

No. 20-6707

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IN THE
SUPREME COURT OF THE UNITED STATES

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Cary Lee Peterson — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals (3d Cir.), App #19-1093
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Cary Lee Peterson
(Your Name)

FDC Seatac, P.O. Box 13900
(Address)

Seatac, WA 98198
(City, State, Zip Code)

caryleepeterson@gmail.com <POA Agent>
(Phone Number)

IV: ("Attachment A") - Questions Presented.

Q1: Why was judgment entered by USCA3 Clerk (re "Appendix G") (i.e. ECF Doc. Nos. 119, 123, 123-1), followed by an informal mandate, whereupon an unpublished opinion, without including 'Bill of Costs' or 'Attorney's Fees' or 'Costs of Appeal,' as required under Federal Rules of Appellate Procedure [FRAP] 39(d)(3), and (e)?

Q2: (In supra. "Q1" set forth above) Why would this judgment not be considered an irregular judgment [?]; and why would such a judgment not be set aside, stayed, or vacated?

Q3: Why would this Court not find violation to Petitioner's Fifth, First, or Sixth Amendment rights, whereby consisted of two or more errors (i.e. clerical, cumulative, procedural, or structural), resulting in a factual impossibility, (hence) causing Petitioner's direct appeal to be denied due to him not providing USCA3 with trial court transcripts within 14 days from entry of 'NOA' (pursuant to FRAP 10)? [Appendix E]. (Thus, Petitioner's NOA was entered 1/11/2019. But Petitioner was

<pageno>

①

IV. ("Attachment A" cont.)

was not granted right to proceed as 'pro-se' until 6/13/2019. [re Appendix D]; and FPD Robert Epstein, Esq. was not appointed as 'counsel' until on or about 4/2/2019 [re "Appendix B"; "Appendix C"]; And (thus) Appendix B demonstrates that quasi-judicial orders entered on 1/17/2019, 2/14/2019, and 3/13/2019, stating that "no action will be taken on any of Petitioner's (pro-se) court filings regarding order of trial court transcript, bail pending appeal, and other supplemental motions." (i.e. federal question, under 28:1331 as to 'legal incam' petence, or 'ineffective assistance of counsel').

[Q4] (in supra. "Q3" set forth above) [re I.A.C.]. How could it not be found as a constitutional error as to 'ineffective assistance of counsel' (per abuse of discretion), where with Petitioner was obliged to continue in criminal trial case, where upon his defense counsel filing two motions to withdraw as counsel due to fundamental ("factual") issue that made attorney-client relationship "not viable" [re "Appendix A"; see orange highlighted sections; see also, Appx. A - "Motion for leave to Withdraw as Counsel"; see also Appx. A - "Order Relieving Eric March, Esq., as Counsel (ECF Doc. 158)"] [?];

IV ("Attachment A" cont.)

and why would it stand as constitutional to appoint CIA Marcy per 'sua sponte' by USCA3 Clerk (without Petitioner's consent or request), despite CIA Marcy being relieved by the district court, 1/9/2019 [re "Appendix A"]?

⑤ Why would USCA3 have standing for merit or jurisdiction for a direct appeal derived from a trial case (docket record) that shows docket entries under 28:753 (i.e. ECF Doc. Nos. 170, 171, 172), that tacitly demonstrate or impalpably infer the existence of a private prosecution, or multiple sentences or convictions imposed after inception of USCA3 direct appeal, whereby are [either] nominal, manifestly excessive, indefinite, delayed, deferred, or [outright] inexplicable? (i.e. ECF Doc. 170 shows court record docketed as an ex-parte sentencing hearing held on 5/10/2019 while Petitioner was at FCI Sheridan, Oregon, not represented by counsel in the U.S.D.C. New Jersey, and ["a fortiori"] was pending appeal proceedings (for the same trial prosecution) in USCA3. And ECF Doc. 171 infers a second conviction "in esse" as of 7/30/2019, associated with Petitioner and a political organization (Bet on Bernie),

③

IV. ("Attachment A" cont.)

as co-defendants in U.S.D.C. New Jersey Criminal Docket No. 3:16-cr-00230-AET-1 (re Case No. 2016R00418)

[re Q: FISA Court; (then) FBI Director Andrew McCabe re Peterson v. FBI, et al., DOJ File DOJ-AP-2019-006628; DOJ-AP-2019-0000176], whom [both] shared a \$200,000 bail surety [re Doc. 19], and bail order, 6/6/2016.

Q6: Why would it be constitutional for Petitioner's original conviction [re DNJ trial case Doc. No. 156 re "Indictment" @ Doc. No. 13] 'Statement of Reasons' to be based upon parallel (SEC) case allegations (that were administratively terminated by U.S.D.C. New Jersey, 10/17/2019), and several (critical) presentence report objections that were not [at anytime] adjudged prior to imposing a sentence, as required under Fed. R. Crim. P. 32(i)(3)? [See also, "Appendix I, ECF Doc. No. 121, at 4, 8, 9, 15."]

Q7: Why would it be constitutional to constructively or partially amend criminal offense charges of indictment or conviction (re Petitioner's trial case docket entries 13 and 156), with respect to both counts of offense(s) under 18 U.S.C. 1350 ("False Certification"), for a

IV. ("Attachment A" cont.)

U.S. Code under Section 1350 of Title 18 [18 USCS 1350], entitled "Failure of corporate officers to certify financial reports," wherewith has specificities that do not [anywhere] contain the term "failure certification," or the singular word "false"; and are exclusively enjoyed [only] by person(s) who were/was a CEO, CFO, or a corporate officer of similar equivalence, at a publicly-traded corporation ["issuer"].

Q8: How is it constitutionally lawful for Respondent "USA" (or any nonparty in concert and participation with USA pursuant to Restatement (2d) of Torts 875-876 ["Appendix I," at ECF Doc. No. 121, at 6]) to invoke a contrived pretense, resulting in federal criminal prosecution (under a pretext), in efforts to improperly gain an advantage in a political or civil matter, against a political committee under 52 U.S.C. 30101, and the political organization's chief representative, who is a registered lobbyist at U.S. Congress under 2 U.S.C. 1603, notwithstanding 2 U.S.C. 1607(b) prohibiting any court (or court order) from hindering or enjoining lobbying activities (e.g. 2 U.S.C. 1604(e))

(5)

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

- (1) Primary Defendant: Cary Lee Peterson
- (2) Org. Defendant: Bet on Bernie
(re "Question #8"; see also, "Related Cases" #7, #11, #12, #13; see also "Appendix L")

RELATED CASES

See "Attachment B" (i.e. 16 "Related Cases," p. 1-12).



