

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BRITT JARRIEL HAMMONS,

Defendant - Appellant.

FILED
United States Court of Appeals
Tenth Circuit

December 13, 2023

Christopher M. Wolpert
Clerk of Court

No. 23-6190

(D.C. No. 5:04-CR-00172-F-1)

(W.D. Okla.)

ORDER

Before BACHARACH, BRISCOE, and PHILLIPS, Circuit Judges.

Appellant Britt Jarriel Hammons—a federal prisoner proceeding without the benefit of counsel—filed a notice of his intent to appeal “his conviction and judgment [sic] under 922(g)(1) that was deliver [sic] on April 28, 2005.”

The government filed a motion to dismiss the appeal as untimely. Mr. Hammons responded, arguing that there is no statute of limitations in a habeas corpus case and that he is actually innocent of the crime of which he was convicted. Upon consideration of these filings, the district court docket, and the applicable law, the court grants the government’s motion to dismiss for the reasons set forth below.

The defendant in a criminal case must file his notice of appeal in the district court within 14 days after entry of judgment. Fed. R. App. P. 4(b)(1); *see also United States v.*

Randall, 666 F. 3d 1238, 1240-41 (10th Cir. 2011) (§ 3582 motion addresses criminal matter such that Fed. R. App. P. 4(b) governs timeliness of appeal).

The district court is authorized to extend the time to appeal, but the extension may not exceed 30 days after the time to appeal expires. Fed. R. App. P. 4(b)(4). The time limits set forth in Rules 4(b)(1) and 4(b)(4) are “inflexible claim-processing rule[s]” that the government may forfeit if it does not properly raise. *United States v. Garduño*, 506 F.3d 1287, 1291 (10th Cir. 2007). If, however, the government properly invokes the time bar, this court must grant relief. *United States v. Mitchell*, 518 F.3d 740, 744 (10th Cir 2008) (citing *Garduño*, 506 F.3d at 1290-91).

Here, the district court entered its judgment and sentence on the docket on April 28, 2005. [ECF No. 27]. The time to appeal expired 14 days later, and Hammons’ then-counsel filed a timely notice of his intent to appeal the judgment and sentence. [ECF No. 29]. This court affirmed Mr. Hammons’ conviction and sentence on direct appeal. See *United States v. Hammons*, No. 05-6168, 153 F. App’x 492, 494-95 (10th Cir. 2005).

Accordingly, the court dismisses this appeal for two reasons. First, Mr. Hammons is not entitled to a second appeal of the same order. See, e.g., *United States v. Mendes*, 912 F.2d 434, 438 (10th Cir. 1990). “Any other interpretation would undermine the doctrine of finality and lead to endless relitigation of issues previously resolved.” *Id.*

Second, Mr. Hammons' notice of appeal is untimely and the government properly invoked the time bar by filing a motion to dismiss. *See Mitchell*, 518 F.3d at 744.

APPEAL DISMISSED.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk

APPENDIX A
OF
TENTH CIRCUIT

TRULINCS 15819064 - HAMMONS, BRITT JARIEL - Unit: HAZ-D-B

FROM: 15819064
TO: Circuit Of Appeal, The Tenth
SUBJECT: cover
DATE: 09/06/2023 02:14:27 PM

UNITED STATES COURT OF APPEALS

FOR THE
TENTH CIRCUIT

Britt Jarriel Hammons, pro se

Case Number: CT-04-172-1-f

vs.

UNITED STATES OF AMERICA

"APPLICATION FOR ISSUANCE"
OF A
CERTIFICATE OF APPEALABILITY

ROM: 15819064
Circuit Of Appeal, The Tenth
SUBJECT: Page 1-11
DATE: 09/06/2023 02:13:21 PM

Mr. Hammons, proceeding in pro se and invoking the Supreme Courts controlling doctrine of Haines v.s kerner, 404 U.S.519,520-521, moves this very honorable court to issue him a certificate of Appealiblity (herein after COA) Mr. Hammons seekd the issuance of a COA, pursuant to 2: U.S.C. 2253(c)(2) authorizing Mr. Hammons to appeal from the District Courts judgement that was delivered on April 28, 2005. Mr. Hammons only has a onw(1) count indictment and that is an felon in possession of a firearm federal statue 922(g)(1)...

