

23-7406

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Bobby Rouse, Sr., Ph.D. — PETITIONER
(Your Name)

VS.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals - Fifth Circuit

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

PETITION FOR WRIT OF CERTIORARI

Bobby Rouse, Sr., Ph.D.
30118-076

(Your Name)

Federal Medical Center
PMB 4000

(Address)

Rochester, MN. 55903

(City, State, Zip Code)

None

(Phone Number)

FILED
FEB 01 2024
OFFICE OF THE CLERK
SUPREME COURT U.S.
ORIGINAL

QUESTION(S) PRESENTED

1. Is it a violation of appellant's Sixth Amendment constitutional rights for defense counsel to refuse to investigate the evidence and interview witnesses in order to understand appellant's case so as to militate the Government's charges against appellant?
2. Is it a violation of fundamental fairness and a criminal defendant's Sixth Amendment constitutional right to the effective assistance of counsel when defense counsel provides a criminal defendant false, inaccurate, and misleading information to induce a criminal defendant to enter a guilty plea to offenses the criminal defendant did not commit and defense counsel had not investigated the evidence or interviewed witnesses?
3. Is a criminal defendant denied his 5th and 14th Amendment constitutional rights to both due process and equal protection when defense counsel deliberately and intentionally withholds the criminal defendant's file from the criminal defendant to hamper and impede pro se defendant's ability to proceed and to state a claim of relief to which he is entitled?
4. Is a criminal defendant denied his constitutional rights for effective assistance of counsel when District Court recognizes and grants defendant the right to proceed in forma pauperis and thereby forces defendant to proceed pro se if defendant wishes to be heard, and the District Court denies pro se defendant the rights and liberties that would be granted to a newly appointed or retained counsel, such as discovery and access to the former counsel's case file?

LIST OF PARTIES

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

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

RELATED CASES

United States of America v. Bobby Rouse, No. H-17-134-1 CR,
No. H-22-1461 CV.U.S. District Court for the Southern District
of Texas, Houston Division. Judgement Entered April, 17, 2023.

United States of America v. Bobby Rouse, No. 23-20223, United
States Court of Appeals for the Fifth Circuit. Judgement Entered
October 2, 2023.

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

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

OPINIONS BELOW

For cases from federal courts:

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

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

U The opinion of the United States district court appears at Appendix B to the petition and is U.S. v Rouse, 2023, U.S. App. LEXIS 66213
 reported at (5th Dist. 2023); or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from state courts:

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

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

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

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

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 2, 2023.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 8, 2023, and a copy of the order denying rehearing appears at Appendix C.

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

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

For cases from **state courts**:

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment to the Constitution of the United States

Sixth Amendment to the Constitution of the United States

Fourteenth Amendment to the Constitution of the United States

STATEMENT OF THE CASE

PREAMBLE

Appellant is a licensed psychologist-healthservice provider since 1974-75. License number 335-Retired. Additionally, appellant is an ordained minister since 1967.

This combination of vocational states produced a mission for appellant. When appellant discovered the abandonment of the Serious and Persistently Mentally Ill (SPMI) by our society, appellant felt compelled to develop a treatment program for the SPMI. They were discharged from state psychiatric hospitals some 60 years ago. Today the SPMI wander the streets as homeless, are incarcerated in jails and prisons on criminal or civil commitment, or they languish in group homes where treatment is not provided. Their life expectancy is 25 years less than the average life expectancy.

The Government developed a false narrative. Without any understanding of Medicare regulations, state and federal laws pertaining to hospitals, partial hospitalization programs, and the interaction of the physician acting "as authorized." The Government prosecuted a crime that did not happen. There was no crime.

The Government had ample evidence to support the fact that there was no crime. The Government chose to ignore the evidence in their possession that disproved a crime and would serve to impeach the testimony being provided by witnesses in exchange for a reduced prison sentence. Defense counsel failed to familiarize himself with appellant's case, investigate the evidence, or interview witnesses. Defense counsel by his deficient performance denied appellant of effective assistance of counsel. Appellant's Sixth Amendment rights were violated.

STATEMENT OF THE CASE

This case is about the violation of appellant's constitutional rights under the Sixth Amendment to the Constitution of the United States.

QUESTION ONE:

1. The Government developed a false narrative. The Government built a crime where no crime existed.
2. The Government seized all documents, hard copy and electronic located at the PHPs owned by Westbury Community Hospital, LLC.
3. The Government used adulterated information to prosecute where, when the facts in the case are viewed in context, there was no crime.
4. Assuming that the Government provided all the files the Government has in their possession to defense counsel, then defense counsel has the obligation to investigate the evidence and interview witnesses.
5. Defense counsel through his deficient performance, violated appellant's Sixth Amendment rights.
6. Defense counsel did not familiarize himself with appellant's case. Had he done so, he would have discovered through the facts in evidence that there was no crime.

QUESTION TWO:

1. Appellant's Sixth Amendment rights were violated by counsel not investigating the evidence or interviewing witnesses. Counsel then, by providing false and misleading information induced an 80 year old man to plead guilty to crimes that did not exist.
2. Counsel did not understand the case and had not familiarized himself with appellant's and instead of preparing to defend appellant's case, he advised appellant to plead guilty to § 1957 dealing with unlawful funds.

QUESTION THREE:

1. Upon appellant's realization that he had been without the benefit of effective assistance of counsel, appellant requested appellant's case file.
 - a. Two or more written request were sent to defense counsel requesting appellant's case file.
 - b. Defense counsel ignored the request and refused to produce the case file.
2. Appellant then asked defense counsel, in writing, to at least provide the evidence used to indict appellant.
 - a. Counsel again refused to reply the request.
 - b. Counsel did not provide the requested evidence.

QUESTION FOUR:

1. With appellant's growing belief that his constitutional rights had been violated, appellant filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence due to ineffective assistance of counsel. May 2, 2022 - Docket # 117, p.166
 - a. Appellant did so ignorant of the rules of law; or,
 - b. knowledge or access to case law; or,
 - c. without any of the evidence the Government or defense was in the possession of.
2. Appellant seeking evidence so as to strengthen appellant's effort to be heard:
 - a. Appellant motioned the District Court to grant discovery, and compel defense counsel to provide appellant, appellant's case file. July 06, 2022, Docket # 129, p.129
 - b. District Court denied the motion to grant discovery and was silent on the motion to compel defense counsel to provide appellant's case file. July 07, 2022, Docket # 130, p.220.
3. District Court denied appellant's 2255 motion. April 12, 2023, p.147 - APPENDIX B
 - a. Court cited appellant failed to provide any evidence to support appellant's convoluted claims.
 - b. Although all appointed or retained counsel were granted continuances to familiarize themselves with appellant's case, appellant was denied access to the facts in evidence.

c. Court also denied an evidentiary hearing and a Certificate of appealability.

d. The District Court appeared very adversarial during these post sentencing proceedings.

