APPENDIX

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED FEBRUARY 26, 2024

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-2080

PETER K. STERN,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court for the Western District of North Carolina, at Asheville. Martin K. Reidinger, Chief District Judge. (1:23-cv-00185-MR-WCM)

Submitted: February 22, 2024
Decided: February 26, 2024

Before NIEMEYER and HEYTENS, Circuit Judges, and KEENAN, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Peter K. Stern, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

Appendix A

PER CURIAM:

Peter K. Stern appeals the district court's order construing his "Complaint and Petition for Declaratory Judgment" as a petition for a writ of error coram nobis and denying coram nobis relief. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order. *Stern v. United States*, No. 1:23-cv-00185-MR-WCM (W.D.N.C. Sept. 18, 2023). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED MAY 17, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-2080
(1:23-cv-00185-MR-WCM)

PETER K. STERN

Petitioner-Appellant

v.

UNITED STATES OF AMERICA

Respondent-Appellee

Filed: May 17, 2024

ORDER

Upon consideration of submissions relative to the motion to recall the mandate, the court denies the motion.

For the Court--By Direction

/s/ Nwamaka Anowi, Clerk

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA, ASHEVILLE DIVISION, FILED AUGUST 7, 2023

THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:23-cv-00185-MR-WCM

PETER K. STERN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ORDER

THIS MATTER is before the Court on the Petitioner's "Complaint and Petition for Declaratory Judgment" [Doc. 1].

On July 20, 2000, the Petitioner Peter K. Stern was found guilty following a jury trial of the following offenses: one count of conspiracy to submit false claims to the IRS, and aiding and abetting the same, in violation of 18 U.S.C. §§ 286 and 2; one count of obstruction of IRS agents, in violation of 26 U.S.C. § 7212(a); one count of bank fraud, in violation of 18 U.S.C. § 1344; two counts of threatening federal judges, in violation of 18 U.S.C. § 115;

and two counts of using the mail to communicate threats, in violation of 18 U.S.C. § 876. [Crim. Case No. 2:99-cr-00081-MR-1 ("CR"), Docs. 136, 173]. He was sentenced in January 2002 to a total of 151 months' imprisonment. [CR Doc. 173]. The Fourth Circuit affirmed his convictions and sentence. *United States v. Stern*, 96 F. App'x 855 (4th Cir.). The Petitioner then filed a petition for writ of certiorari in the Supreme Court. On January 24, 2005, the Supreme Court granted the petition, vacated the Fourth Circuit's judgment, and remanded for further consideration in light of *United States v. Booker*, 125 S.Ct. 738 (2005). *Stern v. United States*, 543 U.S. 1097 (2005). On remand, the Fourth Circuit affirmed the Petitioner's convictions, vacated his sentence, and remanded to this Court for resentencing consistent with *Booker*. *United States v. Stern*, 164 F. App'x 306 (4th Cir. 2006). This Court, with the Honorable Lacy H. Thornburg presiding, resentenced the Petitioner to a total term of 124 months' imprisonment. [CR Doc. 194]. The Petitioner appealed, but he subsequently moved to dismiss his appeal, which was granted on May 4, 2006. [CR Doc. 199].

In October 2006, the Petitioner filed a motion to vacate pursuant to 28 U.S.C. § 2255. [CR Doc. 204]. However, the Petitioner subsequently filed a voluntary dismissal of that petition [CR Doc. 225], and on June 18, 2007, Judge Thornburg dismissed his motion to vacate [CR Doc. 229]. In 2011, the Petitioner moved to reinstate his motion to vacate, which this Court[1] denied. [Doc. 234].

1. Upon Judge Thornburg's retirement in 2009, this matter was reassigned to the undersigned.

Appendix C

The Petitioner now returns to this Court, seeking a declaratory judgment that his criminal convictions "must be overturned, reversed in their entirety, with prejudice, vitiated ab initio, and the record of [his] conviction(s) be expunged in their entirety." [Doc. 1 at 11-12].