VII. Index of Appendices

Appendix

- A USCA3 Order Appointing CJA Marcy, 1/9/2019
- B USCA3 Direct Appeal Dkt. Summary
(i.e. Showing Appointments of CJA Counsel;
and Withdrawals, et seq.)
- C USCA3 Order Appointing CJA Epstein, 3/14/19
- D Direct Appeal Judicial Order for Extraordinary
Relief (i.e. withdrawal of CJA; pro se repre-
sentation; bail pending appeal, et seq.)
- E (Informal) Rule 39 Application; Proof of Service
- F USCA3 Direct Appeal Opinion (10/8/20)
- G USCA3 Direct Appeal Judgment (w/o CJA fees)
- H USCA3 Denial Order (re ECF Docs. 115, 120)
- I Petition for Rehearing (re ECF Doc. 117)
- J USCA3 Denial Order (i.e. rehearing) (re Doc. 121)
- K Petitioner's Credentials at U.S. Congress
- L Showing of Inference as to Irregular Process
- M Original Litigation - Minutes of Sentencing Hrg.
- N Showing of Legal Incompetence (FRE 902(6))
- O Copy of Petitioner's Crim. Offense Code 1350
- P USCA3 Direct Appeal (i.e. informal mandate)
- Q USCA3 Direct Appeal Bail/Transcript Motion
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- S Gov't / Court Papers (re USCA9 "Related Case #13")
- T DOJ Press Release Showing Constructive Amend.
- U USDC-NJ Statement of Reasons (w/ Errors)
<see Index as Attachments>

Note: Due to size of Appendices Index,
this is not within the court's template

VI. Table of Contents ("Attachment C")

* Note: (Judicial Notice to Clerk Pursuant to Fed. R. Evid. 201)
At present (since 12/3/2020), FDC Seatac, where Petitioner is incarcerated, is active under COVID-19 Outbreak Lockdown, whereby has obliged prisoners to full-day [24-7] cell confinement, only allowed out of cell every 2-3 days for shower. Ad-hoc, no access to legal drafting devices or materials, or phone/computer access is physically possible (re Rule 39.3). Ad-hoc, the continuation of sporadic, abrupt COVID-19 lockdown measures invoked by FDC Seatac (since 3/1/2020) have resulted in undue hardship to Petitioner, notwithstanding a "prisoner's constitutional right of access to the court requires prison authorities to assist inmates in preparation and filing of meaningful legal papers by providing prisoners with adequate law library... affirmative obligations are

VI ("Attachment C" cont.)

<Note 1> continued hereunder.>

imposed ... [on the government] to assure all inmates access to the courts and assistance in preparing and filing of legal papers." Petrick v. Maynard, 11 F.3d 991 (10th Cir. 1993). As the U.S. Supreme Court upholds precedent that "prisoners have a fundamental right to adequate, effective, and meaningful access to court to challenge violations of their Constitutional rights." Bounds v. Smith, 430 U.S. 817, 52 L. Ed. 2d 72, 97 S.Ct. 1491 (1977).

Whereas, based on petitioner's disclosure of adjudicative fact, hereat, it is conclusively presumed that preparing this shall adhere Rule 39.3, as the instant case has "the criteria for "Excusable Neglect" and "Unique Circumstances," Thompson v. I.N.S., 375 U.S. 374, 11 L. Ed. 2d 404, 74

VI. ("Attachment C" cont.)

< "Note 1" continued hereunder. >

S. Ct. 397 (1967); Harris Truck Lines v. Cherry Meat Packers, 371 U.S. 215, 9 L. Ed. 2d 261, 83 S. Ct. 383 (1962).

Thus, "Appendix D" demonstrates an interlocutor by USCA3 Justice Restrepo, dated June, 13, 2019, as to an issuance of prerogative writ for extraordinary relief and bail pending appeal (pursuant to U.S. Ct. Crim. App. P. 150.24 and 28 U.S.C. 1291).

Thereby, Petitioner declares that he shall proceed under the said 'unique' and 'extraordinary' circumstances to the best of his ability to provide all required portions of the following sections of the instant petition under Rule 39 et seq.

< end of 'Note 1.' >

VI ("Attachment C" cont.)

Opinions Below,

Infra. "Section IX";
see also, Direct Appeal
Opinion in "Appendix F"
[p. 1]

Jurisdiction,

Infra. "Section X";
see also, "Appendix B"
and "Appendix L" [p. 2]

Constitutional and
Statutory Provisions
Involved,

[p. 3]; see also
"Appendix M"; Infra,
"Section XI"; see also
"Attachment D"

Statement of
the Case,

Infra. "Section XII";
see also "Attachment
E" [p. 4]

Reasons for
Granting the Pet-
ition,

Infra. "Section XIII";
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E" [p. 5]

Conclusion,

[p. 6]

Proof of Service

Infra. "Section XV";
see also "Appendix E"
[p. 7]

Note 28 "Appendices" are captioned as
"Exhibits" (yet footnoted properly).

VIII. Table of Authorities ("Attachment D")

[Re "Questions Presented" in numeric order; i.e. #1-8; cases, statutes, and other provisions or self-authenticated documents cited.]

Question #1:

a. Cases Cited —

- (1) Court Awarded Attorney Fees, 108 F.R.D. 237 (3d Cir. 1985) (i.e. "reversible error" re F.R.A.P. 39(d), and (e)).
- (2) Asta Funding v. Neal, Civ. No. 14-2495 (KM) (D.N.J., Nov. 2018) (i.e. "Third Circuit dismissed... because there was no final order as to attorney's fees.").

b. Court Rules Cited —

- (1) Federal Rules of Appellate Procedure 39(d)(3), and (e) (i.e. "Bill of Costs... Insertion of Mandate"; "Costs on Appeal Taxable in the District Court")

<end of page 1.>

VIII ("Attachment D" cont.)

Question #2:

a. Cases Cited—

(1) Karrick v. Wetmore, 25 App. D.C. 415 (D.C. Cir. 1905) (1905 U.S. App. LEXIS 9) (i.e. "No notice is required to vacate an irregular judgment at a subsequent term of the court.")

