

IN THE SUPREME COURT
FOR THE UNITED STATES OF AMERICA

STUART ALEXANDER DAMERI,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

Stuart Alexander Dameri
Pro Se Litigant
Currently Held At:
FCI Fort Dix
P.O. Box 2000
Joint Base MDL, NJ 08640

APPENDIX A

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APPENDIX A

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FILED: August 1, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4695
(2:20-cr-00085-AWA-RJK-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

STUART ALEXANDER DAMERI

Defendant - Appellant

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge King, Judge Richardson, and Judge Heytens.

For the Court

/s/ Patricia S. Connor, Clerk

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 21-4695

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

STUART ALEXANDER DAMERI,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Arenda L. Wright Allen, District Judge. (2:20-cr-00085-AWA-RJK-1)

Submitted: April 27, 2023

Decided: June 20, 2023

Before KING, RICHARDSON, and HEYTENS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Stuart Alexander Dameri, Appellant Pro Se. Joseph Attias, Assistant United States Attorney, Richmond, Virginia, Matthew John Heck, OFFICE OF THE UNITED STATES ATTORNEY, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Stuart Alexander Dameri seeks to appeal his conviction and 168-month sentence following his guilty plea, pursuant to a written plea agreement, to receipt of child pornography, in violation of 18 U.S.C. § 2252(a)(2). The Government moves to dismiss his appeal as untimely. We dismiss the appeal.

In criminal cases, the defendant must file the notice of appeal within 14 days after the entry of judgment. Fed. R. App. P. 4(b)(1)(A). With or without a motion, upon a showing of excusable neglect or good cause, the district court may grant an extension of up to 30 days to file a notice of appeal. Fed. R. App. P. 4(b)(4). Although the appeal period in a criminal case is not a jurisdictional provision, but rather a claim-processing rule, *United States v. Urutyan*, 564 F.3d 679, 685 (4th Cir. 2009), “[w]hen the Government promptly invokes the rule in response to a late-filed criminal appeal, we must dismiss,” *United States v. Oliver*, 878 F.3d 120, 123 (4th Cir. 2017).

The district court entered the criminal judgment on July 19, 2021. Dameri filed the notice of appeal, at the earliest, on December 4, 2021. Because Dameri failed to file a timely notice of appeal or to obtain an extension of the appeal period and the Government has promptly invoked the appeal’s untimeliness, *see 4th Cir. R. 27(f)(2)*, we grant the Government’s motion to dismiss the appeal. We grant Dameri’s motion to file an oversized brief. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

FILED: June 20, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4695
(2:20-cr-00085-AWA-RJK-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

STUART ALEXANDER DAMERI

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, this appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in
accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Stuart Alexander Dameri,
Appellant,

v.

Appeal No. 21-4695

United States of America,
Appellee.

OPPOSITION TO THE UNITED STATES' MOTION TO DISMISS THE APPEAL

To begin, it is prudent to understand the exact constitutional challenges Mr. Dameri is raising on appeal. This matter is purely a challenge to JURISDICTION of all parties and institutions, including the United States District Court, involved in this case, and, because the appeal is a challenge to subject-matter jurisdiction, which is a challenge that can be raised at any point in time, Mr. Dameri is not time barred - nor can his filing of an appeal be considered untimely or impermissible for any reason, including entering a fraudulent agreement.

"[A] jurisdictional defect cannot be procedurally defaulted because a defect in subject-matter jurisdiction cannot be waived."

"[S]ubject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Consequently, defects in subject-matter jurisdiction require correction regardless of whether the error was raised in district court." United States v. Cotton, 353 US 625, 630, 122 S.Ct. 1781, 152 L.Ed. 2d 860 (2002).

"A jurisdictional defect cannot be waived or procedurally defaulted and a defendant seeking post-conviction relief need not show cause and prejudice to justify his failure to raise one." Howard v. United States, 374 F.3d 1068, 1071 (2004).

And, "Question of subject matter jurisdiction may be raised by parties at any time or by court sua sponte." Rath Packing Co. v. Becker, 530 F.2d 1295 (1975),

aff'd, 430 US 519, 97 S.Ct. 1305, 51 L.Ed. 2d 604 (1977).