By the present action, the Petitioner seeks to challenge the legality of his convictions. Therefore, this so-called "Complaint and Petition for Declaratory Judgment" is more in the nature of a collateral attack to his conviction and sentence. *See* 28 U.S.C. § 2255(a) (stating that federal prisoner may seek to vacate sentence "imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, . . . or is otherwise subject to collateral attack"). It therefore appears that this action is more properly construed as an action pursuant to 28 U.S.C. § 2255 to vacate, set aside or correct his conviction and sentence. The Court will thus provide the Petitioner with notice, pursuant to *Castro v. United States*, 540 U.S. 375 (2003), that it intends to recharacterize this action as an attempt to file a motion pursuant to 28 U.S.C. § 2255. The Petitioner shall be provided an opportunity to advise the Court whether he agrees or disagrees with this recharacterization of the motion.

Before making this decision, the Petitioner should consider that if the Court construes this motion as one brought pursuant to § 2255, it will be his first § 2255 petition,[2] which will mean that before he can thereafter

2. As noted *supra*, Stern has already filed a motion to vacate, but that motion was dismissed voluntarily prior to any response from the Government and thus is not counted as his "first" motion

file a second or successive § 2255 petition, the Petitioner must receive certification from the United States Court of Appeals for the Fourth Circuit. Moreover, in determining whether the Petitioner agrees or disagrees with this recharacterization, he should consider that the law imposes a one-year statute of limitations on the right to bring a motion pursuant to § 2255. This one-year period begins to run at 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 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.

28 U.S.C. § 2255(f).

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to vacate. *See Jackson v. United States*, 245 F. App'x 258, 259 (4th Cir. 2007) ("A voluntary dismissal acts [as] if no action was brought at all.").

Here, the Petitioner's conviction became final for purposes of Section 2255(f) in 2006, following the dismissal of his appeal. *See United States v. Oliver*, 878 F.3d 120, 125 (4th Cir. 2017) ("A criminal conviction becomes final at the end of the appellate process. . . ."). As such, the motion is untimely under § 2255(f)(1) and is subject to dismissal on that ground unless another subsection of § 2255(f) applies or the Petitioner can demonstrate that equitable tolling should apply.

To be entitled to equitable tolling, "an otherwise time-barred petitioner must present '(1) extraordinary circumstances, (2) beyond his control or external to his own conduct, (3) that prevented him from filing on time.'" *United States v. Sosa*, 364 F.3d 507, 512 (4th Cir. 2004) (quoting *Rouse v. Lee*, 339 F.3d 238, 246 (4th Cir. 2003)). A petitioner must show he has been follow the form for § 2255 motions which has been approved for use in this judicial district. *See* Rule 2(c), Rules Governing Section 2255 Proceedings for the United States District Courts. Additionally, the Petitioner will be required to address in his amended and restated motion to vacate why his motion should not be dismissed as untimely, including any reasons why equitable tolling should apply. *See Hill v. Braxton*, 277 F.3d 701, 706 (4th Cir. 2002).

IT IS, THEREFORE, ORDERED that the Petitioner may comply with the provisions of this Order by written filing on or before thirty (30) days from service of this Order.

Appendix C

The Clerk of Court is respectfully directed to provide the Petitioner the appropriate § 2255 motion form along with a copy of this Order.

IT IS SO ORDERED.

Signed: August 7, 2023

/s/ Martin Reidinger

Martin Reidinger
Chief United States District Judge

APPENDIX D — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA, ASHEVILLE DIVISION, FILED SEPTEMBER 18, 2023

THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CRIMINAL CASE NO. 1:23-cv-00185-MR-WCM

PETER K. STERN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ORDER

THIS MATTER is before the Court on the Petitioner's "Response to the Court's 08/07/2023 Order" [Doc. 4].

On August July 20, 2023, the Petitioner Peter K. Stern filed a "Complaint and Petition for Declaratory Judgment" purporting to seek declaratory relief pursuant to 28 U.S.C. § 2201 and seeking a declaratory judgment that his criminal convictions "must be overturned, reversed in their entirety, with prejudice, vitiated ab initio, and the record of [his] conviction(s) be expunged in their entirety." [Doc. 1 at 11-12].