(2) District of Columbia v. Humphries, 12 App. D.C. 122 (D.C. Cir. 1898) (i.e. "An irregular judgment may be set aside at a subsequent term... After the close of term errors in a final judgment other than mere clerical misprisions can be corrected only by an appellate court on writ of error or appeal. The trial court has then lost the right to vacate the recovery under any proceedings... The conviction was declared erroneous, but the judgment was not void. [Justice Morris; reversed].")

(3) Briagrove, 170 F.3d 536, 1999 WL 156154 at *2 (quoting Askanase v. Livingwell, Inc. 981 F.2d 807, 810 (5th Cir. 1993).

VIII ("Attachment D" cont.)

(Question #2 - Cases Cited - Subsec. (3))

(i.e. "We may raise sua sponte the issue of appellate jurisdiction, see Castaneda v. Falcon, 166 F.3d 799, 801 (5th Cir. 1999). The highly irregular judgment now before us compels such an inquiry.")

b. (In supra. "Question #1, b.(1)" set forth above; i.e. F.R.A.P. 39(d)(3), and (e)).

c. Other Citations —

(1) Black's Law Dictionary - 10th Edition (Bryan A. Garner) (i.e. "irregular judgment. A judgment that may be set aside because of some irregularity in the way it was rendered, such as clerk's failure to send a defendant notice that a default judgment has been rendered.")

(2) Black's Law Dictionary - 10th Edition (Bryan A. Garner) (i.e. "judge-proof, adj. (of a legal instrument) so well drafted that even the most willful judge cannot conceivably misinterpret the words," re "Appendix E (Annotations)"; and "Appendix I")

VIII ("Attachment D" cont.)

Question #3:

a. Cases Cited—

(1) Ceja v. Stewart, 97 F.3d 1246 (9th Cir. 1996) (i.e. "Multiple errors, even if harmless individually, may entitle petitioner to habeas relief if their cumulative effect prejudiced defendant.").

(2) Griffin v. Illinois, 351 US 12, 100 L. Ed. 891, 76 S.Ct. 585 (1956) (i.e. "Criminal defendant has right to record on appeal which includes complete transcript of proceedings at trial.") (see also, U.S. v. Neal, 27 F.3d 1035 (5th Cir. 1994).
[re "Appendix F"; see also "Appendix I"]

(3) United States v. Russell, 604 Fed. Appx. 193 (3d Cir. 2015) (i.e. "Under the Federal Rules of Appellate Procedure [F.R.A.P. 10], within 14 days after filing a notice of appeal, the appellant must... order "a transcript of such parts of proceedings not already on file as the appellant considers necessary."")

VIII. ("Attachment D" cont.)

(Question # 3 - Cases Cited - (et seq.))

(4) United States v. Russell, 604 Fed. Appx. 193 (3d Cir. 2015) (i.e. "to be successful with an argument that because a portion of the trial transcript is missing the case warrants reversal," [a defendant] must make "a specific showing of prejudice." United States v. Sussman, 709 F.3d 155, 163 (3d Cir. 2013)). [re Appx's "B," "F," and "I."]

(5) Vincent v. Louisiana, 469 US 1166, 83 L. Ed. 2d 939, 105 S.Ct. 928 (1985) (i.e. "The conviction of an accused person while he is legally incompetent violates due process." Pate v. Robinson, 383 US 375, 378, 15 L Ed 2d 815, 86 S Ct 836 (1966)). [re Appx's "A," "B," "C," "D," and "N"]

(6) United States v. Seeley, 574 Fed. Appx. 75 (3d Cir. 2014) (i.e. "It is clear that the conviction of a legally incompetent defendant and failure to provide adequate procedures to determine competence

VIII ("Attachment D" cont.)

(Question # 3 - Cases Cited - subsec. 6)

would violate a defendant's constitutional right to a fair trial."

United States v. Renfro, 825 F.2d 763, 765-66 (3d Cir. 1987),

[re Opinion & Appx. "F"; see also, Appx.'s "A," "B," "C," "D," "I," and "N" whereby corroborate "Appendix F."]

- (7) United States v. Gillette, 738 F.3d 63 (3d Cir. 2013) (2013 U.S. App. LEXIS 24287) (i.e. "[15] Due process prohibits the conviction of a legally incompetent person, Pate v. Robinson, 383 U.S. 375, 378, 86 S. Ct. 836, 15 L. Ed. 2d 815 (1966)).

b. Other Citations -

- (1) Black's Law Dictionary - 10th Edition (Bryan A. Garner) (i.e. "Pate hearing. A proceeding in which the trial court seeks to determine whether a criminal defendant is competent to stand trial. Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836 (1966); 18 USCA 4241.") [re "Appendix M"; see also Appx.'s "N," "A," "C," "D," and "I" whereby corroborate "Appendix M."]

VIII ("Attachment D" cont.)

Question #4;

a. Cases Cited —

(1) Evitts v. Lucey, 469 US 387, 83 L. Ed. 2d 821, 105 S.Ct. 830 (1985); see also, Williams v. French, 146 F.3d 203 (4th Cir. 1998). [re "Appendix A," "Appendix C," "Appendix D," "Appendix B," and "Appendix L"; see also "Appendix I," at 10 (lines 320-324), 12 (section 17 et seq.), and 18.] (i.e. "Defendant's right to effective assistance of counsel applies not just at trial but also on direct appeal.")

[REDACTED]

(2) United States v. Yepiz, 844 F.3d 1070 (9th Cir. 2016) (2016 U.S. App. LEXIS 22626) (i.e. "when a district court erroneously denies a motion to substitute retained counsel with appointed counsel, it commits structural error. The mistake in this approach stems from confusion about the right at issue.") [re "Appendix A"; see also, "Appendix B," whereby corroborates Appx. A.]

VIII ("Attachment D" cont.)

(Question #4 - Other Citations)

b. Other Citations -

(1) Black's Law Dictionary - 10th Edition (Bryan A. Garner) (i.e. "ineffective assistance of counsel). A representation in which the defendant is deprived of a fair trial because the lawyer handles the case unreasonably, usu. either by performing incompetently or by not devoting full effort to the defendant, esp. because of a conflict of interest."). See "Appendix A," ("Counsel Motion to Withdraw"; District Court Order Relieving Defense Counsel").