4. Appellant motioned the United States Court of Appeals - Fifth Circuit, for a Certificate of Appealability.

a. The Fifth Circuit denied the motion citing that appellant did not make a substantial showing of the denial of constitutional rights. October 2, 2023 - APPENDIX A

b. The Fifth Circuit denied appellant's motion for reconsideration. November 8, 2023 - APPENDIX C

c. The Fifth Circuit ruled that appellant missed timely filing for an En Banc hearing by three (3) days.

(1) Appellant thought that the tolling time was from the last denial and was not aware that it was from a previous date.

(2) Appellant, acting pro se, was ignorant of the procedural rule.

5. As appellant has become more knowledgable to the realization that there was no crime committed.

a. The Government selected certain facts out of context and used those facts to create a false narrative to prosecute appellant.

b. The Government made statements and assertions that they were not authorized to make. They are not authorized to practice medicine.

c. The Government used the promise of reduced prison time to secure perjured testimony.

d. The perjured testimony could have been exposed as lies with the investigation of the evidence that the Government has in their possession.

e. Defense counsel was not invested sufficiently to gain familiarity with appellant's case. He did not investigate the evidence or interview witnesses in order to build a strategy for appellant's defense.

f. Instead, defense counsel used the easy and convenient way of dispatching appellant's case by inducing an elderly man to plead guilty.

g. In advising appellant to plead guilty, counsel violated appellant's constitutional rights.

REASONS FOR GRANTING PETITION

QUESTION ONE:

Is it a violation of appellant's Sixth Amendment constitutional rights for defense counsel to refuse to investigate the evidence and interview witnesses in order to understand appellant's case so as to militate the Government's charges against appellant?

Yes! Effective counsel would have investigated the evidence and interviewed witnesses so as to understand the appellant's case.

I. Counsel would need to understand healthcare and the laws governing the delivery of healthcare as it relates to appellant's case. The moving parts of healthcare system that impacts appellant's case are:

A. The physician is the authorized individual that makes our healthcare system work.

1. Healthcare moves at the point of a physician's pen.

If the physician does not order healthcare, it does not occur.

2. The outpatient clinics are where contact or interface between the patient and physician first occurs.

3. Hospitals are facilities that receive patients admitted by a physician for treatment.

- a. The hospital provides 24/7 care for the patient.
- b. The hospital provides services ordered by the physician.
- c. The physician must certify and admit a patient to the hospital. He/she is the only person authorized to admit, treat, and supervise treatment.
- d. The physician develops a plan of treatment. The physician orders medication and tests that he/she wants performed.
- e. By law the physician cannot own part of a hospital.

B. Partial hospitalization programs are either owned by a hospital; or, in the case of psychiatric care, partial hospitalization programs (PHPs) are a subsidiary (wholly owned) function as part

a hospital or part of a Community Mental Health Center (CMHC).

1. In appellant's case the PHPs were originally part of a CMHC.

2. Later and at the time the Task Force seized the medical records and other documents, the PHPs were subsidiaries of Westbury Community Hospital, LLC. Physicians were prohibited from owning any part of the partial hospitalization programs.

3. The physician received payment for his or her services from commercial insurance companies or from Medicare/Medicaid. The fee was very nominal from Medicare/Medicaid and was paid for physician's encounter with the patient for treatment, by Medicare.

4. No person is authorized to admit, treat, or supervise treatment except a physician.

5. Medical records are the center point of communication among the physicians, nurses, and therapists. All the providers that entered notes in the chart had to date and sign each patient encounter. They had to keep copious notes to communicate with the other providers.

6. The Government seized 100's of medical records. These records are in the possession of the Government and should have been given to defense counsel. The records are clear evidence that services were provided.

7. Twenty-five randomly selected medical records were argued before a Federal Administrative Law Judge (ALJ).

a. Trailblazer, physical intermediary for Medicare, selected 25 medical records to challenge medical necessity at the PHP Hornwood.

b. The records were argued before an ALJ in Florida

by Dr. Mark Moeller, a forensic psychiatrist in Houston and Troy Brooks, a Houston attorney. The ALJ ruled that all 25 medical records met medical necessity. The ALJ ordered Medicare to pay all claims associated with the medical records. This too is in the evidence held by the Government and should have been provided to defense counsel.

II. Had counsel investigated the evidence and interviewed witnesses, he could have found the Medicare Regulations Manual governing the operation of Community Mental Health Centers (CMHC) and partial hospitalization programs (PHPs). These regulation militate the Government's eight count indictments against appellant.

APPENDIX G Medicare Manual

III. Effective assistance of counsel would need a thorough understanding of the Medicare regulations governing PHPs.

Section 70.3 - Partial Hospitalization Services.
"Partial hospitalization programs (PHPs) are structured to provide intensive psychiatric care through active treatment that utilizes items and services described in §1861(ff) of the Social Security Act (the Act). The treatment program of a PHP closely resembles that of a highly structured short-term hospital inpatient program . . ."

APPENDIX G Medicare Manual

- A. The PHPs were owned by Westbury Community Hospital, LLC.
- B. The physicians did not own any part of the PHPs.
- C. The physicians were simply on the staff of the PHPs.
- D. The physicians were in private practice and they were on the staff of several unaffiliated hospitals and partial hospitalization programs in the Houston area. The physicians admitted patients at the other hospitals and PHPs as well as Westbury's PHPs.

E. Medicare regulations clearly authorize the physician to admit and treat patients in the CMHC and the PHPs.

F. Appellant is not authorized to admit patients to a partial hospitalization program. That authorization is given exclusively to the physician. Appellant was not licensed to treat patients in the partial hospitalization programs, nor did he.

G. The physicians were independent practitioners and did their own billing through their private offices.

IV. The extensive staff of nurses, masters level therapists, medical records personnel, psychiatric techs, and other support personnel were employees of Westbury Hornwood. APPENDIX H Hornwood Payroll

A. Nurses, therapists, or administration cannot evaluate a patient and admit a patient to a partial hospitalization program. The admission and certification of a patient needing care can only be done by a physician.