"NOTICE & OPPORTUNITY"

Mr. Hammons is humbly requesting that this honorable court issue him an COA in good faith on these very important grounds herein this very motion...

This honorable court has taken an oath to serve, honor, and protect the constitution of the United States of America of (1791) from any domestic or foreign force that is trying to attack it , anyone or anything that is in conflict with the Original Constitution of (1791).....

If found necessary this very motion will be the subject matter for a writ of certiorari rule 11. & 14.

"NATURE OF PROCEEDING"

Mr. Hammons would like to, on a successive 2255 with the United States district court of the Western District of Oklahoma that will successfully argue the serious of the very grounds hat is undisputable and undebatable. That is the federal statue 922(g)(1) is unconstitutional and with that being, expoes that also means that Mr. Hamoomns is actually innocent of his conviction under that same exact statue 922(g)(1) as it stands to be in the greatest of conflict with the Original Constistution of (1791)(also) its stated: That the founding-era legislators did not strip felons of the right to bear arms simply because of their status as felons (nonetheless) the federal statue 922(g)(1) predecessor the firearms act of 1938. did not permanently ban all felons from possessing firearms, but rather those convicted of crimes of violence, defined forms as: Murder, Manslaughter, Rape, Mayhem, Kidnapping, Burglary, Housebreaking and certian forms of aggravated assault.

See Marshall, 32 Harv.J.L.& Pub.Poly at 698-99.

The government can't show that the federal statue 922(g)(1) is or was consistent with the Nations Historical Tradition of firearm regulation...

As the honorable Judge Reeves stated in his opinion that the federal statue 922(g)(1)is unconstitutional because it does not pass Bruen Muster. History inconsistent with some common sense: it demonstrates that legislators have the power to prohibit danferous people from possessing guns, (however) That power only extends to people who are dangerous; the found-era legislators did not strip felons of the right to bear arms simply because of their status as felons nor have any parties introduced any historical evidence or any evidence that says otherwise that the founding-era intended to strip felons of thier right to bear arms... Inso far as federal or state statue would seek to bar arms possession by felons who pos[e] no physical danger to others, those laws to be invalid on their face...So the second & fourteenth amendments plan& straightforward text do protect and individual right to keep & bear arms. Mr. Hammons conviction & senténe under the federal statue 922(g)(1) is an unconstitutional violation of the second & fourteenth amendment because:

1.) The Original Constitution of (1791) Amendment guarantee : A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed...(see: Amendment 2) also
No state shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States (see: Amendment 14)

2.) The Supreme Court decided in 2008 that the individual rights was more faithful to the constitution... "There seems to us no doubt, on the basis of both text and history, that the second amendment conferred on individual rights to keep & bear arms. "(See.. D.C. v.s Heller ,554 U.S 570,595,128 S.Ct 2783,171 L.Ed 2d 637(2008)

3.) The Supreme Court held in McDonald that the second & fourteenth amendment protects an individuals right to keep & bear arms for self defense. (See.. McDonald v.s Chicago, 561 U.S. 742,130,S.Ct.3020,177L Ed 2d 894).

4.) The broad scope of the federal statue 922(g)(1), which permanently disqualifies all felons from possessing firearms would conflict with the very core self-defense right that embodies in the second amendment...

See..United States v.s McCane,573,f 3d 1037,1048,49,(10th cir 2009).

5.) Mr.Hammons actual innocence claim is relied on by these very facts and the fact that if this evidence was viewed in light the evidence as a whole, it would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would find Mr. Hammons guilty of the offense of being a felon in the possession of a firearm 922(g)(1)...

So now that the federal statue 922 (g)(1) is being exposed for what it really is, treason against the Original Constitution of (1791) and with numerous circuits are ruling that the federal statue 922(g)(1) is in fact unconstitutional; as of todays time the honorable district court is without authorization and jurisdiction therefore "Mr. Hammons is actually innocence"...

"PROCEDURAL STATUS OF THE CASE"

An application to the judge of the court of appeals for a certificate of appealability is appropriate at this time because:

1.) The district court entered a final judgement on this case on April 28, 2005...