Government Representative Matthew J. Heck begins the Motion to Dismiss by employing artifice as a prosecutorial stratagem to deflect, obscure, and prejudice Mr. Dameri. By stating that Mr. Dameri "pled guilty to an agreement that expressly waived his right to appeal his conviction and sentence on any ground" (Doc. 46, p. 1), Matthew J. Heck is being blatantly untruthful. This is proven by the following admission, in the third sentence of the same paragraph, that "[t]he sole issue not covered by that waiver is the Defendant's claim his counsel was ineffective." Being contradictory to the very first sentence of the Motion to Dismiss, Matthew J. Heck clearly is employing deceit to confuse the Court. If the government is willing to be untruthful and contradictory in the opening of their Motion then logic and reason dictates that this trend not only is sustained throughout the Motion to Dismiss but was a tactic used to entrap Mr. Dameri and deceive the United States District Court.

Mr. Dameri now points the Court's attention to the intentional omissions of the government.

FRAUD

The entirety of this case is fraud; Full stop. On August 28, 2020, Lisa Carroll - a "special agent" employed by the Department of Defense's military component the Naval Criminal Investigative Service (NCIS), filed a fraudulent criminal complaint in the United States District Court for the Eastern District of Virginia. The complaint not only was filed by an agent employed by the military against a civilian Citizen (an act prohibited by Posse Comitatus), but it falsely claims violations of the territorially applicable laws codified under Title 18 had occurred on land not under the exclusive territorial jurisdiction of the United States, making the crime not cognizable, therefore removing the Court's subject-

matter jurisdiction. Because the United States District Court was derelict in its duty to know the law, the complaint was filed and an arrest and search warrant was issued outside of the Court's territorial jurisdiction because the land upon which Mr. Dameri resides on was not ceded to the United States. Everything that follows from the filing of the criminal complaint is, in fact, fraud, which was perpetuated by Matthew J. Heck.

"A fraud is the misrepresentation of a material fact, or creation of false impression, either by declaration, deed or artifice, to mislead another, or cheat him, or obtain an undue advantage." Laidlaw v. Organ, 15 US 2 Wheat, 178, 195; United States v. Marshall Silver Mining Co., 129 US 579, 32 L.Ed. 734 (1889).

By claiming a violation of Title 18 occurred, without the prerequisite proof of territorial jurisdiction over the land upon which the crime alleged occurred, the complaint lacks a major "essential element" of the crime; that being the fact that the law, itself, is applicable on land upon which the sovereign seeking to punish (the United States federal government) has exclusive territorial jurisdiction over. Because 40 USC § 3112(c) makes it "conclusively presumed" that federal jurisdiction does not exist and must be found by showing of the Notice of Acceptance for the ceded land which was filed with the Governor of the respective union State.

This showcases that fraud was employed, from the very onset, to paint a thin veneer over the missing fact that the crime is not cognizable. This proves that the United States District Court did not have subject-matter jurisdiction because in order to hear and enter judgement on an alleged violation of the laws codified under Title 18, it must be cognizable in the court, therefore granting the court power to hear and enter judgement. Subject-matter jurisdiction is not simply granted because a violation of the United States Code is alleged in a complaint or indictment, but rather

"it is a long standing principle of American law 'that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.'" EEOC v. Arabian Am. Oil Co., 499 US 244, 248, 111 S.Ct. 1227, 113 L.Ed. 2d 274 (1991) (quoting Foley Bros. v. Filardo, 336 US 281 284-85, 69 S.Ct. 575, 93 L.Ed. 680 (1949))

Therefore, to find subject-matter jurisdiction, a court is obligated to not only take notice of the applicable law itself and take notice of the land upon which the violation alleged occurred in order to solidify the finding of subject-matter jurisdiction to proceed. Without establishing that the alleged violation occurred on land upon which the law is applicable, subject-matter jurisdiction can not be properly found.

"In order to apply extraterritorially a federal criminal statute to a defendant consistently with due process, there must be a sufficient nexus between the defendant and the United States, so that such application would not be arbitrary or fundamentally unfair." United States v. Davis, 905 F.2d 245, 248 (1990); accord United States v. Mohammad-Omar, 323 F. App'x 259, 261 (4th Cir.) (unpublished per curiam opinion) (applying the nexus requirement), cert. denied, 130 S.Ct. 282, 175 L.Ed. 2d 188 (2009).