Appendix D

On August 7, 2023, the Court entered an Order noting that it appeared that the Petitioner was attempting to challenge the legality of his prior convictions pursuant to 28 U.S.C. § 2255. [Doc. 3]. In his Response to the petitioners who are no longer "in custody" and cannot seek habeas relief under § 2255 or § 2241. *United States v. Morgan*, 346 U.S. 502, 506 n.4 (1954). The writ of error coram nobis is a "remedy of last resort," *United States v. Akinsade*, 686 F.3d 248, 252 (4th Cir. 2012), and is narrowly limited to "'extraordinary' cases presenting circumstances compelling its use 'to achieve justice,'" *United States v. Denedo*, 556 U.S. 904, 911 (2009) (quoting *Morgan*, 346 U.S. at 511).

This is the second coram nobis petition that the Petitioner has filed seeking to vacate his prior convictions. The Petitioner first sought coram nobis relief in 2016. [*See Stern v. United States*, No. 1:16-cv-00329-MR, Doc. 1]. The Court denied the Petitioner relief. [*Id.*, Doc. 4]. The Court of Appeals affirmed that decision, *Stern v. United States*, 693 F. App'x 196 (4th Cir. 2017), and the United States Supreme Court denied certiorari, *Stern v. United States*, 138 S.Ct. 716 (2018).

For the reasons stated in the Court's prior Order [*Stern v. United States*, No. 1:16-cv-00329-MR, Doc. 4] denying his first petition for coram nobis relief, the Petitioner's present Petition is also denied.

The Court finds that the Petitioner has not made a substantial showing of a denial of a constitutional right. *See generally* 28 U.S.C. § 2253(c)(2);

APPENDIX E — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED APRIL 23, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-2080
(1:23-cv-00185-MR-WCM)

PETER K. STERN

Petitioner-Appellant

v.

UNITED STATES OF AMERICA

Respondent-Appellee

Filed: April 23, 2024

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Nwamaka Anowi, Clerk

APPENDIX F — HEARING BEFORE THE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS, UNITED STATES SENATE, 104 CONGRESS, 2ND SESSION, ON S. 1009, DATED JULY 17, 1996

THE FINANCIAL INSTRUMENTS ANTI-FRAUD ACT S. 1009

HEARING

BEFORE THE

COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

S. 1009

TO PROHIBIT THE FRAUDULENT PRODUCTION, SALE, TRANSPORTATION, OR POSSESSION OF FICTITIOUS ITEMS PURPORTING TO BE VALID FINANCIAL INSTRUMENTS OF THE UNITED STATES, FOREIGN GOVERNMENTS, STATES, POLITICAL SUBDIVISIONS, OR PRIVATE ORGANIZATIONS, TO INCREASE THE PENALTIES FOR COUNTERFEITING VIOLATIONS, AND FOR OTHER PURPOSES

JULY 17, 1996

The Committee met at 10:10 a.m., in room SD-538 of the Dirksen Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

Appendix F

OPENING STATEMENT OF SENATOR ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

The Committee meets today to examine the use of fictitious financial instruments by criminal organizations and anti-government groups.

Over the past several years, innovative criminals have exploited a loophole in the Federal anti-counterfeiting laws. These laws do not specifically criminalize the production or passing of a phony check, bond, or security if the check, bond, or security is not a copy of an actual financial instrument. Criminals are now making and passing completely fictitious financial instruments. These instruments may involve, for example, a bank, an asset, or a security that does not even exist. We have several examples of these instruments here today. Let's look at example number one. We have it posted up top there. It says, "U.S. Dollar Bond."

> Senator Bond, U.S. Dollar Bond. He is the real thing.
> [Laughter.]
> Senator BOND. I am not a loophole.
> [Laughter.]
> The CHAIRMAN. He is not a loophole.
> [Laughter.]

Take a look at this, though. Not long ago, a criminal attempted to pass this U.S. dollar bond with a face value of $5 million. Federal prosecutors declined to take the

case because this note is not technically a counterfeit instrument. It is not a copy of an existing instrument. Fortunately, the fraud was detected before anyone took a loss. Some of these phony instruments are for enormous sums of money.

Let's look at example number two. This is a "Georgian Imex International Bank Letter of Credit" with a face value of $500 million. There is no Georgian Imex International Bank, and that's what makes this something that cannot be prosecuted. They will create a bank. They will create a phony, a fictitious payee.