2.)Mr. Hammons desires and is entitled to appeal his judgement as is authorized by 28 U.S.C.2253(a); however 2253(c)(1) and appellate rule 22(b)(1) require that a Certificate of Appealability be issued as a precondition of proceeding with the appeal.

"STANDARD OF REVIEW"

A federal prisoner, who seeks/ or who wants to appeal his conviction must first receive a COA from the court of appeals...Federal law requires that the prisoner first obtain an Certificate of Appealability (herein after COA) from a circuit judge of the appropriate court of appeals.

(See...28 U.S.C.2253(c)(1)... A COA may be issued only if the applicant has made a substantial showing of the constitutional rights that's been violated or/ and the newly discovered evidence...The Supreme Court in Buck v.s Davis,137 S.Ct 759;197 L Ed 2d 1(2017) Holds: A court of appeals should limit its examination (of the COA stage) to a threshold inquiry into the underlying merit of the claims and ask only if the district courts decision was or is debatable.

(See... Miller-E1,537 U.S. at 327,348,123,S.Ct 1029,154 L Ed 2d 931)

The Supreme Court has emphasized that the COA inquiry is not co-extensive with a merits analysis. At the COA stage, the only question is whether the prisoner has shown that "Jurist's" of reason could disagree with the district courts resolution of his constitutional claims or that jurist' could conclude the issues presented are adequate to deserve encouragement to proceed further...

(See Miller-E1,537 U.S..at 327,123 S.Ct.1029;154 L Ed 2d 931)

This threshold question should be decided without full consideration of the factual or legal basis adduced in support of the claim. See: I.d, at 336;123 S.Ct.1029;154 L.ed 2d 931)

When a court of appeals sidesteps the (COA) process by first deciding the merits of an appeal and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction.

(See...I.d,at 336-337;123 S.Ct 1029;154L)

Therefore, in the case of Britt Jarrel Hammons, the sole question before this honorable United States Court of Appeals is whether jurists of reason could be debated whether the district court conviction of Mr. Hammons under the federal statue 922(g)(1) is constitutional sound and binding now today with it being exposed by numerous circuits as being Unconstitutional.

"ISSUE OF THE CASE"

Mr. Hammons questions if the district courts conviction and sentence under the federal statue 922(g)(1) is constitutional sound and binding as it sounds... Not according to the very honorable Judge Reeves (who is also chair of the sentencing commission) that made this very powerful statement in his ruling in the Bullock case: " That the federal statue 922(g)(1) is unconstitutional because it does not pass Bruen Muster"... The court has determined that under the Bruen test, the plain text of the second amendment covers Mr. Bullocks right to possession of a firearm.. In and according to the Original Constitution amendment covers Mr. Bullocks right to possession light of (1791) guarantee: A well regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

"REASON TO GRANT A CERTIFICATE OF APPEALABILITY"

Denial of Constitutional right: Mr. Hammons is currently incarcerated for a crime that he is now actually innocent of...Mr.

Hammons was indicted on 9/7/2004 for, one(1) count of felon in possession of a firearm on 922(g)(1)... Mr. Hammons actual innocent claim was established when the honorable Judge Reeves declare that the federal statue 922(g)(1)is unconstitutional and now that numerous circutes are re-enforcing the honorable Judge Reeves claim that the federal statue is unconstitutional; That subject matter alone is enough for this Honorable Court to take a look at the federal statue 922(g)(1) and to take a look at the Original Constitution Amendment (2) of (1791) to see if federal statue 922(g)(1) is in conflict with the Original Constitution Amendment (2) of (1791)

The very found-era legislators did not strip felons of the right to bear arms simple because of their status as felons nor have any party introduced and historical evidence or any other evidence that the founding-ear intended to strip felons of their right to bear arm...(however) The broad scope of 922(g)(1) which permanently disqualifies all felons from possessing firearms would conflict with the very core of self-defense right embodies in the second amendment...

(See Unites States v.s McCane,573 f 3d 1037,1048-49(10th Cir 2009))

The Original Constitution Amendment (14) of (1791) guarantees no state shall make or enforce any law which shall abridge the privileges or immunities of a citizen of the United States...