"[W]hen a federal court concludes that it lacks subject-matter jurisdiction, the court must dismiss the complaint in its entirety. See 16 Moore § 106.66, pp 106-88 to 106-89." Arbaugh v. Y&H Corp...

"The prior legislation now embodied in § 272 of the Criminal Code, and the interpretation of these statutes by the court shows that Congress did not intend to depart from the territorial principle of criminal jurisdiction and punish [] crime [] committed within the territorial jurisdiction of another sovereign [being one of the independently sovereign union States]. [] The criminal jurisdiction of the United States is wholly statutory, see United States v. Hudson, 7 Cranch, 32, 3 L.ed. 259, [] It is true that in United States v. Revans, 3 Wheat. 336, 4 L.Ed. 404, the prisoner, charged with murder on a warship in Boston Harbor, was discharged, as was one charged with manslaughter committed on a vessel on a Chinese river in United States v. Wiltberger, 5 Wheat. 76, 5 L.Ed. 37. But the judgements were based not upon a want of power in Congress to define and punish the crimes charged, but upon the ground that the statute did not apply, in the one case, for the reason that the place of the offense was not out of the jurisdiction of a state, and in the other, because the offense, manslaughter, was not committed on the high seas." United States v. Flores, 77 L.Ed. 1086, 289 US 137-159.

ON APPEAL

Mr. Dameri filed a timely Notice of Appeal in the United States District Court,

which has complete discretion over accepting or rejecting a Notice of Appeal, as the government has admitted. In Mr. Dameri's Notice of Appeal, dated December 4, 2021, and due to the mailbox rule this date counts as the official date of filing, he gave notice to the United States District Court of his intention to raise "a challenge to the Court's subject-matter jurisdiction and in personam jurisdiction to enter judgement..." and that "he had the ineffective assistance of counsel leading up to, during, [and after] his sentencing." (see Exhibit A).

"Subject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived." United States v. Cotton, 535 US 625, 630, 122 S.Ct. 1781, 152 L.Ed. 2d 860.

Because subject-matter jurisdiction is being challenged and "[a] jurisdictional challenge may be raised at any time during the proceedings" Crim Law & Procedure, and does not have a statute of limitation to be raised, a notice of appeal on said grounds is always timely filed. The additional challenge to ineffective assistance of counsel is raised to substantiate the fact that "essential elements," such as subject-matter jurisdiction, were absent and counsel should know the law but failed to act or challenge these facts, even after Mr. Dameri had an express conversation about post-conviction relief immediately following sentencing. Proof of which can be found on the unlawfully recorded legal call placed by Mr. Dameri to counsel Grindrod at Western Tidewater Regional Jail in Tidewater Virginia.

Further dispelling the government's argument of untimely filing is the attached affidavit (see Exhibit B), which requested that the court use its discretion to accept the filing of the Notice of Appeal by an incarcerated inmate due to exigent circumstances beyond his control. Because FRAP 4(c)(1) and 28 USC § 1746 make a filing by an incarcerated inmate timely within the allotted time frame, should the court use its discretion to allow the filing, FRAP 4(b) is inapplicable in this matter.

The disqualification of FRAP 4(b) can be further substantiated by looking at the applicable Rule itself, the relevant statutes, and the Court's exercise of its discretion to grant the filing as timely.

"Rule 4(a)(6) allows the district court to reopen the time to file an appeal...

The court construes Laporte's notice of appeal, in conjunction with his response to the show-cause order, as a Rule 4(a)(6) motion to reopen the appeal period. See Sanders v. United States, 113 F. 3d 184, 187 n.5 (1997) ("Construing a pro se litigant's late notice of appeal as a Rule 4(a)(6) motion satisfies that Rule's requirement for a motion.")" Laporte v. United States, 2017 US App. LEXIS 3663 (2017).

