

Jorge A. Martinez, MD.
Reg. No. 39798-060, U.S.P. Allenwood
P.O. Box 3000, White Deer, PA 17887.

Lisa Nesbitt, Office of the Clerk
of the United States Supreme Court
Washington, DC 20543-0001

January 12, 2018
Certified No.:
7016 1370 0002 2933 1179

RE: Jorge A. Martinez v United States
USCA6 No. 14-4258.

7016 1370 0002 2933 1179

RE: Refiling Petition for Certiorari.

Dear Ms. Nesbitt:

As per your letter of January 2nd., 2018:

- (1) There is no United States District Court Opinion because I, on February 12, 2014, sent a 28(j) Letter to the Court of Appeals for the Sixth Circuit, informing them that on January 27, 2014, the Supreme Court had issued its Opinion in Burrage (United States v Burrage, No. 12-7515) which made me Actual innocent of the two convictions of Homicide.

At that time, the Sixth Circuit Court of Appeals had Jurisdiction of my Case, No. 11-4418.

On 2-21-14, I filed "Supplement to a COA Brief and Motions to Overturn Judgments of Convictions, Sentences and Affirmations based on the Supreme Court's Decisions of Gonzales v Oregon, Skilling and Burrage (1-27-14)" in the same Court of Appeals for the Sixth Circuit.

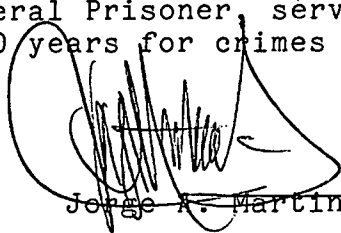
On May 10, 2016, I filed on CA6 No. 14-4258 a "Brief in Support of An Appellate Ruling on my Claims of Actual-Factual Innocence Notwithstanding Rprocedural Issues Related to a Local Rule 7.1 [et cetera]."

All my Claims of Actual Innocence has been ignored, not acknowledged by the Sixth Circuit Court of Appeals.

- (2) I have made the corrections, i.e. filled up the spaces with a N/A. where these were missing.

I hope that you will find my Petition compelling because I am in fact, an Actual Innocent Federal Prisoner, serving wrongful sentences of two life terms plus 30 years for crimes I have not committed.

With the Outmost Respect.


Jorge A. Martinez, MD.

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

January 2, 2018

Jorge A. Martinez
Reg. No. 39798-060
U.S.P. - Allenwood
P.O. Box 3000
White Deer, PA 17887

RE: Jorge A. Martinez v. United States
USCA6 No. 14-4258

Dear Mr. Martinez:

The above-entitled petition for writ of certiorari was postmarked December 6, 2017 and received December 12, 2017. The papers are returned for the following reason(s):

The notarized affidavit or declaration of indigency does not comply with Rule 39 in that it is incomplete.

The opinion of the United States district court must be appended to the petition.

The report and recommendation of the magistrate must be appended (if applicable).

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

A copy of the corrected petition must be served on opposing counsel.

When making the required corrections to a petition, no change to the substance of the petition may be made.

Sincerely,
Scott S. Harris, Clerk

By:

Lisa Nesbitt

(202) 479-3038

Enclosures

Jorge A. Martinez, MD.
Reg. No. 39798-060, U.S.P. Allenwood.
P.O. Box 3000, White Deer, PA 17887.

January 22, 2018.
Certified Mail No.
7016 1370 0002 2933 1162

Lisa Nesbitt,
Office of the United States Supreme Court
Washington, DC 20543-0001

RE: Jorge A. Martinez v United States
USCA6 No. 14-4258

Dear Ms. Nesbitt:

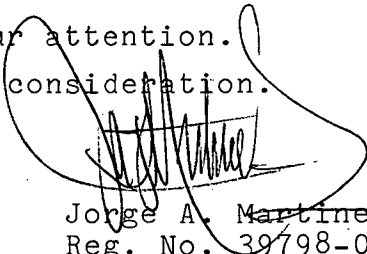
On January 12, 2018, by Certified Mail No. 7016 1370 0002 2933 1179 I sent you a letter explaining you that the matter I am Petitioned to be heard by Certiorari, i.e. my Claim of Actual Innocence had not been heard by the District Court because the Supreme Court's ruling in Burrage (United States v Burrage, No. 12-7515) was issued on January 27, 2014, when the Court of Appeals had Jurisdiction of my case.

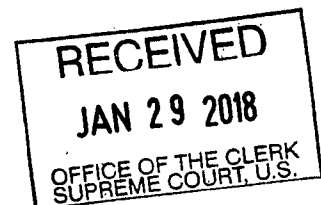
Because you had asked me to send you the District Court Orders, which did not address the issue of my Actual Innocence, I am now sending them to you, regardless that they do not address the issue of Burrage-Actual Innocence.

