

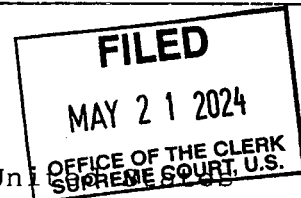
23-7532

IN THE  
SUPREME COURT OF THE UNITED STATES

ORIGINAL

IN RE: KEITH HAGER

On Petition for a Writ of Mandamus to The United States  
Court of Appeals for The Eighth Circuit  
23-2823

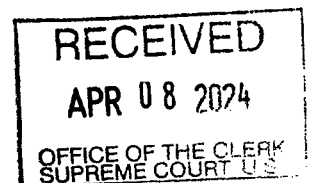


PETITION FOR A WRIT OF MANDAMUS

Submitted by and for:

Keith Hager

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PRO SE



## QUESTIONS PRESENTED

- I. WHETHER THIS COURT MUST ISSUE A WRIT OF MANDAMUS WHERE A FEDERAL COURT LACKED AUTHORITY TO SENTENCE PETITIONER UPON AN OFFENSE FOR WHICH CONGRESS DID NOT MAKE CRIMINAL AND FOR WHICH THE JUDGE DID NOT FIND A REQUISITE SET OF FACTS CONSTITUTING THE NECESSARY MENS REA FOR THE JUDGE TO PRONOUNCE A FINDING OF GUILT AND IMPOSE SENTENCE FOR?
  
- I. WHETHER THIS COURT MUST ISSUE A WRIT OF MANDAMUS TO ENFORCE THE THE PETITIONER'S RIGHT TO DUE PROCESS--TO BE FOUND GUILTY ONLY ON PROOF BEYOND A REASONABLE DOUBT WITH THE ESSENTIAL FACTS THAT SATISFY THE ELEMENTS OF THE OFFENSE--AND NOT ON A GUILTY PLEA THAT CONTAINED AN INSUFFICIENT FACTUAL BASIS AND THE CHARGING INSTRUMENT BEING A MULTIPLE OFFENSE FOR WHICH THERE IS NO EXISTING PENALTY?

## LIST OF PARTIES

All parties appear on the caption to the case on the cover page.

Mr. Hager is the Appellant below. The United States is the Appellee below

## DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

Pursuant to Supreme Court Rule 29.6, Mr. Keith Hager, makes the following disclosure:

- 1) Mr. Hager is not a subsidiary or affiliate of a publicly owned corporation
- 2) There is no publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome of this case.

By: Keith Hager

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## PETITION FOR WRIT OF MANDAMUS

Mr. Hager respectfully petitions the Supreme Court to issue a writ of mandamus to the Eighth Circuit to provide it's honest service, to fulfill it's duty, and to follow the mandates in *Clisby v. Jones*, 960 F.2d.

### JURISDICTIONAL STATEMENT

The Supreme Court of the United States has the original jurisdiction in any case where the Constitutional validity of an act Congress is question. In Mr. Hager's case he questions if 21 U.S.C. §841(a), 846, and 860, charged as a single count, is void for vagueness as applied to him.

Moreover, the Supreme Court has exclusive jurisdiction because Mr. Hager seeks a writ of mandamus to the Eighth Circuit, asking that the Court of Appeals be ordered to execute it's duty. Under 28 U.S.C. §1651(a), the remedy of mandamus against a lower federal court is a drastic and extraordinary remedy reserved for extraordinary causes. It is given that the writ's traditional use in aid of appellate jurisdiction, both at common law and in the federal courts, has been to confine the lower court against which mandamus is sought to a lawful exercise of the lower court's prescribed jurisdiction. Because of the Eighth Circuit's failure to exercise it's jurisdiction in Mr. Hager's case the effectiveness and validity of an act of Congress is left in question.

The Supreme Court has jurisdiction to issue a writ of mandamus to a circuit court of the United States Court of Appeals. That authority is vested in the Supreme Court by 28 U.S.C. §1651, and the Rules of the Supreme Court, Rule 20.