[REDACTED]

(2) Black's Law Dictionary - 10th Edition (Bryan A. Garner) (i.e. "Strickland standard, Criminal law. The minimum standard of lawyer competence in the representation of a criminal defendant ... (1) the lawyer's performance must be outside the broad range of professionally acceptable assistance ... and (2) there must be a reasonable probability that, but for the

VIII ("Attachment D" cont.)

(Question #4 - Other Citations - subsec. b)

attorney's unprofessional errors, the result of the proceeding would have been different... See Strickland v. Washington, 466 U.S. 668 (1984).
[re "Appendix A."]

Question #5

a. Cases Cited -

- (1) U.S. ex rel. Brown v. Hill, 74 F.2d 822 (3d Cir. 1934) (i.e. "Considerations which have led this court to hold that habeas corpus may not be used as a writ of error to correct an erroneous judgment of conviction of crime, but may be resorted to only where the judgment is void because the court was without jurisdiction to render it, *** lead to the like conclusion" where the prisoner is lawfully detained under a sentence which is invalid in part."). [re "Appendix L" and "Appendix B"; i.e. Appx's 'B' and 'L' demonstrate 'irregular process' @ Doc. No. "170", whereby is court record of a trial court

VIII ("Attachment D" cont.)

(Question # 5 - Cases Cited - subsec. a(1))

proceeding for sentencing, held at U.S.D.C. New Jersey on 5/10/2019, almost five month after first judgment of conviction of 12/20/2018 (re "Appendix M," "Appendix U," and "Appendix N.")]

(2) United States v. Calhoun, 276 Fed. Appx. 114 (3d Cir. 2008) (2008 U.S. App. LEXIS 9560) (i.e. "Where a judge is, without explanation ... during a critical stage of a trial, a structural error occurs and prejudice is presumed.") [re "Appendix L."]

(3) United States v. Everett, 520 F. Supp. 46 (E.D. Pa. 1981) (i.e. "reversible error occurs when a district court errs as a matter of law by utilizing improper standards or procedures in determining fees.")

(4) McAlister v. C.J. Dick Towing Co., 175 F.2d 652 (3d Cir. 1949) (i.e. "Where clerk of district inadvertently failed to enter judgment, appellate court had no jurisdiction.")

VIII. ("Attachment D" cont.)

(Question #5 - Cases Cited - (et seq.))

█ < Q #5, subsec. 'a(4)' cont. >
[re "Appendix L".]

(5) Bryan v. Congdon, 86 F. 221
(8th Cir., Mar. 21, 1898 Opinion),
see also, Cooley, 176 F. 719 (8th Cir.
Feb. 21, 1910) (i.e. "Irregular process
is such as a court has general
jurisdiction to issue, but which
is █ unauthorized in the
particular case by reason of exis-
tence or nonexistence of some fact
or circumstance rendering it improper
in such a case." The order made
or judgment rendered by a court,
which is simply reversed as err-
oneous, nevertheless affords protec-
tion to all persons acting under
it."). [re "Appendix L"; "Appendix G";
and "Appendix P."]

(6) Kenney v. California Tanker Co.,
381 F.2d 775, 11 Fed. R. Serv. 2d
(Callaghan) 1062 (3d Cir 1967), cert.
denied, 390 U.S. 904, 88 S.Ct. 817,
19 L. Ed. 2d 870 (1968).

<end of page 11.>

VIII. ("Attachment D" cont.)

(Question # 5 - Cases Cited - (et seq.))

< Q # 5, subsec. 'a(b)' cont. >

(i.e. "District Courts have responsibility to secure just, speedy and inexpensive determination of every action.") [re "Appendix L".]

(7) Morano v. Commissioner of Internal Revenue, 175 F.2d 555, 49-2 U.S. Tax Cas. (CCH) P9350 (1949 U.S. App. LEXIS 4486) (3d Cir. 1949) (i.e. "There being no final judgment, our court in fact is without jurisdiction.") [re "Appendix L"; see also "Appendix B," whereby corroborate fact that "original litigation" (in trial court) had "judgment nisi," while "direct appeal case" was active for the same criminal prosecution, indictment, and defendant.]

(8) In re D'Arcy, 142 F.2d 313, 56 Am. B.R. (n.s.) 100, Bankr. L. Rep. (CCH) 54831 (3d Cir 1944) (i.e. "Where mandatory language contained in opinion [or court report] of district court was ~~never~~ never entered in its docket as order.)

VIII ("Attachment D" cont.)

(Question #5 - Cases Cited - (et seq.))

(9) Tucson Electric Power Co. v. Pauwels Canada Inc., 651 Fed. Appx. 681 (9th Cir. 2016) (2016 U.S. App. LEXIS 10454) (i.e. "circumstantial evidence, defined as "evidence based on inference and not on personal knowledge or observation." Black's Law Dictionary (10th ed. 2014).")
[re "Appendix L."]]

(10) Jesionowski v. Boston, 329 U.S. 452, 91 L. Ed. 416 S.Ct. (i.e. "Evidence, 214 ... No act need be explicable only in terms of negligence in order for the rule of "res ipsa loquitar" to be invoked. The rule deals only with permissible inferences from unexplained events.")

(11) Steel Co. v. Citizens for Better Env., 523 U.S. 83-94, 140 L. Ed. 2d 210, 118 S.Ct. 1003 (1998) (i.e. "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the

VIII. ("Attachment D" cont.)

(Question #5 - Cases cited - subsec. 'a'(1))

< Subsection 11 cont. (Steel Co. v. Citizens) >

court is that of announcing the fact and dismissing the cause." Ex parte McCordle, 7 Wall 506, 514, 19 L Ed 264 (1869). "On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it." Great Southern Fire Proof Hotel Co. v. Jones, supra, at 453, 44 L Ed 842, 20 S Ct 690. The requirement that jurisdiction be established as a threshold matter "springs] from the nature and limits of [523 US 95] the judicial power of the United States" and is "inflexible and without exception." Mansfield, C. L. M. R. Co. v Swan, 111 US 379, 382, 28 L Ed 462, 4 S Ct 510 (1884)."]
[re "Appendix L."]

VIII. ("Attachment D" cont.)

(Question #5 - Cases Cited - (et seq.))