As such I am herein enclosed are the District Court Orders:

1. Dated September 25, 2014;
2. October 10, 2014;
3. November 24, 2014.

I appreciate the value of your attention.
With the outmost respect and consideration.


Jorge A. Martinez, MD.
Reg. No. 39798-060
U.S.P. Allenwood
P.O. Box 3000, White Deer PA 17887.



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. 4:11 CV 2348
	)	
Plaintiff,	)	
	)	
v.	)	JUDGE DONALD C. NUGENT
	)	
JORGE A. MARTINEZ, M.D.,	)	
	)	<u>ORDER</u>
Defendant.	)	
	)	

The United States of America has filed a Motion to Strike Mr. Martinez's most recent § 2255 motion seeking to vacate his sentence. Mr. Martinez had previously filed a § 2255 motion that was over 628 pages in clear violation of the page limit requirements of Local Rule 7.1. The Court struck that motion from the record, and after waiting close to five months to see if Mr. Martinez would re-file a compliant motion, it dismissed the action. Mr. Martinez appealed this Court's order striking his motion and the Court of Appeals vacated and remanded opining that this Court should have affirmatively stated in its order that Mr. Martinez could have re-filed a compliant motion. Following the Court of Appeals opinion, Mr. Martinez filed the instant motion, which itself is 23 pages long, and which attaches the same 628 pages of supporting material as was included in the first memorandum in support of his first § 2255 motion. The government has filed a motion to strike this new submission for again being wildly

over the allowed page limitation (when including the 628 page affidavit) or, in the alternative, for failing to develop any argument, provide any substantive legal support, or offer any factual basis for his allegations within the 23 pages of the actual motion submitted. Mr. Martinez shall have until October 31, 2014 to respond to the Government's motion to strike. If no response is received by this date, the Court will strike the motion for non-compliance with the local rules, without objection and the case may be dismissed with prejudice. IT IS SO ORDERED.

/s/ Donald C. Nugent
Donald C. Nugent
United States District Judge

Date: September 25, 2014

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. 4:04 CR 430
	)	4:11 CV 2348
Plaintiff,	)	
	)	JUDGE DONALD C. NUGENT
v.	)	
	)	
JORGE A. MARTINEZ,	)	
	)	<u>DISMISSAL ORDER</u>
Defendant.	)	

In an order dated October 14, 2014, (ECF #309), the Court struck Dr. Martinez's non-compliant petition under 28 U.S.C. § 2255, and gave Dr. Martinez until November 10, 2014 to re-file a petition that complied with Local Rule 7.1. It is now, November 24, 2014, two weeks past the Court imposed filing deadline, and Dr. Martinez has not re-filed his petition. In accordance with the Court's Order of October 14, 2014, the Court, therefore, dismisses this action with prejudice for failure to comply/failure to prosecute. No further filings under 28 U.S.C. § 2255 will be accepted from this Petitioner.

Pursuant to 28 U.S.C. § 2253, the Court must determine whether to grant a certificate of appealability as to any of the claims presented in the Petition. 28 U.S.C. § 2253 provides, in part, as follows:

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from --

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

In order to make "substantial showing" of the denial of a constitutional right, as required under 28 U.S.C. § 2255(c)(2), a habeas prisoner must demonstrate "that reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issue presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4, 103 S. Ct. 3383, 77 L. Ed. 2d 1090 (1983).)

Where a district court has rejected the constitutional claims on the merits, the petitioner must demonstrate only that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. *Slack*, 529 U.S. at 484. Where the petition has been denied on a procedural ground without reaching the underlying constitutional claims, the court must find that the petitioner has demonstrated that reasonable jurists could debate whether the petition states a valid claim of the denial of a constitutional right *and* that reasonable jurists could debate whether the district court was correct in its procedural ruling. *Id.* "Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further." *Id.*

Dr. Martinez originally filed a 628 page Petition, 608 pages longer than the 20 page limitation on dispositive motions provided in Local Rule 7.1 . Petitioner did not seek permission to file a petition in excess, and would not have been granted a 608 page variance from the rule.

Petitioner was not precluded from filing a revised petition that complied with the rules, but he did not attempt to do so.

