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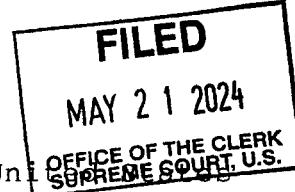
ORIGINAL

SUPREME COURT OF THE UNITED STATES

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

Keith Hager  
AO#  
U.S.P. Terre Haute  
P.O. Box 33  
Terre Haute, IN 47808  
PETITIONER  
PRO SE

RECEIVED

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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 CONSITITUTING 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 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 MULTPLICITOUS 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 or failre 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 unconstitutional 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 principles 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 statement, 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 procedural 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 what 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

perform its duties under the Constitution.

Finally, Mr. Hager has been unlawfully detained for over Ten (10) years because of this one single reoccurring incident with judge Reade. The single most important factor in his case is the inability of the judge to uphold her oath of office and give Mr. Hager the review and determination that he is entitled to under the laws of this country. On or about May 5, 2017, Mr. Hager filed a motion for relief under 28 U.S.C. §2255 raising Three (3) grounds for relief. Ground One (1) specifically states:

GROUND ONE

Whether, due to ineffective assistance of counsel, Applicant Hager suffered conviction and an Eighty-year sentence for a non-existent offense, (namely, violating Title 21 U.S.C. 860 by conspiring to violate 841(a)(1) within 1000 ft. of a protected location)

(a) Supporting facts:

Mr. Hager was deprived of counsel at three critical stages of his criminal case. Because of Counsel's errors Mr. Hager pled guilty to an offense that did not exist by committing a crime that he did not do.

1. On or about May 2013, Hager suffered an indictment for, inter alia, violating Title 21 U.S.C. §860 by conspiring to violate section 841(a)(1) within 1000 feet of a protected location. See indictment, United States of America v. Keith Hager, CR-11-0143.

2. Pursuant to a plea agreement, Hager pled guilty to violating §860 by conspiring to violate section §841(a)(1) within 1000 feet of a protected location. Id.

3. Magistrate Judge Jon Stuart Scoles conducted Hager's plea proceeding. see Plea Colloquy.

4. Magistrate Scoles informed Hager that the plea agreement offered consisted of a guilty plea to violating §860 by conspiring to violate §841(a)(1) within 1000 feet of a protected location. Id.

5. Magistrate Scoles informed Hager that this charge carried a 5 year mandatory minimum and a maximum of 80 years; an advisory guidelines range of 151-188 months, (according to defense counsel); and an advisory guideline range of 210-262 months (according to the government).Id.

6. To be convicted under the charge offered, (i.e., violating §860 by conspiring to violate section 841(a)(1) within a 1000 feet

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.

11. For the conduct convicted, the lower court sentenced Hager to 80 years imprisonment, followed by an 8 year term of supervised release.

12. Defense counsel lodged no objection.

13. Hager remains serving the 80 year sentence imposed.

14. Hager filed a timely section 2255 motion arguing that:

(a) conspiring to violate 21 U.S.C. §841(a)(1) or 856 by distributing, possessing, or producing with intent to distribute, or manufacturing 100 grams of more of a mixture of containing herion within 1000 feet of real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college, or university, or a playground or housing facility owned by a public housing authority is not an offense established by Congress; (b) because, as part of his plea, he was not required to acknowledge or admit that he knew of and intentionally joined an agreement which had as its objective distributing 100 grams or more of herion within 1000 feet of a protected location, his guilty plea was not knowing, intelligent, and voluntary; and (c) because the record does not establish that he knew of and intentionally joined an agreement which had as its objective distributing 100 grams or more of herion within 1000 feet of a protected location, and insufficient factual basis existed for a charge of conspiracy requiring that objective. See Hager's Title 28 U.S.C. §2255; affidavit in support.

15. In support of his request for relief, Hager submitted a duly sworn affidavit attesting that: (a) informed that 860 attached only to violations of sections 841(a)(1) and 856, he would not have pled guilty; and (b) informed that conspiracy to distribute 100 grams or more of herion within 1000 feet of a protected location required knowledge of, and an agreement, to join, a conspiracy which had that three-fold objective, (i.e., (1) purpose to sell herion; (2) in an amount of exceeding 100 grams; (3) within 100 feet of a protected location), he would not have pled guilty and would have proceeded to trial. Id.