* * *

APPENDIX G — LANDERS' AFFIDAVIT, DATED JUNE 7, 2006

I Russell Dean Landers, hereinafter at all times relevant "Affiant", state that the facts herein are of first hand personal knowledge, true, correct, complete, certain, not misleading, and given unedr the penalty of perjury pursuant to the laws of the United States. 28 USC§1746.

1. The Affiant is familiar with the genesis and events surrounding Government Exhibit 11-1, in Case 99-cr-0081, in the United States District Court for the Western District of North Carolina, represented by the two attached pages.

2. The Affiant states that he and his wife, Dana Dudley, were instrumental in assisting John Anthony Norris in Case # 95-5117, CR-93-30, and 5-92-CR-40-2-V in the time frame of late 1995 through 1996 in the U.S. District Court in Charlotte, North Carolina.

3. The Affiant states that he and his wife, Dana Dudley, authored a number of documents served and filed into those cases, and attended hearings at the Charlottte Federal Courthouse whereat John Anthony Norris's case was heard.

4. The Affiant states that he and his wife, Dana Dudley, authored Exhibit 11-1, and a record of that should be maintained by the government in the form of evidence and data taken from the Affiant's computers seized by the FBI in Brussett, Montana in 1996. Data files with those documents were resident on our hard drives and tables in the Government's exhibit lists during the trial of the "Montana Freemen" in Billings, Montana.

Appendix G

5. The Affiant states that he and his wife, Dana Dudley, authored Government Exhibit 11-1, brought it to the Franklin, North Carolina APCH meeting in December of 1995, and after the meeting, took the document home with them to their house in Four Oaks, North Carolina, copied the document, placed it in an envelope, and mailed it from the U.S. Post Office in nearby Erwin, North Carolina.

6. The Affiant states unequivocally, and with absolute certainty that Peter Kay Stern had nothing to do with the document other than placing his signature thereon.

Further the Affiant says not.

Done and dated this the 7th day of June, 2006.

/s/ Russell Dean Landers
Russell dean Landers

APPENDIX H — NATIONAL ARCHIVES DOCUMENT, DATED MAY 15, 1994

NATIONAL ARCHIVES

Washington, DC 20408

May 15, 1994

THE TRUTH IS IN THE FEDERAL REGISTER

Richard Durjak
5506 West 22nd Place
Cicero, IL 60650

Dear Mr. Durjak:

The Director of the Federal Register has asked me to respond to your inquiry. You have asked whether Internal Revenue Service provisions codified at 25 U.S.C. 6020, 6201, 6203, 6301, 6303, 6321, 6331 through 6343, 6601, 6602, 6651, 6701, and 7207 have been processed or included in 26 CFR part 1.

The Parallel Table of Authorities and Rules, a finding aid compiled and published by the Office of the Federal Register (OFR) as a part of the *CFR Index*, indicates that implementing regulations for the sections cited above have been published in various parts of title 27 of the *Code of Federal Regulations* (CFR). *There are no corresponding entries for title 26.*

However, the Parallel Table is only an extract of authority citations from the CFR data base and cannot be considered a comprehensive key to the statutory basis of all regulations. An agency may have additional authority for regulations that are not listed separately in authority citations, or is carried within the text of CFR sections.

Appendix H

Citations in regulatory text generally do not appear as entries in the Parallel Table.

Since there are 12 volumes that make up part 1 of title 26 of the CFR, it would require extensive research to answer your question with certainty. Commercial computer based services are better equipped to perform this type of research. In any case, the OFR has neither the resources nor the authority to perform the research requested, since to do so would require us to make substantive interpretations as to whether certain tax statutes have any association with the specified set of regulations (see 1 CFR 3.1 enclosed).

Your second question refers to IRS procedures for incorporating material by reference in the *Federal Register*. The incorporation by reference process is narrowly defined by the provisions of 5 U.S.C. 557(a) and 1 CFR Part 51. **Our records indicate that the Internal Revenue Service has not incorporated by reference in the *Federal Register* (as that term is defined in the Federal Register system) a requirement to make an income tax return.**

I hope this information will be useful to you.

Sincerely,

/s/ Michael L. White

MICHAEL L. WHITE
Attorney
Office of the Federal Register