Medicare Partial Hospitalization Manual § A3-3194, HO-230.7,
A "Partial hospitalization is an active treatment that incorporates an individualized treatment plan which describes a coordination of services wrapped around the particular needs of the patient and includes a multidisciplinary approach to patient care under the direction of a physician. B,1. ". . . Patients admitted to a PHP must be under the care of a physician who certifies the need for partial hospitalization. APPENDIX G Medicare Manual

CMS Manual System, 7011-General, A3-3112.7.A, HO-230.5A
A.2, "Physician Supervision and Evaluation - Services must be supervised and periodically evaluated by a physician to determine the extent of which treatment goals are being realized. The evaluation must be based on periodic consultation and conference with therapists and staff, review of medical records, and patient interviews. Physician entries in medical records must support this involvement. The physician must also provide supervision and direction to any therapist involved in the patient treatment and see the patient periodically to evaluate the course of treatment and to determine the extent to which treatment goals are being realized and whether changes in direction or emphasis are needed."

B. Defense counsel's failure to investigate the evidence and interview witnesses left counsel unable to formulate a defense strategy that would show that the physicians were acting as authorized, and there was no crime.

C. The Supreme Court and subsequently the 4th Circuit Court of appeals ruled that as long as the physician is acting "as authorized" the burden of proving wrong doing shifts to the Government to prove.

(Court Held: Section 841's "knowingly or intentionally" mens rea applies to the statute's "except as authorized" clause. Once a defendant meets the burden of producing evidence that his or her conduct was "authorized" the Government must prove beyond a reasonable doubt that the defendant knowingly or intentionally acted in an unauthorized manner. Pp. 4 16) Xiulu Ruan v United States, 142 S.Ct. 2370 (2022)

(Section 885 thus does not provide a basis for inferring that Congress intended to do away with or weaken, ordinary and long-standing scienter requirements. . . . And the Government does not deny that, once a defendant satisfies his production under 855 by invoking the authorization by satisfying the ordinary criminal law burden of proof beyond a reasonable doubt.) (Id.)

4th Circuit overturned the conviction of Smithers of running a pill mill. Smithers appealed the conviction indicating that the jury instructions were improper. While the ruling was pending, Ruan was decided, holding, "that the statute's "knowingly or intentionally" mens rea applies to "except as authorized." As a result of this, court found that the conviction should be overturned. US v Smithers, Case No. 19-4761, 2024 USApp. LEXIS2399 (4th Cir. (2024)

(The integrity of our criminal justice system and fairness of the adversary criminal process is assured only as an accused is represented by effective attorney.) United States v Morrison, 449 U.S. 361, 364 (1981).

D. The Government interviewed one or more of the physicians, one or more times. The Government did not find any wrong doing on the part of the physicians. None of the physicians were indicted.

III. Defense counsel's deficient performance caused him to not be able to provide effective assistance of counsel and he did not understand appellant's case and the fact that there was no crime committed.

A. Counsel did not, moreover, could not protect appellant's constitutional rights due to counsel's performance.

B. Counsel failed to conduct a proper interview of witnesses, some of which would have provided exculpatory testimony to support the facts contained in the evidence held by the Government to show that no crime was committed.

C. Counsel did not interview:

1. The banker who handled the Westbury bank accounts.
2. Any of the physicians
3. Any of the 51 therapists
4. Three of the compliance officers
5. Any of the PHP administrators
6. Any of the nurses
7. Any of the medical records specialist
8. The billing director
9. Neither Dr. Moeller or the attorney Troy Brooks that represented the PHP before the Administrative Law Judge in Florida.

D. Counsel interviewed 3% of available witnesses. Only one of the witnesses interviewed was of any significance - that was Frank Blair, Chief Financial Officer for Westbury Community Hospital.

APPENDIX I Defense counsel's private investigator's report.

E. Defense counsel's deficient performance of failing to investigate the evidence and interview witnesses limited his understanding of appellant's case. This violated appellant's Sixth Amendment right as well as Fifth and Fourteenth Amendments rights to due process and fair and equal treatment.

F. Defense counsel did not prepare to adversarially test the Government's case against appellant. Instead, in the face of defense

counsel's failure to become informed, counsel advised appellant to plead guilty to crimes that appellant did not commit and, in fact did not exist.

G. Had defense counsel not refused to investigate the evidence and interview witnesses, he would have discovered the large staff that Westbury Hornwood employed to treat patients as ordered by the physician acting "as authorized."

1. Hornwood employed:

- a. Nine (9) nurses
- b. Forty-two (42) masters level therapists
- c. Nine (9) medical records specialists
- d. Numerous support staff - administration, house-keeping, and dietary.

2. The monthly payroll for Hornwood was \$195,000.00 per month. APPENDIX H Hornwood Monthly Payroll

3. Hornwood employed nine (9) medical records personnel that audited the medical records daily for completeness and accuracy.

- a. The physicians, nurses, and therapists entered copious notes on each patient encounter each day.
- b. There were 100's of medical records.
- c. These records were in the Government's possession and should have been provided to defense counsel.

H. The Government's false narrative seems to be based on a lack of understanding of the role of the physician and how he or she utilizes the hospital or a partial hospitalization program to treat the patients the physician acting "as authorized" certifies the need for the patient to be in a hospital or a PHP.

IV. On page 22 of the Re-Arraignment, Docket 52, the Government summarized:

"From in or around March, 2005 through May 20, 2012 defendant, along with other indicted co-conspirators, including co-defendant Steven Houseworth, devised a scheme to defraud Medicare

by paying and receiving kickback and bribes in exchange for the referral of Medicare beneficiaries for whom Continuum and Westbury would submit false and fraudulent claims to Medicare."

A. There could not be a conspiracy enacted without the participation of a physician.

B. The Medicare Manual clearly states that only a physician can admit a patient to a PHP.

C. The medical records in the possession of the Government show:

1. The physician's evaluation of each patient.
2. The physician certifying the patient as needing care provided in the partial hospitalization program.

D. The medical record shows the entries by the physician, nurses, and therapists. There are 100's of records in the possession of the Government.

E. All billing to Medicare and Medicaid was done from services noted in the medical record for providing groups and individual therapy. All encounters were signed by the provider rendering the service.

F. No conspiracy could have been enacted without the participation of the physician.

G. As noted earlier, 25 medical records were argued before a Federal Administrative Law Judge located in Florida. The ALJ ruled in Hornwood's favor on all 25 records.

H. Defense counsel violated appellant's 5th, 6th, and 14th Amendments. He denied appellant due process, effective assistance to counsel, and fair and equal protection to be heard. His incompetence caused appellant to be serving a 10 year sentence for crimes appellant did not commit, and no crime occurred.

V. On page 23 of the Re-Arraignment, Docket 52, the Government summarized:

"Defendant did knowingly engage in a monetary transaction to a financial institution affecting interstate commerce for criminally derived property of value greater than \$10,000.00. Such property was derived from specified unlawful activity, which is healthcare fraud. Specifically on or about March 13, 2012, defendant Mr. Rouse transferred approximately \$17,050 from Wesbury Community Hospital Wallace Bank account ending in *7372 to Westbury Community Hospital Wallace State Bank account ending in *3393."