(12) Mallalieu-Golder v. Exec. Risk Indem., 254 F. Supp. 2d 521 (M.D. Pa. 2003) (i.e. "Joinder is fraudulent where there is no reasonable basis in fact or colorable ground supporting claim against joined defendant, or no real intention in good faith to prosecute action against defendants or seek joint judgment.") [re "Appendix L"; see also "Appendix I," at "Document 121," at 2 (lines 41-67), 3 (lines 68-90), 4 (lines 111-126), 6 (lines 189-202), 13 (lines 431-440), 14 (lines 441-464).]

(13) Crossley v. Lieberman, 888 F.2d 566 (3d Cir. 1989) (1989 U.S. App. LEXIS 1625) (i.e. "Thus the document is self-authenticating. Fed. R. Evid. 902(1)... As such it is an admissible public record. Fed. R. Evid. 1005.") [re "Appendix L"; "Appendix P," and Appx's A-U (filed under FRE 902 or 1005).]

VIII ("Attachment D" cont.)

(Question #5 - Court Rules Cited)

b. Court Rules Cited -

(1) Federal Court Rules of Evidence Rule 1005 ["FRE 1005"] (i.e. "The proponent may use a copy to prove the content of an official record - or of a document that was recorded or filed in a public office as authorized by law.") [re "Appendix L"; and Appx's 'P', 'Q', 'R', and 'S'].

(2) Federal Court Rules of Criminal Procedure 55 [Fed. R. Crim. P. 55] (i.e. "the clerk of the district court must keep records of criminal proceedings in the form prescribed by the Director of the Administrative Office of the United States Courts. The clerk must enter records every court order or judgment and date of entry.")

[REDACTED]

(3) Federal Court Rules of Criminal Procedure 32(b) [Fed. R. Crim. P. 32(b)] (i.e. "(1) In general, the court must impose sentence without unnecessary delay.") [re "Appendix L"].

VIII. ("Attachment D" cont.)

(Question #6 - (et seq.))

Question #6:

a. Cases cited -

(1) Molina-Martinez v. United States,
136 S.Ct. 1338, 194 L. Ed. 2d 444
(2016) (Judgment reversed) (i.e. re: Fed.
R. Crim. P. 52(b); "When a defendant
was sentenced under an incorrect Guid-
elines range, whether or not the defen-
dant's ultimate sentence fell within the
correct range, the error itself could,
and most often would, be sufficient
to show a reasonable probability
of a different outcome absent the
error.")

(2) (In supra. Molina-Martinez v. U.S.)
(i.e. "Headnote: [6] The United States
Sentencing Guidelines are to be the
sentencing court's starting point and
initial benchmark... Even if the sent-
encing judge sees a reason to vary
from the Guidelines, if the judge
uses the sentencing range as the
beginning point to explain the dec-
ision to deviate from it, then the
Guidelines are in a real sense the

VIII ("Attachment D" cont.)

(Question #6 - Cases Cited - subsec. 'a(2))'

the basis for the sentence ... < 194 L. Ed. 2d 446 > ... Headnote: [7] The United States Sentencing Guidelines' central role in sentencing means that an error related to the Guidelines can be particularly serious. A District Court that improperly calculates a defendant's Guidelines ... has committed a significant procedural error. That same principle explains the ruling that a retrospective [or foresighted] increase in the Guidelines range applicable to a defendant creates a sufficient risk of a higher sentence to constitute an ex facto violation ... (Kennedy, J., joined by Roberts, Ch. J., and Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)).

(3) (In supra. Molina-Martinez v. U.S.) (i.e. "Headnote: [10] Where the record is silent as to what the District Court might have done had it considered the correct [u.s.s.g.] ... range, the court's reliance on an incorrect range in most instances will suffice to show an effect on defendant's substantial rights

VIII. ("Attachment D" cont.)

(Question #6 - Cases Cited - subsec. 'a(3))'

In the ordinary case a defendant will satisfy his burden to show prejudice by pointing to the application of an incorrect, higher Guidelines range and the sentence he received thereunder. Absent unusual circumstances, he will not be required to show more, ... <194 L. Ed. 2d 447> ... [Headnote 12 reads] Courts reviewing sentencing errors cannot apply a categorical rule requiring additional evidence in cases, like this one, where the District Court applied an incorrect range but nevertheless sentenced the defendant within the correct range. Rejection of that rule means only that a defendant can rely on the application of an incorrect [u>U.S.S.G.] ... range to show an effect on his substantial rights, (Kennedy, J., joined Roberts, Ch. J., and Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)).

<end of page 19>

VIII ("Attachment D" cont.)

(Question #6 - Cases Cited - (et seq.))

(4) Molina-Martinez v. United States, 136 S. Ct. 1338, 194 L. Ed. 2d 444 (2016) (i.e. "Headnote: [3] A Court of Appeals has discretion to remedy a forfeited error provided certain conditions are met. First, there must be an error that has not been intentionally relinquished or abandoned. Second, the error must be plain, that is to say, clear or obvious. Third, the error must have affected the defendant's substantial rights, which in the ordinary case means he or she must show a reasonable probability that, but for the error, the outcome of the proceeding would have been different... The Court of Appeals should exercise its discretion to correct the forfeited error if the error seriously affects the fairness, integrity or public reputation of judicial proceedings.").

VIII ("Attachment D" cont.)

(Question #6 - Cases Cited - (et seq.))

(5) United States v. Sussman, 709 F.3d 155 (3d Cir. 2012) (i.e., "709 F.3d 163) We will find plain error if there is "(1) an error; (2) that is plain; and (3) that affected substantial rights..."")

(6) United States v. Cross, 128 F.3d 145 (3d Cir. 1997) (i.e., "Due process cannot be satisfied when the state [government] has contrived a conviction through the pretense of trial." See, e.g., Mooney v. Holohan, 294 U.S. 103, 112, 79 L. Ed. 791, 55 S. Ct. 340 (1935) (the State); Napue v. Illinois, 360 U.S. 264, 3 L. Ed. 2d 1217, 79 S. Ct. 1173 (1959) (same); Pyle v. Kansas, 317 U.S. 213, 87 L. Ed. 214, 63 S. Ct. 177 (1942) (same).")

VIII ("Attachment D" cont.)