16. The lower court denied relief reasoning that: (a) section 860 criminalizes, inter alia, conspiracies to violate §841(a)(1) within 1000 feet of a protected location; and (b) Magistrate Scoles' plea colloquy was adequate to ensure a knowing, intelligent, and voluntary plea. see Memorandum and Order.

17. As authorized by Fed.R.Civ.P. 59(e), a timely motion to alter and amend judgement followed. see Hager's Motion to Alter and Amend judgement.

18. On June 1, 2020, the lower court reaffirmed. See Memorandum Denial Order.

19. In compliance with Title 28 U.S.C. §2253(c), a timely application for a Certificate of Appealability was filed and denied. Hager filed his grounds of relief pursuant to 28 U.S.C. §2255. In doing so he invoked the intentions of Congress that were particularized in allowing the habeas statute to use the Federal Rules of Civil Procedure to the extent necessary. This encompasses Rule 52 and 54, thus Judge Reade's "opinion" does not contain a statement of facts applied to the law, a judgement in accordance with both above stated rules. Hager is thus being deprived of a judicial rule in accordance with due process and the rules of habeas corpus.

The District court disregarded the intent of Congress when it mis-characterized his issues of being convicted of a non existant offense and then dismissed it without the proper analysis needed to ascertain accuracy in her ruling, violating Clisby v. Jones, 960 F.2d 925 (11th Cir. 1992), when she dismissed his request for a certificate of appealability, still refusing to do a proper adjudication, whereby depriving Hager of any meaningful way of attacking her legal theory or supporting evidence. This is the issue that she is refusing to address. She then summarily refused to do any diligence on any other motions Hager filed after that. Judge Reade is relying on her own interpretation of Title 21 and protected locations despite there being an overwhelming number of cases decided by the Supreme Court and the Eighth Circuit regarding the punishment of 860 in relation to it being a substantive charge and 841(a) being used only for a description and not a sentencing enhancement when charged with 860.

One of the most concerning civil rights issues, of our modern time, is the mass incarceration of American citizens. According to a recent report-issued by the National Association of Criminal Defense Lawyers, entitled The Trial Penalty- the most aggravating elements of the Mass Incarceration issue is that a number of innocent people, like Mr. Hager are coerced to plead guilty every day. The conviction of the innocent is propagated by the government's broad charging discretion, and is

aggravated by inadequate defense attorneys who virtually eliminate the option of taking a case to trial. On a more human level, for some defense lawyers, there cannot be a more heart-wrenching task than to explain to a defendant, who very likely may be innocent, that they must seriously consider pleading guilty or risk the absolute devastation if the remainder of his or her life, that includes the impact to their families. To further perpetuate Mass-incarceration, and pertinent to this petition, the lower courts around the country, including the Thirteen (13) Circuits of the court of appeals-delay and deny and/or ignore nearly all meaningful Constitutional claims that warrant post conviction relief.

In the Case of United States v. Keith Hager, CR-11-143-LRR, of the Northern District of Iowa, his counsel, Michael Lahammer, failed to object to the erroneous charging instrument, that resulted in a sentence that shocks the consciousness. Motion after motion judge Reade continually denies Hager of any meaningful review despite her not having the authority to enter any judgement in the case to begin with. The fact that Hager remains convicted and in prison despite his many lawful attempts to obtain relief demonstrates that judge Reade knowingly and is willfully conspiring to upset the judicial system in this country by hiding behind her incorrect application of the law as it pertains to Hager's case. Mr. Hager has even went to the extent of hiring lawyers who represent federal defendant successfully and judge reade still denies Mr. Hager access to his statutory rights under 28 U.S.C. §2255. It's no wonder judge Reade finds herself the subject of news articles calling her ethics and statements into question.

Hager's pleadings go back and forth between the Circuit Court and judge Reade, and have been for the last ten (10) years with it being denied without adequate and lawful determination of the facts as they relate to the law. Mr. Hager now petitions The Supreme Court of the United States to intervene by issuing a writ of mandamus, to ensure and protect the rights of all American citizens from deprived by the district or any court in this country who do not have the authority to expand federal jurisdiction where it is not present or determined to exist. The court in issuing it's favorable determination will provide the Constitution it's full authority in it's duty to protect and guard

against all over reaching attempts of usurpation of the federal government that are without authority to do so once and for all. This is the reason why Congress made habeas available, to correct manifest miscarriage of justices like this one were the Constitutional violations are causing the incarceration of American citizens at the expense of American tax payers.