In this case, Mr. Dameri remains under the unprecedeted constraint of COVID-19 within the BOP. His filing of a Notice of Appeal, with the accompanying Affidavit, which makes a showing of good cause for accepting the filing, showed to the United States District Court that there existed reason to accept and file the appeal on not only the grounds of subject-matter jurisdiction, which is not time barred or subjected to the constraints of FRAP 4(b), but, because he showed good cause, an extension of time, to within the 180 day exception, was presumably granted and should be recognized as so by this Honorable Court, to raise the supplemental supporting arguments in the Appellant's Brief, which substantiate the claim of jurisdictional defect for all parties and institutions involved which, ultimately, sustains the claim of Fraud. Also, because Mr. Dameri, being a pro se litigant, raised the ineffective assistance of counsel claim in his Notice, he should

"not [be] time barred because his [] layer's ineffective assistance counted as an exceptional circumstance excusing his lateness." (AAA)

It should be equally presumed that the district court exercised its discretion to permit the filing of Mr. Dameri's appeal based on the facts that the grounds of subject-matter jurisdiction and fraud are not time barred and that the claim of ineffective assistance for counsel should supersede FRAP Rule 4(b) in certain

(AAA) Reyes Mata v. Lynch, 576 US 143, 135 S.Ct. 2150 (2015)

circumstances, for good cause.

What Matthew J. Heck has failed to recognize and, can only be presumed to be a strategic omission, is the fact that Mr. Dameri is NOT challenging his conviction and sentence on their face, under the standards the government is trying to strictly enforce, in order to avoid the merits of the appeal, but rather, Mr. Dameri's dominating grounds for appeal is JURISDICTION and FRAUD.

A challenge to a court's jurisdiction and raising a claim of fraud, which can render a case void, cannot be time barred or be waived in any way whatsoever for if a court lacks the jurisdiction to hear and enter judgement in a case, or if the case can be shown to be founded in fraud, then the case, itself, is null and void.

In order to thoroughly showcase that the United States District Court, the United States federal government, and NCIS all lacked the respective jurisdiction necessary to obtain and sustain a conviction in this matter, Mr. Dameri included in his Brief a fully formulated challenge to Jurisdiction whereby he substantiated all the relevant challenges and constitutional violations that occurred in order to prove his claim. Because jurisdiction is a preliminary element, courts of appeals must always review the matter *de novo* for not only the district court that entered judgement but for the court of appeals as well.

There can exist no law, statute, rule, or other restrictive measure that can revoke Mr. Dameri's constitutional right to redress a grievance with the government, point out fraud upon the court, and challenge the jurisdiction of a court that rendered a judgement against him that lacked the authority to do so. Further, the case being fraud and the appeal *ripe* with constitutional violations, any refusal to hear this matter and review it *de novo*, could be considered a violation of the Fifth and Fourteenth Amendment *protection* of Due Process.

It should be pointed out that Matthew J. Heck failed to recognize the holdings of

the Fourth Circuit in Urutyan v. United States, 564 F. 3d 679; 2009 US App. LEXIS 9827; 73 Fed. R. Serv. 3d (Callaghan) 721 (2009) which quotes the following Criminal Law & Procedure governing Time Limitations

"Fed. R. App. P. 4(b) is a court-prescribed, procedural rule. Rule 4(b) is not backstopped by any federal statutory deadline. Court-prescribed rules of practice and procedure, as opposed to statutory time limits, do not create or withdraw federal jurisdiction. The non-statutory time limits in Rule 4(b) do not affect subject-matter jurisdiction." - Criminal Law & Procedure > Appeals > Reviewability > Time Limitations.

Because "[w]e have said that "where a common-law principle is well established,... courts may take it as given that Congress has legislated with an expectation that the principle will apply" absent statutory cues to the contrary. Astoria Fed. Sav. & Loan Ass'n v. Solimino, 501 US 104, 108, 111 S.Ct. 2166, 115 L.Ed. 2d 96 (1991); see also Eskridge, Interpreting Law, at 348 ("[C]ourts will assume that legislatures act against the background of the common law"). so, for example, a federal statute of limitations ordinarily is subject to equitable tolling even when the text is silent because "Congress must be presumed to draft limitations periods in light of this background principle." Young v. United States, 535 US 43, 49-50, 122 S.Ct. 1036, 152 L.Ed. 2d 79 (2002); see also Nelson, Statutory Interpretation, at 629 ("[C]ourts frequently understand federal statutes to come with some unstated qualifications or embellishments suggested by principles of general jurisprudence").

By looking at rules and statutes through the eyes of common-law principles, it becomes clear that every rule and law must be open to equitable tolling despite a silence in the legislation because we are a country built upon the bedrock of the English common-law system.