(Question # 6 - Cases Cited - sec. 'a')

< subsection 'a(6)' continued >

[In supra. U.S. v. Cross] [re "Appendix I," "Document 121," at 9 (lines 271-295) referencing U.S. v. Cross, at Line 288-289.]

b. Court Rules Cited -

(1) Federal Court Rules of Criminal Procedure 32(i)(2), and (3) et seq.
[Fed. R. Crim. P. 32(i)(2), and (3)]

(i.e. "The court may permit the parties to introduce evidence on the objections... At sentencing, the court... must - for any disputed portion of the presentence report or other controverted matter - rule on the dispute or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing.")

VIII ("Attachment D" cont.)

(Question #6 - Court Rules Cited cont.)

<in supra, subsection 'b(1)'>

[re "Appendix M", reads as "Faretta hearing held. Ordered defendant sworn; defendant sworn. Ordered defendant's application to proceed pro se is denied. Ordered [149] Motion for New Trial is denied... Ordered certain submissions during sentencing by defendant to the Court to be filed."] [i.e. "Appendix M" and "Appendix N" have nexus, showing inference of Rule 32 violation, [redacted] whereby are as well articulated in "Appendix I", at 9 (lines 271-295).] [see also, "Appendix U", 'Statement of Reasons,' at Section '1.A', whereby reads as: "The court adopts the presentence investigation report without change."] (i.e. "If the Court rules with defense counsel on both the above objections, then [redacted] the total offense level would be 6 (Zone B) ... 1 to 7 months." Petitioner's Report, @47)

VIII. ("Attachment D" cont.)

(Question # 7 - Cases Cited - (et seq.))

Question # 7:

a. Cases Cited -

(1) United States v. Espinoza, 693 Fed. Appx. 711 (9th Cir., Jul. 13, 2017 Opinion) (i.e. "The judgment does not accurately reflect the statute of conviction ... See United States v. Herrera-Blanco, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to correct the judgment).") [re "Appendix I] ["Appendix G" (USCA3 Judgment), "Appendix M" (USDC-NJ Minutes of Sentencing Hearing), and "Appendix U" (Statement of Reasons) ~~do not~~ do not show any statute(s) of conviction.]

(2) United States v. Cotton, 535 U.S. 625, 152 L. Ed. 2d 860, 122 S.Ct. 1781 (2002) (i.e. "a court is without jurisdiction to ... impose a sentence for an offense not charged in the indictment," ... Such an error ... "seriously affects the fairness, integrity or public reputation of judicial proceedings.")

VIII ("Attachment D" cont.)

(Question # 7 - Cases Cited - subsec. a(2))

< U.S. v. Cotton citation continued >

Id., at 406. We granted certiorari, 534 US 1074, 151 L Ed 2d 689, 122 S Ct 803 (2002), and now reverse...

The Court concluded that the amendment was improper and that therefore "the jurisdiction of the offence [was] gone, and the court [had] no right to proceed any further in the progress of the case for want of an indictment." Id., at 13, 30 L Ed 849, 7 S Ct 781.

[re Appx's 'N', and 'T' reference "false certification" (i.e. 18 U.S.C. 1350) as to two statute(s) of indictment or conviction; Appx's 'G', 'M', and 'U' are court documents derived from USDJ-NJ sentencing hearing of "Original Litigation", but nowhere are statutes of conviction disclosed].

< end of page 25. >

VIII ("Attachment D" cont.)

(Question #7 - Other Citations - (et seq.))

b. Other Citations -

(1) Black's Law Dictionary - 10th Edition (2014).

< pertinent legal definitions >

(A) "certify. (1) To authenticate or verify in writing. (2) To attest as being true."

(B) "failure. (1) Deficiency. (2) An ~~omission~~ omission of an expected action, occurrence, or performance."

(C) "corporate officer. An officer of a corporation, such as a CEO, president, secretary, or treasurer."

< Annotation below: >

~~_____~~ [re subsections 'a' and 'b'] as to "Question #7 are in correlation with "Appendix O" (i.e. LEXIS Law document under FRE 902/1005 showing Criminal Statute 18 USCS 1350].

< end of page 26. >

VIII. ("Attachment D" cont.)

Question 8:

a. Cases Cited -

(1) United States v. Bullis, 77 F.3d 1553 (7th Cir. 1996) (i.e. "Criminal prosecution is vindictive and a violation of due process if undertaken to punish person because he has done what the law plainly allows him to do.")

[This citation is regarding "Appendix K"; see also "Appendix I," Document 121, at 5 (lines 136-143, 145-156), 6, 7 (lines 227-236), 8 (lines 237-251), 12 (lines 381-406), 13 (lines 407-440), and 14 (lines 441-472).

(2) United States v. Morrison, 449 US 361, 66 L. Ed. 2d 564, 101 S.Ct. 665 (1981) (i.e. "Reversal mandated if prejudice is proven on attorney-client relationship.")

[re "Appendix A," (i.e. Motion to Withdrawal as Counsel; Order to Relieve Counsel)].

VIII ("Attachment D" cont.)

(Question #8 - Other Citations (et seq.))

b. Statute(s) Cited -

(1) 2 U.S.C.A. 1607(b). Rules of construction - [b] Prohibition of activities. Nothing in this Act shall be construed to prohibit, or to authorize any court to prohibit, lobbying activities or lobbying contacts by any person or entity, regardless of whether such person or entity is in compliance with the requirements of this Act.

(2) 2 U.S.C.A. 1604(e). Reports by registered lobbyists - Electronic filing required. A report required to be filed under this section shall be filed in electronic form, in addition to any other form that the Secretary [redacted] of the Senate or the Clerk of the House of Representatives shall use the same electronic software for receipt and recording of filing under this Act.

[This 'Question Presented' (#8) is germane to 'Related Cases' #9, #12, #13, #15, and #16; entrapment i.e. Petitioner in violation of 2:1606.

VIII ("Attachment D" cont.)

(Question #8 - Other Citations - (et seq.))

c. Other Citations Pursuant to FRE 902(6).

(1) [News publication] 'Bureau of Prisons Continue to Stonewall Political Prisoner Despite Act of Congress' [News Ref. URL under FRE 902(6)/1005, at <https://www.fox34.com/story/41918524/correction-update-bureau-of-prisons-continue-to-stonewall-political-prisoner-despite-act-of-congress>], (March 22, 2020).

(2) [News publication] 'FBI agree to release classified reports on lobbyist tied to Bernie Sanders Scandal (Sep. 25, 2019)' [News Ref. URL under FRE 902(6)/1005, at <https://news.yahoo.com/fbi-agree-release-classified-reports-165824979.html>]; re DOJ Case File: Peterson v. FBI, et al., App No. DOJ-AP-2019-0000176.]

