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United States of America
District of Rhode Island

United States of America
v.

Case No. CR-00074-MSM

David Starkey

RECEIVED

DEC 21 2022

U.S. DISTRICT COURT
DISTRICT OF R.I.

Defendant's Reply to Government's Response
in Opposition to Petitioner's Motion under 28
USC 2255 to vacate, set aside or correct sentence and
Request for Evidentiary Hearing

The following motion is presented to the honorable Court by the Defendant Pro Se. The Defendant was denied counsel by the court and he is not an attorney nor does he have any legal experience. The Defendant is submitting this motion without advice of counsel, while incarcerated, denied Court notifications including Court Docket, notices, filings and Court decisions for 85 days (over 30 actions by the Court had taken place without the Defendants knowledge or ability to be heard), with limited resources while incarcerated and during Covid-19 protocols creating a limited ability for the Defendant to communicate, garner information, or achieve any level of justice or success in these prejudiced proceedings.

Now comes Defendant David Starkey and states as follows:

The Government's Response continues its practice of providing the Court with false information intended to portray the Defendant in a negative light.

The "factual background" in Section A of the government's response is anything but factual. The improper conduct cited by the government in its act and posture "factual background" details much of the behavior of his alleged co-conspirator David Butzinger, not Stareley. Being that the government never interviewed Stareley, as has been the practice in this matter, the Defendant had no voice nor is there any record. Now that that opportunity has passed there is only speculation that remains.

As the Butzinger evidence (as portrayed by agent Christine Brady) in the possession of the FBI shows, and which Defendant will reduce in the evidentiary hearing in this matter all the relevant documents were prepared by Butzinger or Attorney Tim Mears without the prior knowledge of the Defendant. (Butzinger documents/property mistakenly given to Defendant and copied prior to request by Agent Brady to have returned) (Document now have extorted chain of evidence) Judge McElroy denied motion to Strike Malicious Prosecution without legal justification or explanation (See Court Docket ECF 81). Prosecution never responded to motion.

Further, Defendant states as follows:

1. Defendant's claim of ineffective assistance of counsel is predicated on the actions or inactions of both Attorney Josephs (ECF:83) and Attorney Knight (ECF:79). In Prosecution's Motion (ECF:92) Attorney Connolly request for Attorney-Client Privilege waiver in order to speak to Attorney Josephs, yet there is no record or reference made to discussions with Attorney Josephs made in said objection.
2. Attorney Josephs represented Defendant in the early stages of these proceedings, a period of eight (8) months, during which time he did not communicate with the Defendant, did not show or zealously assert evidence showing an illegal search and never brought proof of Defendant's location which would have from the outset prevented negative court action upon the Defendant. Josephs during his term of representation of the Defendant took no action on the Defendant's behalf, as displayed in Court Docket, other than filing a withdrawal without prior knowledge/notice or assent of the Defendant and to file a motion for compassionate release for which the Defendant was not yet entitled.
3. Further evidence of the Government's ignorance of basic factual matters in this case is the

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3. (cont.) Government's statement that Judge Lincoln Almond granted Attorney Joseph's motion to withdraw, when in fact, the Court Docket reflects that Judge McElroy on 1/8/2021 Granted ECF: 32, So Ordered by Judge Mary S. McElroy.

4. Defendant never signed or submitted to Newport Bank any of the alleged fraudulent loan documents. Only Attorney Tim Mears had access, knowledge, motive and ability to prepare and notarize falsely. As evidence, in the possession of the FBI shows and or as Defendant will introduce in an evidentiary hearing, all relevant PPP application documents were prepared by either/or Butzinger and Mears. Many documents were falsely signed and notarized by Mears.

5. Defendant, through counsel has made the Government aware of these facts, but to his knowledge Attorney Mears has never been interviewed by the Government and no sworn statement has been taken or provided.