**"JURISTS OF REASON COULD DEBATE"
THE DISTRICT COURTS JUDGEMENT**

Mr. Hammons actual innocence would cause jurists of reason to find the district courts decision and conviction in Mr. Hammons case case be debatable with good and sound cause...The very first and important judicial officer in Mr. Hammons' case is that his only charge is this so called federal statue 922(g)(1); and now that its being exposed to be unconstitutional how can the district court hold Mr. Hammons in prison for a crime or conviction that he is actually innocent of..So therefore Mr. Hammons seeks to appeal from this unjust conviction with this honorable courts blessings. In todays judicial atmosphere, resources are scarce because of the newly discovered evidence like the decision that the honorable court made in : New York State Rifle & Pistol Association Inc. et al v.s Bruen, McDonald v.s Chicago, Heller v.s District of Columbia and Bullock v.s United States. Thus it is unreasonable to conclude that an of the wise circuit judges would waste judicial resources by not granting and COA for Mr. Hammons advancing a frivalous claim... The Supreme Court held: "we think that in a extraordinary case where a constitutional violation has probably resulted in the conviction of someone who is actually innocent of cause for the procedural default...

(See... Murray v.s Carrier,477 U.S.478,495-6)(1986)...

In an actual innocence claim, if proved, may served as a gateway to overcome procedural default.

(See... McQuiggin v.s Perkins,569 U.S 383:133 S.Ct (1924)(2013)

The Supreme Courts doctrine. A movant's procedural default is excused if he can show that he is actually innocent either of the crime of conviction or in the capital sentencing context of the sentence itself...

(See..Drelke v.s Ho;ey,541 U.S.386,124 S.Ct. 1847,158 L. Ed 2d 659(2004.) ALSO See... Lynn,365 f 3d at 1234.)

FROM: 15819064
TO: Circuit Of Appeal, The Tenth
SUBJECT: Pages11-24
DATE: 09/06/2023 02:11:41 PM

Mr. Hammons case is one of those "EXTRAORDINARY" case where his actual innocent should serve to invoke the review of the United States District Courts decision and/or Judgment in the very light of Honorable Judge Reeves decision and the numerous circuits that is or have ruled the federal statute 922(g)(1) in unconstitutional.

"PROCEDURAL PREREQUISITES FOR ACTION"

As shown in his filing, Mr. Hammons has satisfied all of the procedural prerequisites to action by this court on this application for a Certificate of Appealability:

- 1.) Mr. Hammons has filed a timely notice of appeal..
- 2.) Mr. Hammons has made more than a good faith effort to confirm this application to all the requirements set out in the federal rules of Appellate Procedure: Rule 22 & of the tenth circuit rules pertaining to motion seeking the issuance of a Certificate Of Appealability..
- 3.) Mr. Hammons has served all interested parties to this action with a copy of this application and the supporting papers, as is reflected in the attached Certificate of Service..
- 4.) There is no fee for filing a motion for authorization under 28 U.S.C 2244 for an Order authorizing the district court to consider a second or successive motion under U.S.C.2255; It's likewise unreasonable to conclude that an honorable circuit judge would fail to consider the reasonableness of the appeal prior to granting or denying a motion as important as this very one...
Mr. Hammons believes that the district judge Stephen Friot would reconsider his own judgement and conviction of Mr. Hammons in light of the evidence that is set out in his appeal.. The district Judge Stephen Friot appears to be a jurist of reason who would find his own judgment to be very debatable and unconstitutional in light of all available information. Mr. Hammons case also might represents a circuit court split as to the definition of second or successive...
(See...United States v.s Holt, 417 f 3d 1172 (11th cir 2005) also (See... Johnson v.s United States724 f. ed Appx 917 (11th cir 2018), citing Steward, 646 f 3d at 859.. Mr. Hammons also contends that every judge in America who follows that actual innocent serves as a gateway to procedural default are jurists' of reason who would find that the district courts decision, conviction, and judgement is in fact debatable...

"CONCLUSION"

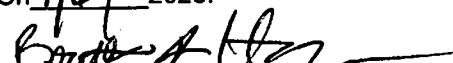
FOR all of the reasons that is set forth herein this motion; Mr. Hammons respectfully requests that this honorable court issues a Certificate Of Appealability "Immediately" to Mr. Hammons; On the very fact that Mr. Hammons is actually innocent and that the district court has no other grounds or cause to hold Mr. Hammons in his unlawful and unconstitutional confinement...