Now that Mr. Dameri has shown cause that Rule 4(b) should be disqualified in this matter, it is necessary to move on to the government's successive claim that Mr. Dameri entered "an agreement that expressly waived his right to appeal his conviction and sentence on any ground...."

THE AGREEMENT

The plea agreement that was entered into on March 3, 2020, is VOID.

"In many countries of the world, American-style plea bargaining is forbidden [as] it presents grave risk of prosecutorial overcharging that effectively compels an innocent defendant to avoid massive risk by pleading guilty." Lafler v. Cooper, 132 S.Ct. 1376 (2011).

"A contract is void when, for example, there was no meeting of the minds about essential terms or where there was fraud in the factum. In contrast, an agreement entered into through fraud in the inducement is an example of a voidable contract. Fraud in the factum occurs in those rare cases where the misrepresentation is regarded as going to the very character of the proposed contract itself, as when one party induces the other to sign a document by falsely stating that it has no legal effect." Simply Fit of N. Am., Inc. v. Poyner, 579 F. Supp. 2d 371 (2008). (quoting E.A. Farnsworth, Contracts § 4.10(1990)).

"The Fourth Circuit has explained that courts must apply both contractual and constitutional waivers analysis to plea agreements. United States v. Patterson, 261 F. App'x 505, 508-09 (4th Cir. 2008). [W]ith predictability and reliance as the foundation of plea bargaining, the Court must apply fundamental contract and agency principles to plea bargains as the best means to fair enforcement of the parties agreed obligations. *Id.*" United States v. McGuirk, 2020 US Dist. LEXIS 153169 (2020).

Therefore, "[w]hen terms are present that directly nullify the implied covenants of good faith and reasonable effects,... the contract is void for lack of mutuality." Margruder Quarry & Co., LLC v. Briscoe, 83 S.W. 3d 647, 652 (MO. App. 2002).

Here, Mr. Dameri asserts that the agreement entered is void because not only is there fraud in the factum of the agreement, which is based on the fraudulent criminal information, but that had he had effective counsel in the matter, he would have been made aware of the fraud in not only the factum, but that the crime he was wrongfully agreeing to is not even cognizable in the first place.

"[A] guilty plea can be challenged for contractual invalidity, including based on a lack of consideration." United States v. Brunetti, 376 F. 3d 93, 95 (2004).

"Where counsel's unprofessional error deprived defendant of the proceeding itself, the court need not reach issue of prejudice to determine whether, but for counsel's unprofessional errors, the result of the proceeding would be different." Lee v. United States, 137 S. Ct. 1958, 198 L.Ed. 2d 476 (2017).

The agreement entered into, unintelligently, by Mr. Dameri, is fraudulent because it claims, via a criminal information, that Mr. Dameri violated laws codified under Title 18 in the "Eastern District of Virginia" on September 21, 2019, a date in which he, in fact, lived in Syracuse, New York. Forgetting the fact that the crime itself is not cognizable due to the lack of territorial jurisdiction of the United States, the fact is plainly fraudulent. This can be proven so by reviewing

not only the NCIS investigation report but the PSI conducted by the probation office which interviewed Mr. Dameri's roommates in Syracuse and confirmed the fact that he lived in New York at that time. The government, then, clearly knew this fact and made the conscious choice to commit fraud upon the Court and against Mr. Dameri which renders the agreement plainly null and void. There is no rational reason why Mr. Dameri would knowingly and intelligently enter an agreement with the government when the factum is clearly fraudulent and the result of said agreement would be the removal of his liberty interest. This showcases that clearly Counsel, Mr. Grindrod, was so grossly ineffective that the proceeding itself can be considered to have violated Mr. Dameri's Fifth and Fourteenth Amendment rights to Due Process. It also showcases the maliciousness of the prosecution performed by Matthew J. Hack.

Furthering the disqualification of Matthew J. Heck's argument on behalf of the government is the fact that Title 18 is territorially applicable. Because, as raised in the Appellant's Brief, the land upon which the government sought to assert its sovereignty was not ceded by Virginia's legislature, there exists no exclusive territorial jurisdiction of the federal government over the land upon which they desire to apply Congressional statutes, be it criminal laws or procedural laws.