6. There are numerous false statements, half truths and inconsistencies in the latter attached to the Government's opposition from Attorney

6. (cont.) Knight and as the Government and the Court are aware, a letter cannot be cross-examined under oath in accordance with Defendant's Constitutional right. Additionally, Prosecutors motion (ECF:105) requested a (30) thirty day extension of time, so prosecution could acquire a "Declarative" from Attorney Knight. No "Declarative" was produced simply a letter dated 11/4/2022 prepared only seven days after Judge McElroy granted the motion on 10/28/2022 and weeks prior to Defendant's unheard or considered objection.

7. Several of the statements which are submitted in the form of a letter, which has NOT been executed under the pains and penalties of perjury, are inconsistent or absent of prior claims made by Attorney Knight to the Rhode Island Supreme Court Disciplinary Board, or if these are facts detrimental to his account of his representation of the Defendant they are omitted or purposely not addressed.

8. The nub of the failure of Attorney Knight to effectively represent Defendant is twofold.

9. First, as to discovery issues, all during the period prior to changing his plea Defendant

9. (cont.) was unable to communicate or consult with Attorney Knight as he failed to respond to confirmation calls from the Wyatt Detention Facility. In fact, even though repeated attempts were made Knight elected to only communicate through Defendant's mother, even though the party was not Knight's client and the party would urge Knight to speak directly with his client. As internal emails from Wyatt staff show, attempts to call Attorney Knight were not returned and it was not until after sentencing that Wyatt placed Attorney Knight's phone number on Defendant's cell list. Too little too late and Attorney Knight not once requested an atty-client phone call. Internal Wyatt e-mails confirming these statements were provided with Defendant's petition (ECF: 79)

10. Knight also failed to advise his client and Wyatt staff that he had provided the Government's discovery via memory stick as he had been advised and had prior knowledge of Wyatt procedures, but yet he neglected to do so. Knight was fully aware that he was responsible for notifying his client. Contrary to the Government's claim the burden was on Attorney Knight to make sure discovery was available to Defendant. As confirmed by internal emails...

10. (cont) provided by Wyatt Detention from evidence coordinator Ms. Timinez) (Provided to the Court confirming e-mails with Detendant's Petition ECF:79)

11. Second, the failure to correct this situation was not corrected until weeks after Attorney Knight coerced Detendant's signature on the plea agreement, a fact confirmed by Knight's letter to Detendant of May 27, 2021 stating that Detendant could "now go review evidence/discovery". This letter presented as evidence in petition ECF:79 was never addressed by Knight in his non-sworn letter in the Government's objection.

12. Knight coerced Detendant's signature on the plea agreement by threatening to withdraw from representation of Detendant and further delaying Detendant's sentencing.

13. Knight advised Detendant that unless he signed the plea, the Detendant's trial and sentencing would be delayed at least another year, lengthening his pre-trial confinement which was under strict Covid-19 protocols, locked in his cell up to 23 hrs day in a population (except for himself) of Latin Kings

13. (cont.) gang members (Unit B), giving Defendant concerns for his physical safety.

14. At no time prior to signing the plea agreement on May 5, 2021 did the Defendant see any discovery ever. This is further confirmed by Defendants and his mothers desperate actions by sending by certified U.S. Mail the evidence provided in this proceeding to AVSA Lee Wilker and U.S. Atty Conka showing the Defendant did not see the evidence in this case and that his counsel refused to address the issue. (Certified Receipts signed/received Aug/Sept 2021)

15. Attorney Knight's account of his meetings with Defendant on May 4, 2021 is a total fabrication. Attorney Knight, in his testimony to the Rhode Island Supreme Court Disciplinary Board never mentioned any of the information presented in his most recent non-sworn letter to the Court as presented by Prosecution in objection. Defendant never reviewed or has heard of a video and other documents revealed for the first time in Attorney Knight's letter.

16. In addition to his threat to withdraw in a manner prejudicial to the Defendant, Knight also indicated Defendant would receive

16. (cont.) a sentence of "time served." A fact further demonstrated by Knight's sentencing memorandum requesting the Defendant should receive a "time served" sentence.