<end of page 29.>

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix F to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 10/8/2020.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 11/3/2020, and a copy of the order denying rehearing appears at Appendix J.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

XII. Statement of the Case. (Attachment F)

The instant petition "res ipse loquitur." "Ab initio," the 'original litigation,' whereby was the proximate cause of fifteen (or more) "Related Cases," all over the U.S., among several district and circuit courts (and other federal tribunals), and multiple proceedings that ensued showing(s) of irregular process [re "Appendix L"], and an irregular judgment ["Appendix G"], whereupon a (23-month) direct appeal case, that rendered a [late] 'non-precidential opinion,' from a statutorily disqualified judge [re "Appendix I," at 2, 7, 13, 14] [see also 'Direct Appeal Case,' ECF Docs. 109, 115] (pursuant to 28 U.S.C. 144 and 455), who [in so many words] denied Petitioner's appeal due to being legally incompetent [re "Appendix F"], in an appellate case that had the substantial likelihood to not

(XII cont.)

have jurisdiction (for direct appeal of a trial conviction) from inception (re "Appendix B" in corrolation with "Appendix L"; see also "Appendix I", at 13, 14).

'Appendix I' and 'Appendix E', whereby corroborate Peterson's former defense counsel Eric Marcy's declaration of ineffective ~~the~~ assistance of counsel (as well conceded by the trial judge) in 'Appendix A'.

Granted, the Supreme Court upholds that "reversal [is] mandated if prejudice is proven on attorney-client relationship." U.S. v. Morrison, 449 US 361, 66 L. Ed. 2d 564, 101 S. Ct. 665 (1981).

'Appendix A' demonstrates prejudice begotten by 'I.A.C.', whereof ~~overlapped~~ overlapped into the [unusual] USCA3 direct appeal case [re 'Appendix C' and 'Appx's 'B' and 'D']

(2)

(XII cont.)

whereby corroborate with 'Appendix F' (Judicial Opinion)], resulting in Petitioner Peterson's (pro se litigant) efforts, as an appellant in durance (under extreme hardship due to being transferred 8 times since the direct case had been filed, 1/9/2019 (i.e. 8 different penal institutions), while on COVID-19 (cell confinement) ~~lockdown~~ lockdown operations at FDC Seatac since 3/1/2020, ~~the~~ being negated and expressly prejudiced under that fact that Petitioner had been enjoined [by the clerk's order pursuant to 'Appendix B'] from adhering to F.R.A.P. 10, which required an appellant to order court transcript from the trial court within 14 days from "N.O.A." entry.

Whereas, on 1/25/2019, the 14th day from N.O.A. entry, the clerk ordered Petitioner to CSA counsel, despite his requests to proceed as 'pro-se', and no CSA

③

(XII cont.)

counsel had been appointed until on or about 4/2/2019.

Thereby, pursuant to findings at 'Appendix B', it was factually impossible for Petitioner to be 'procedural sound' or 'legally competent,' in the direct appeal case.

The instant case is filed in a quality (far-less) than Petitioner would have preferred to proceed in the highest tribunal in the Western World, but due to the extraordinary circumstances, preparing a petition for an extraordinary certiorari under Rule 14, 20, and 22 (single-justice review for stay on judgment), is impossible to accomplish from an 8x10' prison cell, using lined-paper, a black and yellow highlighter, and an orange crayon [i.e. quite embarrassing].

(XII, cont.)

Appendix N' corroborates 'Appendix A'; as does 'Appendix M.' The legal incompetence was "in esse" throughout the trial court proceedings [re "Appendix I," at 8 (lines 253-270), 9 (lines 271-295), 13 (lines 407-429)].


Ad-hoc, the aforesaid disclosure, whereby begotten by an irregular judgment should be placed under a Rule 20 (single-justice) review for a stay/set aside, and request as to Doc 170/171 trial court transcript(s), and a final judgment (with CSA attorney's fees under F.R.A.P. 39 (d)(3), and (e)), prior to any full-court review of this 'hot mess' induced by [former FBI director] Andrew ("John Doe" @ Garvey) McCabe (i.e. News content published at Yahoo News about this entire court ordeal at 'https://tinyurl.com/tk-confession-news') (see also, "Attachment D," section (2)' of page 29).

(5)

(XII cont.)

Granted, "no notice is required to vacate an irregular judgment at a subsequent term of the court," Karrick v. Wetmore, 25 App. D.C. 415 (D.C. Cir. 1905). And an "unpublished opinion cannot constitute precedential authority." U.S. v. Goldberg, 67 F.3d 1092 (3d Cir. 1995). [re ^{the} "Appendixes" 'F', 'J', and 'P'].

There are entirely too many errors and defects in the instant case's subject-matter to input here. God willing, The Almighty blessed me with the wisdom, knowledge, and strength to get this far. I pray that America and its highest judicial tribunal will uphold the Constitution and U.S. Code, at the nonee.

 12/14/2020

Petitioner submits to the Court under
28 U.S.C. 174B

(6)

XIII. Reasons for Granting Petition ("Attachment G")

The instant case 'res ipso loquitur.' There's a civil rights activist in prison for a status crime that was legally impossible for him to commit "ab initio," since at no time was Petitioner the CEO, CFO, or an equivalent, as 18 U.S.C. 1350 tacitly prescribes as the specificities of the criminal offenses that Petitioner was convicted, partially or wholly, for committing, despite the sentencing judge conceding in her final comments (not found in the Appellee's transcript excerpt at ECF Doc. 105), that Petitioner did not come into any proceeds thru means of fraud, "but potentially could have."

Wherefore, Petitioner requests that the Court, adhere 'Appendix D,' and 'Appendix Q,' as to release

①

(XIII cont.)

pending review under 18 U.S.C. 3145(c), or 3143(b)(1)(B), as the U.S. Supreme Court upholds that "a justice of the court may allow a writ of error ... and may order bail." Hudson v. Parker, 39 L. Ed. 424, 156 U.S. 277 S. Ct. (1895).

[re S.Ct. Rule 36].