RESPECTFULLY SUBMITTED,

BY: 
BRITT JARIEL HAMMONS (15819-064)
USP HAZELTON P.O. BOX 2000
BRUCETON MILLS WV, 26525

"CERTIFICATE OF MAILING"

I have cause to mail this application for issuance of a Certificate of Appealability to: The District Court for the Western District of Oklahoma, The United States district attorneys office and United States Court of Appeals for the Tenth Circuit, to the last known address and way of first class mail to the address listed below; Mr. Hammons would like for this Honorable Court to note that the mailbox rule applies here (also) that this was placed in the prison's legal mail beg On 9/6/2023.



IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,)
)
 Plaintiff-Appellee,) No. 23-6190
)
 v.) D.C. No. CR-04-172-F
)
 BRITT JARIEL HAMMONS,)
)
 Defendant-Appellant.)

MOTION TO DISMISS

Pursuant to 10th Cir. R. 27.3(A)(1)(a), the United States moves to dismiss this appeal because the defendant's notice of appeal came 6,759 days late.

Facts

In 2003, Mr. Hammons was stopped by police for various traffic violations. *United States v. Hammons*, 153 F. App'x 492, 493 (10th Cir. 2005) (*Hammons I*). Since his driver's license was suspended, Mr. Hammons gave police his brother's name. *Id.* But this backfired because Mr. Hammons's brother had a warrant for his arrest. *Id.* Police executed the arrest warrant and searched Mr. Hammons's vehicle, discovering a 9mm pistol under the passenger seat of the car.

Id. A grand jury subsequently indicted Mr. Hammons for possession of a firearm as a convicted felon, and Mr. Hammons pled guilty to the indictment. *Id.* The district court sentenced Mr. Hammons to 180 months' imprisonment to be served consecutively to his state sentences. *Id.* at 494. This Court affirmed on direct appeal. *Id.* at 495.

Mr. Hammons subsequently filed a collateral attack, claiming that his sentence under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), was unconstitutional after *Johnson v. United States*, 576 U.S. 591 (2015). The district court denied relief, and this Court affirmed.

See United States v. Hammons, 862 F.3d 1052 (10th Cir. 2017) (*Hammons II*).

Mr. Hammons filed another collateral attack, arguing that the district court should order him to be transferred to home confinement. *United States v. Hammons*, 833 F. App'x 215 (10th Cir. 2021) (*Hammons III*). The district court denied the motion for several reasons, and this Court denied a certificate of appealability because Mr. Hammons did not allege a constitutional violation. *Id.*

Mr. Hammons filed a motion for compassionate release, listing "the COVID-19 pandemic, his medical conditions, his housing

conditions, and the need to care for his ailing mother" as extraordinary and compelling reasons for a sentence reduction to time served. *United States v. Hammons*, No. 22-6044, 2022 WL 3681254, at *1 (10th Cir. Aug. 25, 2022). The district court denied relief, and this Court affirmed. *Id.* at *1-2.

Since then, Mr. Hammons has filed two motions for sentence reduction and a petition for writ of mandamus with the district court. Docs. 127, 134, 136. The district court has either denied or dismissed each of those. Docs. 133, 135, 137.

On November 13, 2023, Mr. Hammons filed a notice of appeal designating the "conviction and judgment [sic] under 922(g)(1) that was deliver [sic] on April 28, 2005," as the order being appealed. Doc. 139 at 2. From that notice of appeal, this case was docketed.

Discussion

In a criminal case, a defendant has fourteen days from the entry of an order he wishes to appeal to file his notice of appeal. Fed. R. App. P. 4(b)(1)(A)(i). That time limit is an inflexible claim-processing rule, meaning that, when properly invoked by the United States, this Court must dismiss an untimely appeal. *United States v. Mitchell*, 518 F.3d

740, 744 (10th Cir. 2008); *United States v. Garduño*, 506 F.3d 1287, 1290-91 (10th Cir. 2007).