The Supreme Court has recognized that "where a district court persistently and without reason refuses to adjudicate a case properly before it, the Court of Appeals may issue 'in order that it may exercise the jurisdiction by law.'" *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 662-63, 98 S. Ct. 2552 57 L.Ed.2d 504 (1978) (quoting *Ins. Co. v. Comstock*, 83 U.S. 258, 16 Wall. 258, 270, 21 L.Ed.2d 943 (1873)). Indeed, this Court is not alone in recognizing that a writ may be appropriate to address a district court's undue delay in adjudicating a case properly before it, see *In re: Hood*, 135 F. app'x

709, 711 (5th Cir. 2005)(holding writ of mandamus was appropriate to address district court's seven month delay in entering judgement); Madden v. Myers, 102 F.3d 74, 79, (3rd. Cir. 1996)("an appellate court may issue a writ of mandamus on the ground that undue delay is tantamount to failure to exercise jurisdiction."); Johnson v. Rogers, 917 F.2d 1283, 1285 (10th Cir. 1990)(granting writ of mandamus where district court failed to rule on a petition for a writ of habeas which had been pending for fourteen months); McClellan v. Young, 421 F.2d 690, 691 (6th Cir. 1970)(granting writ of mandamus to address delay in ruling on pending petition for a writ of habeas). In Mr. Hager's case Judge Linda R. Reade has had ample time to issue an a valid judgement in Mr. Hager's case addressing all three of his issues in his first in time §2255 motion. The Circuit Court also has not addressed all three of his issues as well and ignored this Court's precedent as well in Clisby v. Jones. The Circuit Court also ignored that same precedent when it ordered the district court to determine the Certificate of Appealability issue, which the district court arbitrarily denied, and the circuit court upheld the district court's determination as to the Certificate of Appealability in violation of Clisby, supra.

Additionally, the Supreme Court of the United States is the only court in the country that has the authority to decide the question of whether 21 U.S.C. §841(a), 846, and 860, as applied to Mr. Hager, is unconstitutionally void for vagueness.

#### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. §1651 which states:

"(a) The Supreme Court and all courts established by an act of Congress may issue all writs necessary or appropriate in aid of these respective jurisdiction and agreeable to the usage and principle of law.  
(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

21 U.S.C. §841(b)(1)(C) which states:

"It shall be unlawful for any person knowingly or intentionally-(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance"

21 U.S.C. §860 which states:

"Any person who violates section 841(a)(1)... by distributing, possessing with intent to distribute, or manufacture a controlled substance in or on, or within 1,000 ft. of a [protected location]...is...subject to...twice the maximum punishment authorized by section 841(b) of this title..."

21 U.S.C. §846 which states:

"Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy."

#### STATEMENT OF THE CASE

On or about May 5, 2017, Mr. Hager submitted an instant motion seeking post-conviction relief pursuant to 28 U.S.C. §2255. His primary three claims-although poorly particularized because of his lawyers ignorance of the law-were based on three basic events: 1) Ineffective assistance of counsel due to his counsel, Michael Lahammer, having him plead guilty to a multiplicitous charge that does not exist as is; 2) Ineffective assistance of counsel, plea agreement was not made knowingly; and 3) Whether, due to ineffective assistance of counsel, Mr. Hager pled guilty under an inadequate factual basis

Mr. Hager raised three very specific grounds for relief which are particularized in his §225 and made a part of the corresponding appendix. App-1.

After almost six (6) years of delay and several requests for a ruling on the facts, and an amendment, the district court denied Mr. Hager requests for relief, under §2255, based on only two of three or Mr. Hager's three grounds for relief, see the court's memorandum and opinion issued by the district court on the 6th of July, 2017, and made a part of the corresponding appendix. App-2. It denied a Certificate of Appealability in the same order.