A. There is no evidence in the possession of the Government to support that claim.

1. Appellant did not transfer or debit any funds from one account to another account at Wallace State Bank.

2. Defense counsel violated appellant's 6th Amendment rights for failing to investigate the evidence or interview witnesses, the "Banker" who would have provided exculpatory evidence and testimony.

B. Government knew or should have known that appellant did not transfer or debit any funds at Wallace State Bank. There is no evidence to support the Government's charge.

C. Even if appellant, which appellant did not, transfer or debit funds at Wallace State Bank as the Government alleges, the funds were not gained by an unlawful act as the funds were the result of the physician acting "as authorized" in admitting, treating, and supervising treatment in a PHP, and ordering specific treatment.

D. Defense counsel was deficient in his performance in not investigating the evidence and interviewing witnesses so he could understand the appellant's case. Without understanding the case,

and the Medicare regulations as they pertain to partial hospitalization programs and the absolute requirements for the PHPs to be under the supervision of a physician, counsel advised appellant to plead guilty to crimes appellant did not commit and to crimes that did not happen. There were no crimes committed. The counsel's deficient performance allowed the Government to put forth a false narrative.

VI. Had defense counsel investigated the evidence and interviewed witnesses he could have exposed the Government's false narrative. (There's no "ipse dixit" at sentencing, the circuit concluded. It isn't so just because the government says it's so.) US. v Gibbs,
Case No 20-3304, 2022 US App LEXIS 4706 (7th Cir Feb 22)

A. There was no crime as the evidence would have shown.

1. The physician was practicing "as authorized" in evaluating patients, certifying the patient's need for treatment in a PHP, treating the patient, and supervising the treatment according to the treatment plan as authorized by Medicare regulations.
2. Continuum/Westbury - Hornwood provided treatment space and PHP staff to treat the patients certified by the physician as needing treatment in the PHP according to Medicare regulations.
3. Hundreds (100's) of medical records detailing the care provided to patient as prescribed by the physician acting "as authorized."
4. Twenty-five (25) medical records heard by a Federal Administrative Law Judge (ALJ) in Florida as to medical necessity. The ALJ ruled in favor of Hornwood on all twenty-five (25) medical records and ordered Medicare to pay the claims associated with the medical records.
5. Because the services were ordered by the physicians acting "as authorized" there were no unlawful funds generated.
6. Therefore"
 - a. There could not have been a conspiracy unless the physician was involved in the conspiracy.
 - b. One or more of the physicians was interviewed by the U.S. Attorney's office and cleared of any wrong-doing.

Clearly defense counsel's performance was deficient. His failure violated appellant's constitutional rights under the Sixth, Fifth, and Fourteenth Amendments. His actions denied appellant due process, effective assistance of counsel, fair and equal treatment in being heard. His performance caused appellant to be placed in the custody of the Bureau of Prisons to serve a ten (10) year sentence for crimes he did not commit and for crimes that did not exist.

The Supreme Court in its seminal Strickland v Washington decision established a two part test to establish ineffective assistance of counsel. (1) A deficient performance, (2) a reasonable probability but for counsel's errors the result of the proceedings would have been different. Strickland v Washington, 466 U.S. 668, 104, S.Ct. 2052, 80 L.Ed.2d 674 (1984).

(a "reasonable probability" is sufficient to undermine confidence in the outcome). Strickland v Washington, 466 U.S. 668, 694, 80 L.Ed.2d 674 (1984).

("Counsel has a duty to make a reasonable investigation or to make a particular investigation unnecessary." Strickland v Washington, 466 U.S. 668, 691, 80 L.Ed.2d 67 (1984).

(Duty to investigate includes obligation to investigate all witnesses who may have information concerning his or her client's guilt or innocence), Bryant v Scott, 28 F.3d 1411, 1419 (5th Cir. 1994); (at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case), Nealy v Cabana, 764 F.2d 1173, 1177 (5th Cir. 1985); (trial counsel ineffective when failed to investigate despite a professional obligation to do so). Elmore v Ozmint, 661 F.3d 783. 873 (4th Cir. 2010); (defense counsel has

a duty to independently investigate the charges against his client). Bower v Quarterman, 497 F.3d 459, 467 (5th Cir. 2013); (it is not reasonable to refuse to investigate when the investigator does not know the relevant facts of investigation would uncover). Rickman v Bell, 131 F.3d 690, 696 (6th Cir. 2006); ("Though there may be unusual cases when an attorney can make a rational decision that investigation is unnecessary [as a general rule an attorney must investigate a case in order to provide minimally competent representation.") Crisp v Duckworth, 743 F.2d 580, 583 (7th Cir. 1984); (nonstrategic decision not to investigate is inadequate performance). Montgomery v Petersen, 846 F.2d 407, 412 (7th Cir. 1988); (defense counsel has a duty to conduct a reasonable investigation into defendant's case, which extends to the law as well as the facts). Heard v Addison, 728 F.3d 1170, 1179 (10th Cir. 2013); (Case law reflects that strategic decisions cannot be reasonable when counsel failed to investigate his options). Jackson v Herring, 42 F3d 1350, 1367 (11th Cir. 1995).

VII It is clear from the preponderance of case law found across the various Circuits, that competent counsel has an obligation to investigate the evidence.

Defense counsel violated appellant's Sixth Amendment constitutional rights by his deficient performance in failing to investigate the evidence and interview exculpatory witnesses. A competent defense attorney would need to understand the distinct parts of appellant's case in order to militate the Government's false narrative.

A. In healthcare there is an adage, "Healthcare moves at the tip of a physician's pen." The physician must order healthcare.

B. The physician orders:

1. Medications
2. Diagnostic tests
3. Diagnoses a patient's illness
4. Develops a plan of care
5. When needed admits to a hospital or PHP
6. Discharges when physician determines treatment is complete.
7. Must certify birth and death certificates

C. Physician has extensive education and training to become a medical doctor.

D. Physician must pass strenuous exams to become licensed as a medical doctor.

E. The physician operates under the Hippocratic Oath - "do no harm."

F. Rules and regulations are imposed on physicians' practice of medicine by state and federal laws, by insurance companies, and Medicare/Medicaid regulations if the physician expects to be paid for his or her services.

G. The physician's training, license, state and federal law, commercial insurance companies, and Medicare/Medicaid "authorized" the physician to actively treat patients.