To appeal his judgment and sentence, Mr. Hammons was required to file his notice of appeal by May 12, 2005, fourteen days after April 28, 2005, the date the district court entered judgment the written judgment on the docket. But Mr. Hammons did not file his notice of appeal until November 13, 2023, which is 6,759 days late.¹ Because Mr. Hammons's notice of appeal is untimely, the United States respectfully requests this Court dismiss this appeal.

¹ Even if the timeliness of Mr. Hammons's last appeal were measured from the last order, his notice of appeal still would have been untimely. The district court dismissed his last motion for compassionate release on September 6, 2023. Doc. 137. Thus, his notice of appeal would have been due no later than September 20, 2023. If that date were used, his notice of appeal would still have been 54 days late. Therefore, even using the last possible date, Mr. Hammons's notice of appeal would still be subject to dismissal as untimely.

Conclusion

For those reasons, this Court should dismiss this appeal.

Respectfully submitted,

ROBERT J. TROESTER
United States Attorney

s/ Steven W. Creager
Assistant United States Attorney
Bar Number: 30052 (OK)
210 W. Park Avenue, Suite 400
Oklahoma City, Oklahoma 73102
(405) 553-8700
steven.w.creager@usdoj.gov

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

As required by Fed. R. App. P. 32(g), I certify that this motion is proportionally spaced and contains 670 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(a)(7)(B)(iii). I relied on my word processor to obtain the count and it is: Microsoft Word 365.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook.

I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

s/ Steven W. Creager
Assistant U.S. Attorney

Certificate of Mailing and Electronic Service

This is to certify that on November 27, 2023, I electronically transmitted the attached motion to the Clerk of Court using the NextGen PACER System for filing, as well as mailing a copy of this document to:

Britt Jarriel Hammons
15819-064
USP Hazelton
U.S. Penitentiary
P.O. Box 2000
Bruceton Mills, WV 26525

s/ Steven W. Creager
Assistant U.S. Attorney

**10th CIR. FORM 2. ENTRY OF APPEARANCE AND CERTIFICATE OF
INTERESTED PARTIES UNDER 10th Cir. R. 46.1**

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Entry of Appearance and Certificate of Interested Parties

United States of America,
Plaintiff-Appellee,
v.

Case No. 23-6190

Britt Jarriel Hammons,
Defendant-Appellant.

INSTRUCTIONS: WITHIN THE TIME PROSCRIBED IN THE COURT'S CASE OPENING LETTER FOR THE APPEAL OR OTHER PROCEEDING COUNSEL FOR A PARTY MUST EXECUTE AND FILE THIS FORM, INDICATING METHOD(S) OF SERVICE ON ALL OTHER PARTIES. MULTIPLE COUNSEL APPEARING FOR A PARTY OR PARTIES WHO SHARE THE SAME MAILING ADDRESS MAY ENTER THEIR APPEARANCES ON THE SAME FORM BY EACH SIGNING INDIVIDUALLY.

In accordance with 10th Cir. R. 46.1, the undersigned attorney(s) hereby appear(s) as counsel for
United States of America

[Party or Parties]

Plaintiff-Appellee in the subject case(s).

[Appellant/Petitioner or Appellee/Respondent]

Further, in accordance with 10th Cir. R. 46.1, the undersigned certify(ies) as follows: (Check one.)

On page 3 of this form is a completed certificate of interested parties and/or attorneys not otherwise disclosed who are now or have been interested in this litigation or any related proceeding. Specifically, counsel should not include in the certificate any attorney or party identified immediately above.

There are no such parties, or any such parties have already been disclosed to the court.

Steven W. Creager

Name of Counsel

s/ Steven W. Creager

Signature of Counsel

USAC, 210 Park Avenue, Suite 400

Oklahoma City, OK 73102

(405) 553-8700

Mailing Address and Telephone Number

steven.w.creager@usdoj.gov

E-Mail Address

Name of Counsel

Signature of Counsel

Mailing Address and Telephone Number

E-Mail Address

I hereby certify that a copy of this Entry of Appearance and Certificate of Interested Parties was served on
(please insert date) November 27, 2023 via (state method of service)
Certified U.S. Mail

Certified 8.8.2011

to Britt Jarriel Hammons, # 15819-064 USP Hazelton U.S. Penitentiary P.O. Box 2000

Bruceton Mills, WV 26525

(Signature) s/ Steven W. Creager

(Signature)

(See Fed. R. App. P. 25(b))

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

United States of America,
Plaintiff-Appellee.

v.