The striking of his non-compliant petition was appealed and the Court of Appeals remanded the case instruction this Court to offer Dr. Martinez an additional opportunity to re-file a compliant petition. Following remand, Dr. Martinez again filed a non-compliant petition in excess of 600 pages. The Court, once again, struck the non-compliant petition and offered Dr. Martinez yet another chance to present a compliant petition. This time Dr. Martinez was specifically warned that failure to file a compliant petition by November 10, 2014 would result in dismissal of his petition with prejudice and that no further filings would be accepted. He still did not re-file a compliant petition. Therefore, this action is dismissed with prejudice and Dr. Martinez is barred from re-filing his petition. A reasonable jurist could not conclude that dismissal of the Petition, in this case was in error or that Petitioner should be permitted to proceed further. For these reasons, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

Further, rather than attempting to comply with the Court's order and filing a petition that was within the page limitations set forth in Local Rule 7.1, Dr. Martinez attempted to appeal the Order striking this Court's Order of October 14, 2014, (ECF # 309), which denied his motion to disqualify and struck his non-compliant petition under 28 U.S.C. § 2255. Because the Court did not dismiss his petition at that time, and gave him additional time in which to re-file a compliant petition, this was not a final appealable order. After filing his notice of appeal, Dr. Martinez filed a Motion for Leave to Proceed with that appeal In Forma Pauperis. He did not attach the required certification providing a certified copy of his trust fund account statement or

institutional equivalent. Because Dr. Martinez's appeal was taken, at least in part against an order that was not a final appealable order, and because he did not provide the required certification, the motion to proceed in forma pauperis is denied. (ECF #312). IT IS SO ORDERED.

/s/ Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: November 24, 2014

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA	)	JUDGE DONALD C. NUGENT
	)	
Plaintiff,	)	CASE NO.: 4:11 CV 2348
	)	4: 04 CR 430
	)	
vs.	)	<u>MEMORANDUM OPINION</u>
	)	<u>AND ORDER</u>
JORGE A. MARTINEZ,	)	
	)	
Defendant.	)	

This matter is before the Court on the United States of America's Motion to Strike Defendant Jorge Martinez's § 2255 Motion. (ECF #5, Case No: 4:11 CV 2348). The Defendant filed an opposition to the Motion (ECF #7, Case No.: 4:11 CV 2348). Defendant also filed a Motion to Disqualify District Court Judge (ECF #306, Case No.: 4:04 CR 430).

PROCEDURAL HISTORY

In January of 2006, following a jury trial, Dr. Martinez was convicted on multiple counts of health care fraud, including two counts of health care fraud resulting in death (Counts 59 and 60). In March of that year, his attorneys filed a Motion for Acquittal under Fed. R. Crim. Pro. 29,

Dr. Martinez, through his attorneys, appealed the restitution amount on August 30, 2006, a day before the final Order adopting the Magistrate's Report and Recommendation was actually issued. (ECF #168). Following the issuance of the restitution order, the Court found Dr. Martinez to be indigent and appointed the Federal Public Defender to represent him on appeal. (ECF #174). The Court of Appeals consolidated his two appeals, and granted his trial attorneys' motion the withdraw as counsel. (ECF #179).

In March of 2007, prior to any decisions on his appeal, and after he was appointed counsel, Dr. Martinez filed, pro se, a Motion for Lack of Subject Matter Jurisdiction. (ECF #213). The government again asked that because he was represented by counsel, he be barred from submitting pro se filings to the Court. (ECF #216). The Court granted the government's request and denied Dr. Martinez's Motion to Dismiss for Lack of Subject Matter Jurisdiction. (ECF #217, 218). A day prior to the issuance of this Order, Dr. Martinez filed a writ of mandamus with the appeals court asking it to compel the trial court to rule on a motion to recuse, citing this Court's prohibition against pro se filings as evidence of alleged prejudice. (ECF #232).² The Court of Appeals denied Dr. Martinez's request for mandamus, holding that this Court was well within its discretion to bar the pro se filings since Dr. Martinez had been assigned counsel. (ECF #241).

In May of 2007, Dr. Martinez, through his attorney, then filed a Motion to Stay Order of Restitution pending resolution of his appeal. (ECF #219). The Court granted this motion to stay. (ECF #220). Dr. Martinez also asked the Court of Appeals for a stay of the sale of certain property. In February of 2008, the Court of Appeals denied Dr. Martinez's motion to stay the sale of certain property, and in May of 2008, denied his motion to remand to the District Court to

² The referenced motion to recuse does not appear on the docket of this case.

permit a motion for new trial, because he had not obtained a certification from the trial court that it would be inclined to grant such a motion. (ECF # 224, 225). Two months later, and just a couple of weeks prior to the scheduled appellate oral argument, the Court of Appeals, took a somewhat contradictory stance and granted Dr. Martinez's motion to stay his appeal pending resolution of a motion for new trial and certification for remand. (ECF #226). Dr. Martinez then filed a combined Motion for New Trial/ Motion to Certify for Remand/ Motion for Evidentiary Hearing. (ECF #227). This Court denied the Motion in December of 2008. (ECF #233).