H. Hospitals and Partial Hospitalization Programs (PHPs).

1. Hospitals require a physician to admit and order treatment while patient is in hospital.
 - a. Patient stays in hospital 24/7 until physician discharges patient.
 - b. Only services ordered by the physician can be provided to the patient.
2. Partial Hospitalization Programs (PHPs) require a physician to admit patients. Only a physician is authorized to admit and treat patients in a PHP.
 - a. The services provided in a PHP are the same type services provided in an acute psychiatric hospital.
 - b. Only services ordered by the physician can be provided in the PHP.
 - c. The difference between the acute psychiatric hospital and the PHP is that the patients in the PHP go home at night.

VII. Serious and Persistently Mentally Ill (SPMI). See page 4 and
See APPENDIX J SPMI

IX. Medicare regulations - Medicare Manual APPENDIX G

X. Healthcare is a highly regulated industry. The physician is the control point in healthcare activity in treating patients.

XI. Billing to Medicare/Medicaid by the PHPs

A. The PHPs operated initially under the Medicare license for a Community Mental Health Center.

B. At the time the FBI and other Task Force members seized the documents, medical records, and electronic documents and messaging information, the PHPs were operating as a wholly owned subsidiary of Westbury Community Hospital, LLC.

C. Medicare/Medicaid reimbursed:

1. Individual and group therapy when ordered by the physician.
2. Occupation therapy
3. Services of social workers, psychiatric nurse
4. Drugs & biologicals that cannot be self-administered.
5. Activity therapy
6. Family Counseling
7. Patient therapeutic educational programs
8. Diagnostic services

D. Every service billed to Medicare/Medicaid was ordered by a physician acting "as authorized."

E. Each billed service had an entry in the medical chart and billing occurred only from a verified order by the physician, and a signed performance note by a person authorized to perform services ordered by the physician acting "as authorized."

F. The physician ordered and provided services "as authorized" by Medicare regulations. This could and should have been verified by defense counsel.

1. His failure to do so violated appellant's Sixth Amendment rights.

2. But for counsel's errors there is a reasonable probability that the outcome of the proceedings would have been different.

QUESTION TWO:

Is it a violation of fundamental fairness and a criminal defendant's Sixth Amendment constitutional right to the effective assistance of counsel when defense counsel provided a criminal defendant false, inaccurate, and misleading information to induce a criminal defendant to enter a guilty plea to offenses the criminal defendant did not commit and defense counsel had not investigated the evidence or interviewed witnesses?

I. Yes! Defense counsel's deficient performance in refusing to investigate the evidence and his refusal to interview witnesses, and then advising appellant to plead guilty to:

A. Count One - Conspiracy to Defraud the United States and to Pay and Receive Kickbacks (18 U.S.C. § 371)

1. A conspiracy to defraud the United States would require admitting patients to a partial hospitalization program (PHPs), who did not meet medical necessity, or where services were not provided, then submitting fraudulent bills to Medicare/Medicaid.

- a. Only a physician is authorized to admit, certify need for care, treat, supervise treatment, and discharge patients from a hospital or a PHP, acting "as authorized."
- b. There were hundreds (100's of medical records that contained copious notes entered by physicians, nurses, and therapist on each patient encounter.
- c. Billing was produced from the group notes and individual therapy notes that had been entered by the therapists as prescribed by the physician acting "as authorized."
- d. Physicians did their own billing through their private offices.

2. The Government interviewed one or more of the physicians one or more times and determined that the physician had done no wrong-doing. The Government did not indict any of the physicians.

3. Therefore, since a physician was deemed to not be complicit in any wrong-doing, there could not be a conspiracy enacted without the physicians' involvement.

4. The Government failed to disclose that the physician was the controlling entry point to the PHPs according to Medicare regulations. Without the physician acting "as authorized" there could not be any admission to a PHP or to a hospital.

5. The Government's list of co-conspirators does not include any physicians. Therefore, if a physician is not involved in the conspiracy, there cannot be a conspiracy completed.

6. Counsel failed to investigate the evidence or interview exculpatory witnesses - the physicians.

B. Count Five: Engaging in Monetary Transaction in Property Derived from Specified Unlawful Activity (18 U.S.C. § 1957).

((a) Whoever, in any circumstances set forth in subsection (d), knowingly engages or attempts to engage in criminally derived property that is of a value greater than \$10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

(f) As used in this section -

(1) the term "monetary transaction" means deposit, withdrawal, transfer, or exchange in or affecting interstate or foreign commerce . . .

"To prove violation of 18 U.S.C. § 1957(a), government must present evidence that defendant knowingly engaged or attempted to engage in monetary transactions in unlawful funds; in order to sustain § 1957(a) conviction, financial institution must have been involved."

United States v Ness, 565 F.3d 73 (2nd Cir 2009).

COUNT FIVE: 5

DEFENDANTS: Bobby Rouse

DATE: 3/13/12

MONETARY

TRANSACTION: Transfer from Westbury Community Hospital, LLC Wallace State Bank account #7372 in the amount of \$17,050.00 to Westbury Community Hospital, LLC Wallace State Bank account #3393

(As charged by the Government - Located on page 23 of Indictment at Docket #1, 3/09/17.)

1. Government alleged that appellant engaged in monetary

transactions using unlawful funds.

2. Appellant's Sixth Amendment constitutional rights were violated by defense counsel's deficient performance.

a. Counsel failed to investigate and learn the Medicare regulations that require a physician to certify the need for a patient to require intensive treatment in a PHP, then admit, treat, supervise treatment, and discharge patients treated in a PHP.

b. Acting "as authorized" the physician provided care by admitting patients to his or her care in a PHP.

3. Therefore, since a physician was deemed by the Government to not be complicit in any wrong-doing, there could not be a generation of unlawful funds without a physician's involvement.

4. Evidence will clearly show that appellant is not guilty of the crimes that the government has charged appellant with. It is the result of a deficient performance on the part of defense counsel in providing false and misleading information, not investigating the evidence or interviewing witnesses, and then advising appellant to plead guilty to crimes that did not exist and appellant could not have committed.

5. Appellant did not knowingly, intelligently; or voluntarily enter into a plea agreement. Appellant entered the plea agreement on false and misleading information provided by defense counsel.

6. If presented to a fair minded group of jurists, "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong" or that the issues "deserve encouragement to proceed further." Slack v. McDanniel, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000).; "To be constitutionally valid, a guilty plea must be knowing voluntary." United States v. Cervantes, 132 F.3d 1106, 1110 (5th Cir. 1998).

7. The Fifth Circuit determined that, "duty to investigate includes obligation to investigate all witnesses who may have information concerning his or her client's guilt or innocence." Bryant v Scott, 38 F.3d 1411, 1419 (5th Cir. 1994).