Thus, Petitioner has demonstrated undue hardship, despite the Court acknowledging that, "special circumstances justifying bail for habeas petitioners include serious deterioration of health while incarcerated and unusual delay in appeal process." U.S. v. Mett, 41 F.3d 1281 (9th Cir. 1994) [re News Content at APNews on FDC Covid-19 Outbreak; '<https://tinyurl.com/fdc-seatac>'; '<https://tinyurl.com/fdc-seatac-5>'].

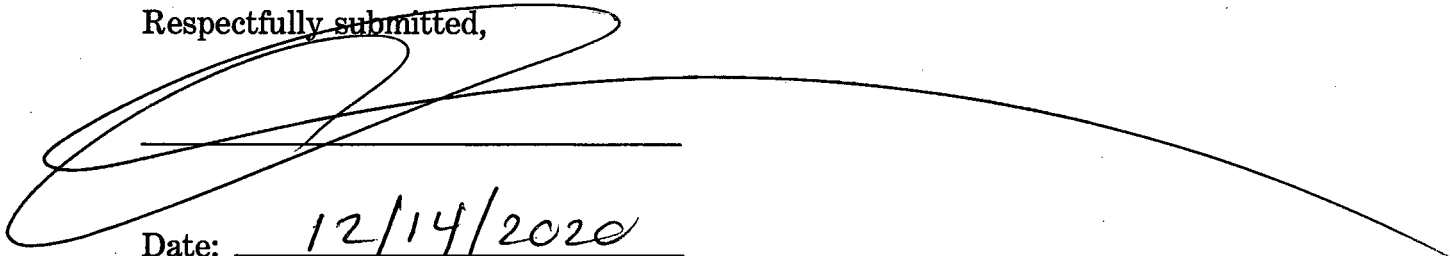
S/  12/14/2020

Petitioner submits this document to the Court under 28 U.S.C. 1746.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and loops around the line.

Date: 12/14/2020

Document Cover Sheet

Peterson, C...

(XII cont.)
whereby corroborate with 'Appendix F'
(Judicial Opinion)] resulting in
Petitioner Peterson's (pro se litigant)
efforts, as an appellant in durance
(under extreme hardship due to
being transferred 8 times since the
direct case had been filed, 1/9/2019
(i.e. 8 different penal institutions), while
on COVID-19 (cell confinement) ~~in~~
lockdown operations at FDC Seatac
since 3/1/2020, ~~the~~ being negated
and expressly prejudiced under
that fact that Petitioner had been
enjoined [by the clerk's order pursu-
ant to 'Appendix B'] from adhering
to E.R. A.P. 10, which required trans-
an appellant to order court trans-
cript from the trial court within
14 days from "N.O.A." entry.

Whereas, on 1/25/2019, the
14th day from N.O.A. entry, the
clerk ordered Petitioner to CSA
counsel, despite his requests to
be represented as pro-se, and no CSA

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-1093

UNITED STATES OF AMERICA

v.

CARY LEE PETERSON,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D. N.J. 3-16-cr-00230-001)
District Judge: Honorable Anne E. Thompson

Submitted Pursuant to LAR 34.1(a)
July 10, 2020

Before: McKEE, BIBAS, and FUENTES, *Circuit Judges*

(Opinion filed: October 8, 2020)

OPINION*

McKEE, *Circuit Judge*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Pro se appellant, Cary Peterson, appeals his conviction and sentence for securities fraud and for making materially false and misleading statements about his publicly traded company. While we construe *pro se* petitions liberally, *pro se* petitioners are not given license to “flout procedural rules.”¹ Nor can they expect appellate courts to comb through a record they failed to provide. Accordingly, we must affirm the district court’s judgment of conviction and sentence.

During trial, the Government produced testimony from several witnesses who testified about Peterson’s dishonesty and fraud. Peterson simply argued that he did not intend to deceive or defraud anyone and that the alleged scheme was too complex for him to have accomplished.² That argument was obviously insufficient to raise a reasonable doubt in the jurors’ minds.

As an incarcerated, *pro se* petitioner, Peterson is offered some latitude in his appeal considering his limited access to legal resources compared to represented plaintiffs. The facts section of Peterson’s appellate brief alleges baseless and unsubstantiated facts about the motivations of the prosecution and judges associated with the case and claims Peterson was not tried by an impartial court.³ Peterson asserts the criminal trial brought against him was a private prosecution despite being brought by the Government. He also argues, without citing any support whatsoever, that he is somehow

¹ *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 245 (3d Cir. 2013).

² Supp. App. 57-58.

³ Appellant’s Br. 15-17.

the victim of judges and law enforcement officials who are graduates of Seton Hall University.⁴

Given the frivolity of his unsupported allegations, it is not surprising that Peterson failed to provide relevant transcripts of the trial and sentencing hearing as required by Federal Rule of Appellate Procedure 10(b) and Local Appellate Rule 11.1.⁵ While we are exceedingly reluctant to dismiss an appeal for failure to comply with procedural rules, we are authorized to do so by Federal Rule of Appellate Procedure 3(a) and the arguments here warrant nothing more.⁶ Peterson provided no record and therefore gave no basis for us to review his unsupported allegations. Moreover, to the extent that he does present a legal argument, it is also frivolous and unsupported. We also conclude that his sentence was within the applicable Guideline range and there is nothing to suggest it was unreasonable or inappropriate.⁷

Accordingly, we will affirm the district court's judgment of conviction and sentence.

⁴ *Id.* 15-18.

⁵ Even if Peterson could not afford the cost, he could have filed an application pursuant to 28 U.S.C. §753(f) for the court to provide transcripts at the government's expense. *See* L.A.R. 11.1.

⁶ *See Horner Equip. Int'l, Inc., v. Seascope Pool Ctr., Inc.*, 884 F.2d 89, 93 (3d Cir. 1989).

⁷ *United States v. Handerhan*, 739 F.3d 114, 119-20 (3d Cir. 2013).

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 19-1093

UNITED STATES OF AMERICA

v.

CARY LEE PETERSON,
Appellant

(D.N.J. No. 3-16-cr-00230-001)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR, KRAUSE, RESTREPO, BIBAS,
PORTER, MATEY, PHIPPS, and FUENTES¹ Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

¹Judge Fuentes Vote is Limited to Panel Rehearing Only.

BY THE COURT,

s/ Theodore A. McKee

Circuit Judge

Dated: November 3, 2020

CJG/cc: Cary Lee Peterson
Mark E. Coyne, Esq.