Case No. 23-6190

Britt Jarriel Hammons,
Defendant-Appellant.

Certificate of Interested Parties

The following are not direct parties in this appeal but do have some interest in or a relationship with the litigation or the outcome of the litigation. *See* 10th Cir. R. 46.1(D). In addition, attorneys not entering an appearance in this court but who have appeared for any party in prior trial or administrative proceedings, or in related proceedings, are noted below.

(Attach additional pages if necessary.)

APPENDIX B

FOR

DISTRICT COURT

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court Western District of Oklahoma		Docket or Case No.:
Name (under which you were convicted): <u>Britt Jarriel Hammons</u>		Cr-04-172-1-f
Place of Confinement: <u>USP Hazelton</u>	Prisoner No.:	<u>15819 064</u>
UNITED STATES OF AMERICA		
Movant (include name under which convicted) v. <u>Britt Jarriel Hammons</u>		

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

United States District Court Western District of Oklahoma, Downtown Oklahoma City

(b) Criminal docket or case number (if you know): Cr-04-172-1-f

2. (a) Date of the judgment of conviction (if you know): April 28 2005

(b) Date of sentencing: March 17 2005

3. Length of sentence: 180 Month

4. Nature of crime (all counts):

Felon in possession of a firearm 923(g)(1)

5. (a) What was your plea? (Check one)

(1) Not guilty

(2) Guilty

(3) Nolo contendere (no contest)

6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

N/A

6. If you went to trial, what kind of trial did you have? (Check one)

Jury

Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes

No

8. Did you appeal from the judgment of conviction? Yes No

9. If you did appeal, answer the following:

(a) Name of court: United States Court of Appeal for the tenth Circuit

(b) Docket or case number (if you know): 05-6168

(c) Result: Deny

(d) Date of result (if you know): November 1 2005

(e) Citation to the case (if you know): 133 Fed. Appx. 492; 206 U.S. App. L. Ex. 23692

(f) Grounds raised: The district court abuse its discretion in making an Armed Career Criminal Act sentence to run Consecutively to an State Sentence.

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If "Yes," answer the following:

(1) Docket or case number (if you know): 05-9001

(2) Result: Affirmed

(3) Date of result (if you know): 2/19/2006

(4) Citation to the case (if you know): _____

(5) Grounds raised: The district court abuse its discretion.

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: United States Court of Appeals for the tenth Circuit.

(2) Docket or case number (if you know): 16-6034

(3) Date of filing (if you know): Jan. 22 2016

(4) Nature of the proceeding: 2255 USC 18(5) Grounds raised: That the residual Clause under Johnson do not apply to Mr. Hammons No longer.

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No (7) Result: Deny(8) Date of result (if you know): May 8 2018

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: United States Court of Appeal for the tenth Circuit(2) Docket of case number (if you know): 18-6024(3) Date of filing (if you know): May 30 2018(4) Nature of the proceeding: 2253 U.S.C. 28(5) Grounds raised: That the decision in decamp apply to Mr. Hammons

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No (7) Result: N/A(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No (2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Mr. Hammens is Actually Innocent of his conviction & sentence
The federal Statute 922 (g)(1) is Unconstitutional. Stated by the Honorable Judy Beccas

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The federal Statute 922 (g)(1) is unconstitutional it can't pass the Boren Master.
The found-era legislatures did not strip felons of the right to bear arms simply
because of their status as felons. Nor have any parties introduced any
Historical evidence or any evidence that say otherwise that the founding era
intended to strip felon of their right to bear arms.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: The federal Statute just
got exposed as being Unconstitutional these fact are very new.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

N/A N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: This fact just came clear.

GROUND TWO: Mr. Hammons is Actually Innocent of his Conviction & Sentence
The federal Statute 922(q)(1) is Unconstitutional

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The United States District Attorney can't show or proof that the federal Statute 922(q)(1) is or was consistent with the Nations Historical tradition.