8. Ex parte Lilly, 656, S.W.2d 490, 493 (Tex.Crim.App.1983), the court stated:

"It is fundamental that an attorney must have a firm command of the facts of the case as well as the law before he can render reasonably effective assistance of counsel . . . A natural consequence of this notion is that counsel also has a responsibility to seek out and interview potential witnesses and failure to do so is to be ineffective if not incompetent, where the result is that any viable defense available to the accused is not advanced."

9. Defense counsel failed to familiarize himself with appellant's case.

a. He failed to interview exculpatory witnesses.

- (1) Banking officer
- (2) Physicians
- (3) Therapists
- (4) Medical records personnel
- (5) Billing director

b. Defense counsel failed to investigate the evidence as reported in Question One.

- (1) Medicare Manual
- (2) Medical Records
- (3) Bank Accounts

C. Defense counsel violated appellant's constitutional rights by taking advantage of an elderly man who was suffering from a very traumatic event - being arrested.

1. Appellant was eighty (80) years of age
2. Depressed and ashamed
3. Confused and had difficult time making decisions.
4. Due to these conditions, appellant was easily led.

D. Counsel brokered a plea agreement using false and misleading

assertions put forth by the Government that defense counsel did not investigate the evidence or interview witnesses. Had he investigated the evidence and interviewed witnesses, counsel would have been able to militate the Government's false narrative. The plea agreement was based on false narrative by the Government and false and misleading information from the defense counsel.

1. The agreement should be voided due to misrepresentation by the Government and defense counsel thereby violating appellant's constitutional rights.

2. The Government knew or should have known that there was no crime.

3. Defense counsel should have investigated the evidence and interviewed witnesses in order to challenge the Government's false narrative.

E. Defense counsel's failure to investigate the evidence or interview witnesses, violated appellant's constitutional rights under the Sixth Amendment. (Petitioner cites the Supreme Court's decisions in Wiggins v Smith, 539 U.S. 510, 123 S.Ct. 2577, 156 L.Ed.2d 471 (2003); Rompilla v Beard 545 U.S. 374, 125 S.Ct. 2456, 162 L.Ed.2d 360 (2005); and Porter v McCollum 558 U.S. 30 S.Ct. 447, 175 L.Ed.2d 398 (2009), for the principal that counsel's failure to conduct or complete an investigation violates Strickland and entitles petitioner to habeas relief.)

F. Defense counsel by his deficient performance violated my constitutional rights afforded by the Sixth Amendment. His deficient performance prevented me from going to trial. But for counsel's errors there is a reasonable probability that the results of the proceedings would have had a different outcome. (a "reasonable

probability" is sufficient to undermine confidence in the outcome). Strickland v Washington, 466 U.S. 668, 694, 80 L.Ed.2d 674 (1984); ("[T]he negotiation of a plea bargain is critical phase of litigation for the purpose of the Sixth Amendment right to effective assistance of counsel." (affirmative misadvice by an attorney and a failure to advise about the advantages and disadvantages of a guilty plea are treated the same when assessing whether counsel's performance was deficient). Padilla v Kentucky, 559 U.S. 356, 373, 130 S.Ct. 1473, 176 L.Ed.2d (2010); ("When a lawyer advises his client to plea bargain to an offense which the attorney has not investigated, such is always unreasonable.") Woodard v Collins, 898 F.2d 1027, 1029 (5th Cir. 1990).

It is evident from the materials presented in Question One that defense counsel did not familiarize himself with appellant's case. Had he done so, he would have been able to determine that there were no crimes committed by appellant. His deficient performance violated appellant's Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States.

QUESTION THREE:

Is a criminal defendant denied his 5th and 14th Amendment constitutional rights to both due process and equal protection when defense counsel deliberately and intentionally withholds the criminal defendant's file from criminal defendant to hamper and impede pro se defendant's ability to proceed to state a claim of relief to which he is entitled?

Yes! Appellant's constitutional rights were violated.

I. Counsel's refusal to provide appellant's case file violates appellant's constitutional rights to due process, equal rights, to see the evidence used to indict appellant, and effective assistance of counsel.

II. Counsel violated the American Bar Rules and the Texas Bar Rules by failing to provide to his client the requested information concerning appellant's case.

III. Appellant made two or more written request to defense counsel to provide appellant with appellant's case file.

A. Counsel ignored the request

B. Counsel did not provide the requested files.

IV. Appellant recognizing that defense counsel was not going to comply with appellant's request for appellant's case file, appellant sent a written request to at least provide appellant with the evidence used to construct the indictment to indict appellant.

A. Counsel ignored the request.

B. Counsel did not provide the requested evidence.

V. Appellant motioned the District Court to compel defense counsel to provide appellant's case file. The District Court denied the motion to compel. See APPENDIX F

VI. Denied discovery and defense counsel's refusal to provide

appellant's case file, appellant was forced to proceed without seeing the evidence the Government used to indict him. This violated the appellant's constitutional rights under the United States Constitution.

VII. Counsel has demonstrated by his failure to provide a copy of appellant's case file that he has deliberately withheld appellant's case file. This hampers and impedes pro se appellant's ability to prepare and have his case heard. Counsel's conduct is prejudicial to the administration of justice. Former defense counsel's case file of appellant will reveal how few witnesses counsel actually interviewed. He did not interview the banker who would provide exculpatory testimony that appellant did not transfer or debit any funds at Wallace State Bank. He did not interview any of the physicians who would have provided exculpatory testimony that they were not part of a conspiracy and had never been approached about being part of a conspiracy. The case file would also reveal that counsel did not investigate the facts for mitigating evidence to test the prosecution's case against appellant.

Counsel's refusal to provide appellant his case file violates not only appellant's constitutional rights, it violates the very core of the attorney client relationship.

Forced to act pro se, the defacto attorney is entitled to see the case file that former counsel has of the appellant's.

To date, appellant has not seen the evidence used to indict him. One wonders why former defense counsel would refuse to provide appellant with his case file.

QUESTION FOUR:

Is a criminal defendant denied his constitutional rights for effective assistance of counsel when District Court recognizes and grants defendant the right to proceed in forma pauperis and thereby forces defendant to proceed pro se if defendant wishes to be heard, and the District Court denies pro se defendant the rights and liberties that would be granted to a newly appointed or retained counsel, such as discovery and access to the former counsel's case file?

Yes! Appellant was denied his constitutional rights by not being allowed to view the evidence or to have effective assistance of counsel. (As Woods recognizes, pro se as a petitioner is not well versed in the complex procedural rules that govern federal habeas petitions. For this reason, "[a] document filed pro se is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." Woods, 525 F.3d at 889-90 (quoting Erickson v Pardus, 551 U.S. 89, 94, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007)

Without training as a lawyer, much less a criminal defense lawyer, ignorant of rules and procedures of the law, an appellant struggles to have his case heard before a fair and impartial court. Appellant is further limited in his effort by the lack of a law library where appellant can research the rules of law, legal procedures, and case law to support appellant's search for justice and protection of his constitutional rights.