In March of 2009, the Court of Appeals issued a true Mandate affirming Dr. Martinez's conviction and sentence. (ECF #244). The United States Supreme Court denied his writ of certiorari in November of 2009. (ECF #250). Dr. Martinez immediately filed a purported second motion for recusal of the trial court judge, which was denied. (ECF # 251, 253). A week later, Dr. Martinez filed a motion to reconsider the denial of the recusal motion. (ECF #254). That motion was also denied. (ECF #257). Dr. Martinez appealed the trial court's decision denying the request for recusal to the Sixth Circuit, and separately appealed the denial of the motion to reconsider on the same issue. (ECF #256, 260). Both decisions were affirmed. (ECF #275). He also petitioned the United States Supreme Court for a rehearing on his motion for certiorari; it too was denied. (ECF #262).

In October of 2011, Dr. Martinez filed a motion under 28 U.S.C. § 2255. The motion itself was 21 pages long, it included one page of "instructions," a one page cover letter, and an eleven page "introduction - objection to review by Judge Donald C. Nugent." Added to this was a 628 page "motion's memorandum, points, and issues of appeal." (ECF #263). The government moved to strike the motion as being wildly over the 20 page limit imposed by Local Rule 7.1. (ECF

#267). The Court granted the motion to strike on December 8, 2011. (ECF #268). Dr. Martinez appealed this ruling. (ECF #269). The Court of Appeals originally dismissed the appeal for want of prosecution, (ECF #272), but later, at Dr. Martinez's request, reinstated the appeal. (ECF #274). More than five months after striking Dr. Martinez's § 2255 petition, having received no further filings, this Court dismissed the petition. (ECF #276). The order of dismissal was never appealed.

Following the filing of his first § 2255 motion, and before the order of dismissal was issued, Dr. Martinez also filed a 101 page "Motion for Leave to File a Bill of Review," which included a request to vacate his judgment due to alleged fraud upon the court by the prosecuting attorneys, the trial judge, and the use of a false forensic report. (ECF #279). This motion was utterly without merit, and was denied. (ECF # 281). Dr. Martinez also appealed this denial. (ECF # 282). The Court of Appeals denied Dr. Martinez's a certificate of appealability on this issue. (ECF #299).

In August of 2014, the Court of Appeals remanded the issue of the non-compliant § 2255 petition to the trial court to determine whether a certificate of appealability should issue. (ECF #294). This Court denied the certificate of appealability. (ECF #295). Thereafter, the Court of Appeals issued its own certificate of appealability limited to the question of whether this Court abused its discretion by striking petitioner's 2255 petition (an issue that was appealed), and dismissing the case with prejudice (an issue that was not, in fact, appealed). (ECF #296). Eventually, the Court of Appeals vacated the order dismissing Dr. Martinez's 2255 motion, and remanded the case for an order allowing Dr. Martinez to re-file a compliant petition. (ECF #300, 301). Although the Court of Appeals decision was favorable to Dr. Martinez, he, nonetheless

filed a motion with the Sixth Circuit to recall the mandate, and when that was denied, he filed a petition of certiorari with the United States Supreme Court for review of the decision. The petition for certiorari was denied on October 6, 2014.

Following the issuance of the mandate on this issue, Dr. Martinez filed a new §2255 motion. This motion was 23 pages long, and was accompanied by two one-page letters and a 628 page affidavit. The "affidavit" was simply a re-named copy of the 628 page "memorandum, points and points, and issues of appeal" stricken as part of Dr. Martinez's first § 2255 motion. (ECF #303). Not surprisingly, the Government followed up the new § 2255 motion with another motion to strike on the grounds of non-compliance with the length restrictions established under Local Rule 7.1. (ECF #5, Case No: 4:11 CV 2348).

The above recitation of the procedural history, which tracks the docket in case number 5:04 CR 430, does not even begin to describe the multitude of filings and other non-official communications Dr. Martinez has indiscriminately bombarded the courts with throughout the pendency of this case and the related civil cases. As stated above, even when banned from filing pro se motions, Dr. Martinez never ceased his improper attempts to contact and communicate with the Court through letters and other correspondence. Further, it does not take into account the multitude of baseless challenges he has made to every unfavorable (and even sometimes favorable) decision, whether by the jury, this Court or the Court of Appeals, nor to the repeated attempts to remove this Judge from the case every time an unfavorable decision was made, even when such decisions were upheld on appeal. Similar challenges relating to issues of restitution within this case have not been listed, nor have the multitude of challenges, baseless filings, requests for recusal, and informal communications submitted in relation to the corresponding civil

forfeiture case, numbered 5:08 CV 863.