On or about July 31, 2017, Mr. Hager filed a notice of appeal from the district court denial

#### REASONS TO GRANT WRIT

This case represents an issue of national importance and very likely a huge step in Criminal Justice Reform. When a court acts outside of its authority to even hear a case, then the govt. with the help of ineffective counsel, gets an innocent man to plead guilty to a charge that is not even a federal offense, and blocks the door by



using the federal rules as a roadblock instead of a tool, a writ then lies to ensure that the fundamental right to petition the government for a redress of grievances through a writ of habeas corpus, it then no longer functions a court of equity but rather an inquisitorial court in which there are no avenues of relief; exactly what the federal Constitution forbids. The issue no longer becomes about the facts or law of a case, but rather the conduct of the tribunal. In this case, Judge Linda Reade, refusing to properly address an issue then ignoring any and all attempts to have it adjudicated knowing full well that a favorable determination will release an innocent man who has been, like many others, relying on fair and just rulings on procedures that are in place, and judges are sworn to uphold and execute faithfully without having to be forced to do so by a higher court.

Sadly, this is not the case. Across the country thousands of inmates spend an average of Sixty (60) months waiting for a judge to follow the letter of the law regardless of their subjective predispositions of a particular party. The president himself is not above the law and he to swore an oath to uphold the constitutional rights of Americans by promising equal access, fair and speedy resolutions, and fair play and treatment at a Constitutional level. When a judge uses her authority to block rights promised and unalienable to U.S. Citizens, they are using the law, not following it, reducing the Constitution to a mere peice of paper, and their oath of office to a fraudulent statment, and are given a carte blanch to violate the laws in place to maintain their abusive positions. Allowing a writ would give the American public the confidence in their elected officials that they will follow the law regardless of thier personal biases to get in the way of our judicial system, and provide a bright line rule of procedrual interpretation so desperatley needed by those innocent Americans who find themselves stuck waiting on a decision that will never come due to a judges artifices cloaked in the color of authority of the law. It will also provide a bright line rule for drawing the line between was is allowable and what's not when dealing with the federal govt.'s authority to enter or entertain a case or controversy when it involves a state crime and citizen.

Additionally, the Supreme Court of the United States is the only court in the country that has the authority to compel a federal judge to

of a protected location), Magistrate Scoles informed Hager that the government had to prove Five (5) facts; (1) beginning January 2009 and continuing through 2011, in the Northern District of Iowa, two or more persons did reach an agreement to distribute herion; (2) that Hager knowingly and intelligently joined that agreement; (3) that Hager knew that the objective of the agreement joined was to distribute herion; (4) that as part of the conspiracy, Hager was involved in the distribution of 100 grams or more of a mixture containing herion; (5) that at least some of Hager's actions occurred within 1000 feet of a protected location. Id.

7. Establishing a factual basis for the plea, the government offered into evidence Paragraphs 8A and 8B of Hager's written plea agreement. Paragraph 8A stating: "Between about 2009 and at least October 2012, defendant and other reached an agreement or came to an understanding to distribute 100 grams or more of a mixture or substance containing a detectable amount of herion. Defendant and his co-conspirators distributed herion within 100 feet of real property comprising a school, specifically polk elementary School and Coe College, located a 1220 First Avenue N.E., both in Cedar Rapids, Iowa. Defendant voluntarily and intentionally joined in the understanding or agreement to distribute herion either at the time it was first entered or at some later time while it was still in effect. At the time the defendant joined the agreement, he knew the purpose of the agreement was to distribute heroin." Paragraph 8B stating: "On or about June 1, 2011, a confidential source working with the Cedar Rapids Drug Administration (DEA) Task Force made a call to defendant to arrange a meeting to purchase \$600.00 worth of heroin from the Defendant at Lindale Mall in Cedar Rapids. The CS met with defendant in defendant's vehicle in the parking lot of Lindale Mall, where defendant knowingly and intelligently distributed approximately 5.2 grams of a mixture or substance containing a detectable amount of heroin to the CS." Id.

8. Hager offered his plea of guilty under this evidence and explanation of the elements. Id.

9. Defense counsel, Michael Lahammer lodged no objection. Id.

10. By memorandum order several days later, the lower court accepted Hager's guilty plea. Id.