Add the frustration of antiquated equipment, such as a basic portable typewriter for the production of documents increases the level of difficulty in preparing documents. Place the workspace in the midst of the social gathering place of inmates, only add more barriers to be heard. The odds of a pro se inmate crafting a document that makes sense to a trained legal mind are very slim.

When the Government creates a false narrative to prosecute an individual and defense counsel is deficient in his or her performance, the courts are the last line of protection for the accused. It is crucial that the courts protect the constitutional rights of accused. Appellant has not had that experience during his time of acting as pro se. Newly appointed or retained attorneys are accorded time to review the evidence, view former counsel's case file, and interview witnesses. The District Court having jurisdiction in appellant's case, liberally granted attorneys' motions for continuance in the "Interest of Justice . . ." Appellant being forced to act pro se, if he has a chance to heard, was not accorded the same allowances as the retained, appointed, or prosecution lawyers.

To wit:

1. On April 27, 2017, continuance was granted to allow attorney to discover, investigate, and interview. Docket # 27
2. On February 18, 2018, continuance was granted to allow attorney to discover, investigate, and interview. Docket # 28
3. On June 27, 2018, continuance was granted to allow attorney to discover, investigate, and interview. Docket # 32
4. On January 17, 2019, continuance was granted to allow attorney to discover, investigate, and interview. Docket # 57
5. On May 2, 2019, continuance was granted to allow attorney to discover, investigate, and interview. Docket # 41
6. From January 17, 2020 to February 18, 2021, there were six continuances granted to allow for preparation of the Pre Sentencing Report. Dockets: 68, 69, 70, 78, and 79

On April 22, 2021, appellant was sentenced. Following that date, due to appellant not having the financial resources to obtain counsel, appellant had to act as his own attorney if he was to be heard in the justice system.

- *1. On May 2, 2022, appellant filed a motion under 28 U.S.C. § 2255 to vacate sentence due to ineffective assistance of counsel.
- 2. On June 9, 2022, the District Court ordered the Government to respond within 60 days. Appellant was ordered to respond in 30 days after the Government responded. With all the resources the Government has at their disposal and the limited resources that pro se defendant, acting alone, has at his disposal, it does not seem equitable.
- 3. On July 6, 2022, appellant made a motion to the District Court to order discovery and to compel former defense counsel to provide appellant's case file to appellant. Pro se defendant had not seen any of the evidence at any time the that the Government had used to indict him. To date, appellant has not been shown any evidence that was used to indict him. Docket # 129
- 4. On July 7, 2022, the District Court denied the motion for discovery. The Court was silent on the motion to compel former defense counsel to provide appellant's case file to appellant. Docket # 130
- 5. On August 9, 2022, the Government motioned the Court for a 25 day extension. Docket # 133
- 6. On August 11, 2022, the Court granted the motion. Docket # 134
- 7. On September 2, 2022, the Government motioned the Court for a 42 day extension of time. Docket # 135 GRANTED #136
- 8. On September 19, 2022, appellant motioned the Court for a 30 day extension of time. Docket # 137
- 9. On September 28, 2022, the Court denied the appellant's motion for an extension of time. Docket # 139

It is difficult to see how the Court has liberally construed the appellant's filings from the above actions.

It would seem that this matter could have been settled at the District Court level with discovery being allowed or providing appellant with former defense counsel's file on the appellant.

I have stated emphatically that:

- 1. I was provided false and misleading information to induce me to plead guilty.
- 2. That I did not move any funds at Wallace State Bank from one account to another account.
- 3. That there was no conspiracy. A conspiracy to defraud the United States would have to have a physician's

participation as a physician is the only individual authorized to admit a patient to a partial hospitalization program.

Much of the evidence to support appellant's claim of ineffective assistance of counsel lies outside the Court record. The reason being that counsel induced an 80 years old man with diminished capacity to plead guilty to crimes he did not do. Defense counsel accomplished this by providing false and misleading information to appellant. By inducing appellant to plead guilty, counsel did not have to prepare for trial. His refusal to provide me with my case file raises suspicions that he cannot afford to allow the record to show what he did and did not do in investigating and interviewing.

Discovery should be available to federal prisoners in accordance with Rule 6 of the Rules Governing Section 2255 cases upon a showing of "good cause." Good cause is shown where "specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is entitled to relief." Bracy v. Gramley, 520 U.S. 899, 908-09, 139 L.Ed.2d 97 (1997); (abuse of discretion to deny discovery when specific factual allegations, if fully developed, would entitle petitioner to relief), Lynott v. Story, 929 F.2d 228, 232 (6th Cir. 1991); (a district court abuses its discretion in not ordering discovery when discovery is "essential" for habeas petitioner to "develop fully" his underlying claim, Pham v. Terhune, 400 F.3d 740, 743 (9th Cir. 2005)

The District Court in its denial of appellant's 2255 motion stated that appellant failed to provide evidence to support his claims. The District Court stated, "Moreover, nothing in the record establishes what information counsel did or did not provide to

defendant prior to his guilty plea, and defendant's conclusory assertions are unsupported."

Appellant does not have and has never been shown the evidence used to indict him. It does not exist.

Appellant has made several efforts to gain the evidence to support the the assertions made by him as to his innocence.

1. Two written requests to Mr. Floyd, defense counsel, to provide appellant his case file. Mr. Floyd did not even reply to the requests.
2. One written request to just provide the evidence used by the Government to indict defendant. Again, Mr. Floyd did not respond.
3. Appellant made a motion to the District Court to order discovery. Court denied the motion.
4. Requested that Court compel defense counsel to provide appellant his case file. The Court did not respond to this request.

If appellant is blocked from acquiring a copy of the evidence used to indict him, how can he present hard evidence to show counsel was deficient in his performance and that his actions prejudice the defendant?

"The Court has created an impossibility of meeting a requirement which the Court has denied the petitioner the ability to perform

Denis v. Chappel, 2014 U.S. District Lexis, 1324, (Feb. 11, 2014)

In addition to blocking appellant from securing information to support his claims, the Court accepted without difficulty the assertions' made by probation officer in the Pre Sentencing Report (PSR) that were never proven with evidence. The Court overruled all objections by defendant. Eight Circuit vacates five-level enhancement under USSG 4B1.5(b). Where disputed Pre Sentencing Report objections were never proven by evidence. United States v. Liston, No. 22-3013 (8th Cir. 2023).

