIT OF
CERTIORARI
- c) A CERTIFICATE OF COMPLIANCE WITH THE PAGE COUNT
REQUIREMENTS OF SUPREME COURT RULE 33.2(b), and
- d) PROOF OF SERVICE.

Should you have any questions concerning these materials, I can be reached at 618-
514-7203 (Cell Phone) or via e-mail at Garyepeel@Hotmail.com.

Sincerely,



Gary E. Peel

CC: AUSA Jennifer Hudson