"In order for a federal court to exercise jurisdiction over a criminal action, the offense must have occurred within: [L]ands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building. 18 U.S.C. § 7(3) (2000); see Volk v. US., 57 F. Supp. 2d 888, 893 (N.D. Cal. 1999). If a crime is committed within the boundaries of such land, federal courts have jurisdiction of the prosecution and to the exclusion of the state courts. U.S. v. Unzeuta, 281 U.S. 138, 142, 50 S.Ct. 284, 74 L.Ed. 761 (1930); see also James Stewart & Co. v. Sadrakula, 309 U.S. 94, 60 S.Ct. 431, 84 L.Ed. 596 (1940).

It is a well established principle of law that all federal legislation applies

only within the territorial jurisdiction of the United States unless a contrary intent appears. Surplus Trading Co. v. Cook, 281 U.S. 647, 652, 50 S.Ct. 455, 74 L.Ed. 1091 (1930); see also Caha v. US., 152 U.S. 211, 215, 14 S.Ct. 513, 38 L.Ed. 415 (1894). The power to exercise exclusive legislation means the same as exclusive jurisdiction. Id. In Caha, [] the Supreme Court stated: "The laws of Congress in respect to those matters do not extend into the territorial limits of the states, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government." Where the United States has exclusive jurisdiction over an area within a state, "no other legislative power than that of [C]ongress can be exercised over" such land and this "operates to exclude all other legislative authority." Fortleavenworth R.R. Co. v. Lowe, 114 U.S. 525, 537-38, 5 S.Ct. 995, 29 L.Ed. 264 (1885)." - LEGAL STANDARD (BBB)

The fraudulent agreement entered unwittingly by Mr. Dameri fails further because the statute, 18 USC § 3742, much like the entirety of Congressional Legislation, is only territorially applicable and since the land upon which Mr. Dameri allegedly violated the laws codified under Title 18 is not under the exclusive jurisdiction of the United States, it further makes the agreement fraudulent.

"The canon of construction which teaches that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States, Blackmer v. United States, 284 US at 437, 76 L.Ed. 382, 52 S.Ct. 252, is a valid approach whereby unexpressed congressional intent may be ascertained." (CCC)

Matthew J. Heck relies heavily on his opinion that Mr. Dameri understood and voluntarily entered the, now proven to be fraudulent, agreement knowingly and intelligently, but this can not be true as Mr. Dameri, someone who at the time was relying solely on the legal prowess of Mr. Grindrod to guide him and advise him to do things that were in his best interest. But, it can be shown clearly, especially in the Appellant's Brief, that Mr. Grindrod was so incredibly ineffective and grossly negligent, which includes his ignorance of the law itself, that Mr. Dameri could not have possibly knowingly and intelligently entered any agreement if the information he was given, at the time, was flawed, incorrect, and did not reflect his best interest.

(BBB) United States v. Perez, 2006 US Dist. LEXIS 75086 (2006)
(CCC) Steele v. Bulova Watch Co., 344 US 280, 73 S.Ct. 252 (1952)

"Guilty plea is not knowingly and voluntarily made when defendant has been misinformed about critical elements of charged offense, even when that misinformation is result of [] court's erroneous prior interpretation of criminal statute..." United States v. Brown, 117 F.3d 471, 11 Fla.L. Weekly Fed. C. 212 (1997).

Because the case, on its face, is fraudulent, all the proceedings and agreements, too, are fraudulent because the factum and application of law is incorrect and applied extraterritorially.

"There can be no practical difference, whether a party be defrauded out of a judgement by the collusion of his attorney, by having his testimony stolen, or witnesses kept from court, or whether by any other device, artifice or fraudulent scheme of the opposite party or attorney, which ordinary prudence and foresight could not guard against, he is prevented from presenting his cause or defense and is, therefore, tricked out of a judgement." Shaddan v. Patrick, 1 MacQueen (1535); United States v. Throckmorton, 251, L.Ed. 93, 98 US 61.