If facts in evidence were allowed to be brought forward, The Physical Facts Rule would override the testimony of the various individuals. The Physical Facts Rule would discredit and override the plea agreement that defense counsel advised appellant to enter without counsel investigating the evidence or interviewing witnesses, some of which who provide exculpatory testimony. Physical Facts Rule (1923)-Evidence - The principal that oral testimony may be disregarded when it is inconsistent or irreconcilable with the physical case. Black's Law Dictionary, Tenth Edition, Bryan A. Garner, Editor in Chief.

My effort to appeal to the Fifth Circuit was denied stating that (To obtain a COA, Rouse must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); Slack v. McDaniel 529 U.S. 473, 484 (2000). Where a district court has rejected a claim on the merits, a movant "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack, 529 U.S. at 484.

1. What greater wrong could there be than the evidence showing that the defendant DID NOT transfer any funds from one account to another account at Wallace State Bank; or,
2. That the evidence would show that services were provided at the partial hospitalization programs; and,
3. That the patients were under the care of a physician who is the only individual that can admit a patient to a partial hospitalization program; and,
4. That there was an extensive staff employed to treat the patients; and,
5. That an Administrative Law Judge (ALJ) heard the case on 25 records challenging the patient meeting medical necessity. ALJ ruled in favor of the partial hospitalization program and ordered Trailblazer to pay all claims associated with the records as the patients met medical necessity and services were provided; and,

6. Had defense counsel interviewed the witnesses, he would that the banking officer would have provided exculpatory testimony that appellant was not involved in the banking relationship with Wallace State Bank and did not transfer or debit any funds at the bank; and,
7. He would have found exculpatory testimony from the physicians that they were not involved in any conspiracy, not been approached about being part of a conspiracy, and were operating within the scope of their license to practice medicine. They were acting "as authorized."

Facts in evidence held by the Government and should be in possession of former defense counsel will attest to appellant's assertions made in this Petition for a Writ of Certiorari to United States Court of Appeals - Fifth Circuit.

I am at a loss as to why the Courts do not want to look at the evidence in possession of the Government and former defense counsel. I am at a loss as to why former defense counsel has refused to provide me with my case file, and why the District Court ignored my motion to compel former defense counsel to provide appellant with his case file.

A lone man, in prison, and without adequate resources, tries to be heard against an opponent with unlimited resources, the latest processing equipment, a support staff of lawyers, paralegals, and secretarial staff. The leveler in this situation is the evidence. Appellant's 5th, 6th, and 14th Amendments to the Constitution of the United States of America have been and are still being violated by:

- A. Former defense counsel who turned in a deficient performance by:
 1. Failing to investigate the evidence.
 2. Failing to interview available witnesses
 3. Providing false and misleading information to induce an elderly (80 years of age) to plead guilty to crimes he did not commit.

B. When a court denies appellant's 2255 motion citing that appellant did not offer any evidence to support his assertions in his 2255 motion; yet, the court had previously denied a motion by appellant for discovery and the court remained silent on appellant's motion to compel former defense counsel to provide appellant a copy of his case file, it creates a "Catch 22." (As Plaintiffs observe, it has "long been a feature of the common law that a person cannot be held criminally responsible for things over which he has no control." (Motion at 19) (citing United States v Willing, 4 U.S. 376, 28F.Cas.695, F.Cas. No 16727. 4 Dall. 376 (D.Pa.), affpd sub nom. Willing v United States, 4 U.S. 374 (C.C.D. Pa. 1804), aff'd sub nom. Willing v Willing, 8U.S. 48, 2L.Ed. 546 (1807) ("the law does not compel parties to impossibilities (2023 U.S. Dist LEXIS 71) ex non cogit ad impossibilial")".

C. When a justice system takes the poorly crafted pleadings of an old man refuses to look at the evidence but instead relies on a guilty plea that was not knowingly, intelligently, or willingly entered into, that violates appellant's rights under the Constitution of the United States.

CONCLUSION

Appellant not being legally trained, required to proceed pro se, lack of a law library, and antiquated equipment; pro se hopefully has presented sufficient evidence for reasonable and fair minded jurists to determine that appellant's constitutional rights have been violated. To determine that there was no crime.

A. Physician is the pivotal point in admissions, treatment, and discharges in a hospital and a partial hospitalization program.

B. The physician is the only person authorized by Medicare regulations, state and federal laws to admit, treat, and supervise treatment, and discharge patients in a hospital or a partial hospitalization program (PHPs).

C. The Government interviewed one or more of the physicians and found no wrong doing. Government did not indict any physicians.

D. The Government has in their possession 100's of medical records that show and support that the physician was acting "as authorized."

E. Each charge billed to Medicare was tied back to the medical record and was signed by the nurse or therapist providing the service as ordered by the physician "acting as authorized."

F. The Government has in their possession 25 medical records that were randomly selected by Trailblazer, physical intermediary for Medicare, to challenge medical necessity. The records were argued before a federal Administrative Law Judge (ALJ) in Florida. The ALJ ordered Medicare to pay all claims associated with the medical records as they met medical necessity and services were provided.

G. The large Hornwood montly payroll militates the assertion that there was any intent to defraud.

H. Nine people in medical records department audited the medical records daily for completeness and accuracy.

I. The Medicare Manual detailing the operation of a partial hospitalization program and stating that a physician, only a physician, is authorized to admit, treat, supervise treatment, and discharge patients in a hospital or a partial hospitalization program.

See APPENDIX G

J. Defense counsel's failure to familiarize himself with appellant's case, his failure to investigate the evidence or interview witnesses left appellant vulnerable to an aggressive prosecutor and the Government's false narrative.

K. Appellant being denied his case file by defense counsel and denied discovery by the District Court left appellant at a serious disadvantage in being heard and gaining relief.

L. For a conspiracy to be enacted, the physician would have to be involved. No one is authorized to admit to a PHP other than a

physician.

M. For unlawful funds to have been generated, a physician would have to be complicit in the production of funds through unlawful means. There was no crime as the physician was acting "as authorized" by Medicare.

N. Appellant's constitutional rights have been violated.

1. Ineffective assistance of counsel
2. Denied access to evidence used to indict appellant
3. Prosecution for a crime that did not exist.

O. Appellant requests this Honorable Court to:

1. Vacate appellant's sentence
 - a. There was no crime
 - b. Appellant's constitutional rights were violated by defense counsel and the Government.
2. In the alternative:
 - a. Remand for evidentiary hearing
 - b. Release appellant so appellant can participate in his defense of this complex case.

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under the penalty of perjury that he is the movant in the above action, that he has read the above pleading and that the information contained therein is true and correct to the best of his knowledge and belief.

Executed at Federal Medical Center, Rochester, Minnesota on the First Day of February 2024, and redeclares this corrected version on the Fifteenth Day of April 2024.



Bobby Rouse, Sr., Ph.D.
30118-076