17. Knight failed to advise Defendant that he needed the Court's permission to withdraw and that the Defendant could object to that withdrawal. But considering the manner in which the Court handled the withdrawal of Attorney Mark Josephs and how the Defendant was never notified or provided the opportunity to object, along with the fact the Defendant has no legal knowledge or experience, it is reasonable to understand how the Defendant could have been intimidated by Attorney Knight's threats.

18. Knight never reviewed the plea agreement and the legal ease of the document nor the discovery materials with the Defendant at any time during this matter. Knight never disclosed the waiver of Defendant's appellate rights nor did he advise Defendant that the court could reject the plea and impose a longer sentence. Knight left his client helpless and desperate.

19. Further, Knight's statement that he had several lengthy meetings with the Defendant

19. (cont.) during his incarceration at Wyatt is categorically false. In fact, as stated to the State of Rhode Island Supreme Court Disciplinary Board when asked about invoicing and the fact Knight never provided documentation of his time and efforts on the Defendants behalf, he responded in similar fashion that he took "contemporaneous - running notes and has relied on those notes and his memory."

But yet he has never been able to generate proof of his notes or time entered on behalf of the Defendant. Knight has been challenged to this regard for months and now a year, yet he has never generated proof to clear this issue. At this point, it is clear he does not have proof and if created now it would be unrealistic to believe it was not falsified. Attorney Knight was asked to provide Defendants Appeals Attorney with his entire file yet there to, there were no "contemporaneous notes", which he is required and ethically should have provided to the Defendant. They simply do not exist. There were very few meetings, never notified in advance and never lasting more than 10-15 minutes. Not once during Knight's representation was he available for an Attorney-client call. The sole exception being a one hour initial

19. (cont) consultation which was basically a sales pitch to hire Knight, but he stated the meeting was to decide if he wanted to take the case. During this meeting he was asked about the disposition of the sitting Judge on the Defendants case and after describing her professional background he stated, "that they were distant relatives" meaning Knight and the Judge. When asked if this was allowed and would there be a conflict?, he stated "its Rhode Island". At no point did Knight reveal any other conflicts or his elected position in Rhode Island. Which would have weighed heavily in hiring him.

20. None of these meeting included any review of discovery and each was accompanied by a demand that Defendant comply with Knight's proposed action or he would withdraw, further prejudicing Defendant's rights.

21. On May 4, 2021 Knight provided Defendant with the plea agreement and told the Defendant to read it and that he would return on May 6, 2021 to review. As previously stated herein, Knight returned a day earlier without prior notice and coerced Defendant's signature, saying "the plea has a short fuse and it will be off the table in hours".

22. Similarly on August 5, 2021, Knight appeared without prior notice and presented the Defendant with a fee agreement he had never seen before. Knight had been representing the Defendant since early March 2021 without a fee agreement/contract in place. Knight also never issued invoices or an accounting of his time throughout his representation. He would call the mother of the Defendant, who is 83 years old and give her a dollar amount that he needed to receive within a certain amount of days if he was to continue representation of the Defendant. Knight at this time demanded the Defendant sign the fee agreement and back date it until March 2021 or he would be forced to withdraw, again in a prejudicial manner.

23. It was only after Defendant affixed his signature, refusing however, to back date the agreement (later determined Knight himself forged the date reflecting March 2021 - Knight has admitted that he indeed scribed the date without the Defendant's knowledge, effectively forging a legal document - Knight's testimony to Rhode Island Disciplinary Board), that Knight informed Defendant that he had, without Defendant's knowledge or consent delayed his sentencing scheduled for August 6, 2021 to

23. (cont.) on October 2021 date, Knight request to delay the sentencing having been filed in mid-July. Knight again admitted to these unauthorized actions to the Rhode Island Supreme Court Disciplinary Board, stating, "he/I believes he should have discussed moving the date with his client prior to taking action without the Defendant's consent."

24. The submission of Knight to the Government and attached to its opposition does not address 2 of the 4 allegations made by the Defendant in his petition cited by the Government in its motion seeking a waiver of Defendant's Attorney-Client Privilege.