The federal firearms Act of 1938 did not permanently ban all felons from possessing firearm, but rather those convicted of crimes of violence, defined terms as Murder, Manslaughter, Rape, Kidnapping, burglary, house breaking and Certain terms of aggravated assault.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: *This issue just came up.*

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: *This issue just came up.*

GROUND THREE: Mr. Hammons is actually innocent of his conviction. The federal statute 922(g)(1) is in the greatest conflict with the Constitution.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):

The Second and Fourteenth amendment plain and straightforward text protect an individual (Mr. Hammons) right to keep and bear arms; In Heller and McDonald the Court holds that the Second and Fourteenth amendment do protect an individual right to keep and bear arms (However) The broad scope of 922(g)(1), which permanently disqualifies all felons from possessing firearms would conflict with the very core self-defense right that is embodied in the Second Amendment.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: This issue just came out

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state: N/A

Type of motion or petition:

N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(3) If you want to file a complaint under (c)(1) of "ex" notice: **NO**

YES **NO**

(1) If you want to file a complaint under (c)(1) of "ex" notice: **NO**

(c) Complaint Procedure:

(a) If you want to file a complaint under (c)(1) of "ex" notice: **NO**

YES **NO**

(1) If you want to file a complaint under (c)(1) of "ex" notice: **NO**

(b) Procedure to file a complaint:

Ques: If you want to file a complaint under (c)(1) of "ex" notice, what are the steps you should follow?

Ans: If you want to file a complaint under (c)(1) of "ex" notice, you should follow the following steps:

1. Identify the relevant laws and regulations that apply to your complaint.
2. Determine the appropriate authority or agency responsible for investigating your complaint.
3. File a written complaint with the authority or agency, providing all necessary documentation and evidence.
4. Wait for a response from the authority or agency, which may include an investigation and a decision on your complaint.
5. If you are not satisfied with the response, you may file an appeal or take further legal action as permitted by law.

Ques: If you want to file a complaint under (c)(1) of "ex" notice, what are the steps you should follow?

(1) If you want to file a complaint under (c)(1) of "ex" notice: **NO**

Ans: If you want to file a complaint under (c)(1) of "ex" notice, you should follow the following steps:

1. Identify the relevant laws and regulations that apply to your complaint.

2. Determine the appropriate authority or agency responsible for investigating your complaint.

3. File a written complaint with the authority or agency, providing all necessary documentation and evidence.

4. Wait for a response from the authority or agency, which may include an investigation and a decision on your complaint.

5. If you are not satisfied with the response, you may file an appeal or take further legal action as permitted by law.

6. If you are still not satisfied, you may file a complaint under (c)(1) of "ex" notice.

7. If you are still not satisfied, you may file a complaint under (c)(1) of "ex" notice.

Type of motion or petition: N/AName and location of the court where the motion or petition was filed: N/ADocket or case number (if you know): N/ADate of the court's decision: N/AResult (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No (6) If your answer to Question (c)(4) is "Yes," state: N/AName and location of the court where the appeal was filed: N/ADocket or case number (if you know): N/ADate of the court's decision: N/AResult (attach a copy of the court's opinion or order, if available): N/A(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: These issue just came to light.13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:All of the grounds here is N/A.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the
you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the
issues raised.

N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the
judgment you are challenging:

(a) At the preliminary hearing:

Defens office

(b) At the arraignment and plea:

Defens office

(c) At the trial:

Defens office

(d) At sentencing:

Defens office

(e) On appeal:

Defens office

(f) In any post-conviction proceeding:

Pro Se

(g) On appeal from any ruling against you in a post-conviction proceeding:

Pro Se

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court
and at the same time? Yes No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are
challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

(b) Give the date the other sentence was imposed:

N/A

(c) Give the length of the other sentence:

N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or
sentence to be served in the future? Yes No

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

The Supreme Court doctrine of movants procedural default is excused if he can show that he is actually innocent either of the crime of conviction or in the capital sentencing context of the sentence itself. See, *Dretke v. Haley*, 541 U.S. 386, 399, 124 S.Ct. 1847 158 L.W.(2d) 2d 1659 (2004) "9/50" See, *Lynn*, 365 F.3d at 1234.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.