A. HAGER LACKED THE MENS REA NECESSARY TO PLEAD GUILTY TO A SCHOOL ZONE VIOLATION AS HE WAS DID NOT ADMIT TO SELLING NEAR A SCHOOL AND THE COURT DID NOT DISTINGUISH HOW THE SCHOOL ZONE VIOLATION EVEN OCCURED.

During Hager's change of plea hearing, two different views of his factual basis came up. One involved people who were allegedly selling in some apartments near a school. Hager denied any involvement with these people, and one of them stated that Hager was not present during the time alleged in the indictment. The other incident involved a person named Lorzelle Turner, who sold an unspecified amount of drugs near Danilles Park. Magistrate Scoles did not rule on which incident he was accepting the guilty plea on, he simply accepted the plea. Hager's counsel, Michael Lahammer also commented on this as well and objected to it, and again the Magistrate made no specific finding to rest the school zone violation on. The record is clear however, that Hager himself did not sell near a school.

Being that a clear and concise factual basis provides the appeals court with a lawful basis to rest their jurisdiction upon. If there is none, then there can be no grant of authority to impose a sentence or conviction. It is axiomatic that a court have authority to even hear a matter before it imposes any kind of decision. Being that the court did not substantiate it's basis for conviction during the change of plea colloquy, it had no authority to then proceed on a charge that does not exist as listed on Hager's indictment, and was void ab initio. Every single subsequent act done by the court was done outside it's authority to do so and clearly the court lacked the jurisdiction

The court can not legislate from the bench. It can not expand it's jurisdiction using clever legal theories that have no basis in reality. It also cannot circumvent the rules of the court by construing and constructing it's own interpretation or ignorance of the law. Here, it is abundantly clear that Magistrate Scoles had no authority to accept the plea as he did not even ascertain whether the charge was

valid. A quick glance at the indictment would have shown that the pleading was in fact defunct as it was multiplicitous. Any lawyer would have spotted this, and a judge would have most definitely saw it and immediately would have ordered it corrected by the government. Hager's change of plea hearing was nothing more than a fraud. It stands to reason that a Court that functions this way inherently thwarts any check on the government, preserves due process rights of the accused, and assures that the American people can rely on their system of judicial process can be relied upon to produce sound lawful convictions based upon crimes that actually occurred for under laws that actually exist. 21 U.S.C. §846, 841(a)(1), (b)(1)(B), 860 is not a valid law, it never has been, and could never be. All of these charges are substantive charges.

The Court below held that Hager's indictment contained a lawful charge and that 860 can be used as a "sentencing enhancer" for violations of 821(a)(1) in direct contradiction of Circuit and Supreme Court case law. The court stated that: "[T]he movant's understanding of the law as it relates to 21 U.S.C. §860 provides no basis to grant relief. see United States v. Euans, 285 F.3d 656, 661-62 (8th Cir. 2002)(explaining that, because "the object of the criminal conspiracy was the distribution of [drugs] within 1,000 feet of a protected location, which is a violation of 21 U.S.C. §§841 and 860[,...] defendant is subject to the same penalties for a conviction of 21 U.S.C. §846 as those prescribed for 21 U.S.C. §860."). Her legal arguments are circular in nature, as she posits that, a valid guilty plea foreclosed any attack on the conviction, yet conceded that on the finding that the court had no power to enter the conviction or impose the sentence, and uses Euans, *supra*, as her basis to deny the 2255.

It should be noted that the defendant in Euans, *supra* was not charged with a multiplicitous count as Hager was. The key difference between Hager and Euans, *supra* is that her conspiracy did involve a conspiracy to distribute narcotics within 1,000 ft of a school zone, Hager and she admitted to it. Hager did not admit to selling near a protected location, nor was he charged with a conspiracy to do so, he pled guilty to a generic conspiracy and 860 was used as a sentencing enhancer, not the basis of conviction.