25. Knight's letter does not address Defendant's allegation, raised on his appeal; (1) that Knight should have requested a continuance of the sentencing /at sentencing as requested by the Defendant to bring forward documents and witnesses to refute false statements and misleadings made by the Government about the Defendant prior and at sentencing. (2) that Knight falsified the fee agreement; and (3) that the Court of Appeals admonished him to prepare documents "with emphasis" for the Defendant's Appeal which he refused to do

25. (cont.) unless paid \$2000.00. Knight did not admit to the \$2000.00 shake down, but did admit he did not know how to do the filings necessary for the Appeal. (Admission in testimony to Disciplinary Board Submitted ECF: 79). Showing complete incompetence and ineffectiveness as counsel.

26. Knight had not been released from his professional obligation to represent Defendant and failed to advise Defendant he needed permission of the Court to withdraw.

27. But for Attorney Knight's failure to provide Defendant with discovery materials and to review those materials with Defendant, Knight's repeated improper threats to withdraw in a prejudicial manner and his failure to request a continuance at sentencing as requested by Defendant, the Defendant would have proceeded to trial. Also, Defendant was partially induced to accept the offered plea by the statement of the Chief Judge of the District that he would receive favorable consideration if he agreed to receive the Covid-19 vaccine. (ECF: 80). The Chief Judge visited Wyatt and stated those who took social responsibility and accept the vaccine would be viewed favorably by the Court. (See Motion ECF: 80)

27. (cont.) That commitment by the Chief Judge along with Knight's erroneous advice that Defendant would receive a sentence of time served coupled with Defendant's lengthy solitary confinement in the gang unit at Wyatt and the past trauma incurred while incarcerated, induced Defendant to accept the plea, figuring he would attack his conviction at a later date with a different attorney.

28. Knight adopted the Government's theory of the case and never zealously asserted the Defendant's position and rights as was his professional duty. Much less of an argument is the ineffective performance of Mark Josephs which the Docket alone demonstrates he simply was absent during 8 months of representation.

29. With respect to the Government's arguments with respect to waiver of his appellate rights and claim of ineffective assistance, the Defendant states as follows:

30. Defendant is Pro Se with no training in the law and without adequate resources or knowledge while incarcerated to fully address

30. (cont.) the Government's arguments or even if they are correctly or fully stated.

31. Defendant is not familiar with legal research techniques, but he was able to locate a case *US v. DEL VALLE CRUZ* in the 1st Circuit 785 F. 3d 48 decided in 2015 which seems to say to Defendant that there is an exception to the general rule that appellate waivers are effective absent a "miscarriage of justice".

32. Defendant asserts this is such a case and will be able to establish in a evidentiary hearing with documents and witnesses the falsity of the contents of Knight's submission and facts alleged by the Government which it knows to be false.

33. Knight's conduct toward Defendant in demanding he comply and sign the plea agreement or face withdrawal by Knight, failure to review discovery materials, failure to keep Defendant timely notified of the status of the pending case, failure to seek continuance of the sentencing hearing to dispute the falsity of "facts" placed in evidence at that hearing

33. (cont.) and restated in the Government's opposition are clearly prejudicial to the Defendant and prevented him from a knowing and voluntary waiver of his rights.

34. Had this case been handled properly, all charges should have been dismissed, starting with Attorney Mark Josephs and continuing with Attorney Jason Knight their ineffectiveness and lack of desire or skills to zealously assert the Defendants position, protect and rights led to those who committed crimes, David Butzinger and Attorney Tim Mears to get home confinement a slap on the wrist or completely free of prosecution.

Wherefore the Defendant requests the following relief:

1. Grant Petitioners 2255, or
2. Schedule an Evidentiary Hearing after an appropriate period for discovery to fully develop petitioners constitutional claims, ineffective assistance of counsel and prosecutorial abuse.
3. Such other relief as the Court deems appropriate.

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Respectfully Submitted

D. Stanley

David Stanley
Pro Se'