DISCUSSION

It is clear that Dr. Martinez's new filing is not in compliance with the page restrictions imposed by Local Rule 7.1. As the Sixth Circuit noted in its remand order, the Northern District of Ohio Local Rule 7.1 states that memoranda relating to dispositive motions in standard cases must not exceed twenty pages and memoranda relating to all other motions must not exceed fifteen pages in length. Non-compliance with this rule is sanctionable at the judge's discretion. Further, the Court of Appeals also recognized that Local Rule 7.1 applies to all litigants, including pro se litigants filing under 28 U.S.C. § 2255. *See, United States v. Merkosky*, No. 1:02-CR-168, 2008 WL 5169640, at *7 (N.D. Ohio Dec. 9, 2008).

Dr. Martinez clearly attempted to side step the limitations applicable to his second filing by simply re-labeling his supporting memorandum as an "affidavit." The 628 page attachment to Dr. Martinez's motion, however, labeled, is a memorandum in support of his motion and is subject to this Local Rule. The motion, which at twenty-three pages is, itself, already over the allowed page limit, relies on this attachment to define and support its allegations. In short, the current filing is again, remarkably out of compliance with Local Rule 7.1. The Government's motion to strike, (ECF #5, Case No: 4:11 CV 2348), is, therefore, GRANTED.

Based on the guidance provided by the Court of Appeals in its remand instructions, this Court will allow Dr. Martinez one additional opportunity to file a petition that falls within the page limitations set forth in Local Rule 7.1. If he files a compliant petition on or before November 10, 2014, the Court will accept the filing and direct the parties to proceed on the merits

of the case. If, however, Dr. Martinez does not file a compliant petition on or before November 10, 2014, this case will be dismissed with prejudice.

As evidenced by the procedural history outlined above, this litigant has demonstrated an unwavering commitment and ability to pursue his agenda through the use of all available legal means. He has appealed and/or sought reconsideration of nearly every decision rendered by this Court since his conviction, and had demonstrated a full awareness of his procedural rights and avenues for re-dress. Having had a prior motion stricken; and, having had the applicable rules pointed out by the Government through their briefing, by this Court through its original decision striking his first petition, through the explanation provided by the Court of Appeals in its decision to remand this issue for further proceedings, and through this Court's explanation of the applicable page restrictions in this opinion, Dr. Martinez is well informed of the procedural limitations he must adhere to in order to properly raise his current concerns. To make it perfectly clear, any future filings must adhere to the twenty page limit for dispositive motions set forth in Local Rule 7.1. The twenty page limit includes all materials setting forth or defining claims, as well as any materials offering an explanation of the legal and factual support given for the claims alleged. Any attachment, introduction, memorandum or other document required to list or explain those claims must be included within the allowed twenty pages. The twenty pages is the total amount of pages allowed including all introductory and supporting materials.

If Dr. Martinez files a new petition, and that petition exceeds twenty pages it will be stricken as non-compliant and the case will be dismissed with prejudice. This Court will not consider any materials in excess of twenty pages. Any attached materials in excess of twenty pages will be stricken and will not be considered. If the information contained in a twenty page

petition cannot stand on its own as a coherent articulation of claims, without reference or explanation contained in any attachment that would cause the petition to exceed the twenty page limit, the case will be dismissed with prejudice as non-compliant.

Dr. Martinez followed up his second § 2255 petition with a Motion to Disqualify District Court Judge. (ECF #306). This motion cites language utilized by the Court of Appeals in its remand of this issue, alleging that a finding of "abuse of discretion" in the prior decision is grounds for disqualification. As noted in the Court of Appeals prior affirmance of this Court's denial of Dr. Martinez's requests for recusal, "[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994). Dr. Martinez has offered no basis other than his displeasure with the Court's rulings for disqualification, therefore, the Motion to Disqualify is DENIED.

CONCLUSION

For the reasons set forth above, the United States of America's Motion to Strike Defendant Jorge Martinez's § 2255 Motion, (ECF #5, Case No: 4:11 CV 2348), is GRANTED. The Petitioner may re-file a compliant petition of twenty pages or less on or before November 10, 2014. If a fully compliant petition is not filed on or before that date, this case will be dismissed with prejudice and no further filings will be accepted. The Defendant's Motion to Disqualify District Court Judge, (ECF #306, Case No.: 4:04 CR 430), is DENIED. IT IS SO ORDERED.

/s/ Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: October 10, 2014