Matthew J. Heck continues to employ artifice and direct defiance of the law, by obstructing the Due Process of Mr. Dameri, and attempting to cover up the fraud he committed upon the court and against Mr. Dameri by seeking to disqualify the appeal under Rules, both of procedure and locally, that do not apply to the challenge raised on appeal. Lack of subject-matter jurisdiction and the claim of fraud can not be time barred on appeal and must be heard both *sua sponte* and *de novo*. Matthew J. Heck's argument also fails because the case law employed throughout his Motion to Dismiss does not pertain to the grounds of subject-matter jurisdiction and fraud which Mr. Dameri is raising on appeal. It is not disputed that under ordinary circumstances, for appeals made directly against a conviction and sentence, which were entered fairly and lawfully, the rules that govern timeliness would apply. That said, this case does not stem from the ordinary appeal of conviction and sentence but rather follows from the district court's lack of authority to have heard and entered judgement in this matter, the fraud that ensued to obtain a wrongful conviction committed by Matthew J. Heck,

and the wilful neglect and complete dereliction of duty of defense counsel Mr. Grindrod, which constitutes a violation of the Sixth Amendment right to effective assistance of counsel.

Additionally, this court, in the exercise of its discretion and upon a showing of good cause, can move to suspend the rules at anytime, and for certain circumstances.

"In addition, in this case our duty to dismiss for failure to comply with these particular rules is not mandatory, given our authority to suspend the rules for good cause. See Fed. R. App. P. 2." Amalgamated Transit Union Local 1309 v. Laidlaw Transit Servs, 435 F. 3d 1140 (2006).

It is recognized that FRAP 2 does not extend to 26(b), unless an exception is authorized by Rule 4 or an appeal is granted by petition. As mentioned previously, Mr. Dameri, as a Pro Se litigant, did show good cause to be granted permission to proceed, as the grounds are not time barred, and also his ineffective assistance of counsel claim should be allowed to proceed, and should be considered as an extraordinary circumstance in this matter which the Court should treat as a petition for permission to appeal within the 180 day period prescribed under Rule 4(a)(6).

It also should be noted that the Rules of the courts are not law. And, since Matthew J. Heck only relies on court prescribed rules, Rule 4(b) and local Rule 27(f), they are, in fact, not mandatory, as they are not legally binding as the laws of Congress are, within their respective jurisdiction. Because the government does not move for dismissal by invoking Congressional statute, but rather local court rule 27(f), which is not binding on the court, the government's argument falls flat and is shown to be an attempt to avoid accountability for the egregious wrongdoing in this case.

Mr. Dameri sincerely hopes this Honorable Court will see reason and merit in this most dire opposition to the government's Motion to Dismiss and allow the proper administration of justice to proceed by allowing the appeal to commence.

CONCLUSION & RELIEF REQUESTED

To conclude, Mr. Dameri would like to raise the following points, in tandem with the foregoing argument; If the government was going to file a Motion to Dismiss at the time Mr. Dameri filed his Brief, why did they wait? To allow the appeal to proceed for 9 months, which would clearly be a waste of the Court's, Mr. Dameri's and the government's resources, showcases Matthew J. Hecks complete disregard for Due Process and the orderly and timely administration of justice. Alternatively, if Matthew J. Heck decided to file a Motion to Dismiss, utilizing rules that are inapplicable in this particular instance, only after receipt and review of Mr. Dameri's Appellate Brief which showcases the numerous wrongdoings of the government, then there is a clear argument that the government is attempting to thwart Mr. Dameri's right to Due Process by attempting to evoke rules that are prejudicial in favor of the government and, if sustained, would allow the peccadilloes and estrayings of Matthew J. Heck to be swept under the rug unjustly. These instances would allow a wrongful conviction to be upheld, which, in the prescribed duties of the court should have been reviewed for defect at the onset, during the proceedings, and once final judgement was entered, but clearly was overlooked, all in a plainly erroneous violation of the Constitution and wrongfully rendered irreversible therefore leaving Mr. Dameri convicted of offenses that not only are not cognizable, but were done by the unlawful actions of government and military personnel without a check on their authority or consequences for their conduct.

It is for all the foregoing reasons that Mr. Dameri asserts that the Motion to Dismiss be DISMISSED as Mr. Dameri's appeal is clearly timely and the agreement is

fraudulent, therefor, void. It is also requested that this Honorable Court move to EXPEDITE the appeal, in light of Matthew J. Heck's clear attempt to waste the Court's, Mr. Dameri's, and the goverment's resources to cover up his prosecutorial misconduct by way of fraud.

Respectfully submitted to this Honorable Court,

Stuart Alexander Dameri [Reg. No 07009-509]
Fort Dix - FCI
PO Box 2000
Joint Base MDL, NJ 08640