The Magistrate in this case, Magistrate Jon Scoles adopt, without recitation, paragraphs 8A & B of the Second Amended Proposed Agreement. Paragraph 8A states: "Between about 2009 and at least October 2012, defendant and others 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 1,000 ft of real property comprising a school, specifically Polk Elementary, located at 1500 B Avenue, and Coe Collage, located at 1220 First Avenue NE, both in Cedar Rapids, Iowa. Defendant voluntarily and intentionally joined the in the understanding or agreement to distribute herion at the time it was first entered or at some later time while it was still in effect. At the time the defendant joined in the agreement, he knew the purpose of the agreement was to sell herion". Id at Paragraph 8A. It says nothing about a school zone or protected location or person.

Therefore, the 860 and 846 are baseless and have no legal standing to be used as a jurisdictional basis for this conviction and renders teh court without jurisdiction, and exceeding it's lawfull authority to detain Hager. Therefore the Court's misapplication of a the drug offenses 841, 846, and 860 are incorrect as a matter of law and need to be vacated. Without a sufficient factual basis the charge is a substantial miscarraige of justice ab initio.

B. WHETHER THIS COURT MUST ISSUE A WRIT OF MANDAMUS TO ENFORCE THE PETITIONERS RIGHT TO DUE PROCESS--TO BE FOUND GUILTY ONLY ON PROOF BEYOND A REASÓNABLE DOUBT WITH THE ESSENTIAL FACTS THAT SATISFY THE ELEMENTS OF THE OFFENSE--AND NOT A GUILTY PLEA THAT CONTIANED AN INSUFFICIENT FACTUAL BASIS AND THE CHARGING INTSTRUMENT BEING A MULTPLICITOUS OFFENSE FOR WHICH THERE IS NO EXISTING PENALTY.

The writ of Mandamus has been traditionally been used and issued "to confine an inferior court to a lawful exercise of it's proscribed jurisdiction or to compel it to exercise it's authority when it is it's duty to do so." Will v. United States, 389 U.S. 90,94 (1967). "[W]hen a court has no judicial power to do what it purports to do--when it's action is not a mere error but usurpation of power--the situation falls precisely within" the parameters of madamus and the "inquir[y]"

turns upon "whether district courts are empowered to enter the order under attack." DeBeers Consolidated Mines v. United States, 325 U.S. 212, 217 (1945). Where the court is "without jurisdiction" of a primary act it is "without authority" of a subsequent act premised thereupon and mandamus will issue to reverse both acts. Id., 325 U.S. at 222-223/ Cf. United States Catholic Conference v. Abortion Rights Mobilization, Inc., 487 U.S. 72, 76-77 (1988). (Where "district court does not have subject-matter jurisdiction over underlying action process" issued thereupon "is void and an order [punishing] " thereupon "must be reversed"); Ex Parte Fisk, 113 U.S. 713, 718 (1884) (an "order" issued by court "without jurisdiction, is void; and the order punishing [thereupon] is equally void").

After repeated attempts to get the district court to demonstrate how the court has subject matter-jurisdiction over Hager's case he then moved to the Circuit Court to have them make the district court prove jurisdiction, both court have failed to do so by denying and mischaracterizing Hager's claims and therefore a writ must issue to establish jurisdiction.

#### CONCLUSION

Petitioner requests that a peremptory writ of mandamus issue to Linda R. Reade, United States District Judge for the Northern District of Iowa, ordering him to:

- (1) Recall his order denying Hager's 2255 in Case No. 23-2823,
- (2) Recuse herself from the bench on his case,
- (3) Vacate the illegal judgments and sentences imposed upon Hager, discharge Petitioner from said accusations and enter a order of dismissal on both counts for lack of jurisdiction,

The order should compel the District Court to enter it's judgments and discharges nunc pro tunc to reduce the personal injury already caused by it's unauthorized action and restore the status of the parties to that which they were entitled at the time the unlawful and non-jurisdictional acts occurred. Garfield v. United States-ex rel. Goldsby, 211 U.S. 249, 261-262 (1908) (actual or threatened personal injury by action "ultra vires, and beyond the scope of...authority" mandamus will issue to "restore the status of the parties").

Executed on this 24th Day of March 2024,

Respectfully submitted,

Keith Hager

Keith Hager-45486-424  
PETITIONER-PRO SE  
P.O. BOX 33  
Terre Haute, IN 47808