

1/20/23
Page 1

United States of America
District of Rhode Island

United States of America

v.

David A. Stavelley

Case No. CR-00074-MSM

1:22-CV-00315-MSM

Supplemental Filing to Petition

under 28 USC Section 2255

RECEIVED

JAN 26 2023

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

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 advise of counsel, while incarcerated, while being denied Court Notifications including; Court Docket, notices, filings and Court decisions from (Sept. 15, 2022 - Dec. 7, 2022) and again from (Dec. 7, 2022 - Jan. 12, 2023) totaling over 110 days without notice and the ability to be heard. Defendant was absent intentionally / knowingly by the Court (written notification by Defendant numerous times / as well as denial of motion for timely updates) in over 40 Court actions. The Defendant has limited to no resources while incarcerated during Covid-19 protocols additionally limiting the Defendants ability to research, communicate, garner information and/or achieve any level of equal justice or success in the highly prejudicial proceedings which are irretrievably tainted.

1/21/23
page 2

Now comes Petitioner, David A. Starkey
and moves the Court as follows:

Petitioner submits this filing in reply to the
statement filed as an Exhibit to the Government's
reply to the Petitioner's 2255, consisting of an
unsworn statement of Petitioner's prior
Defense Counsel, Jason Knight.

On 10/27/2022, AUSA Lee Vilker submitted the second
motion by the Prosecution for an Extension of Time.
In this motion Vilker stated he needed this
time to get a "declaration" from Attorney Jason
Knight. It is the Petitioner's belief and under-
standing that a "declaration" is typically a sworn
document which would fall under the penalties
of perjury in the Court. AUSA not only did not
provide a sworn "declaration" but an un-sworn
statement that was not directly presented to
the Court but rather through AUSA Vilker further
diminishing its validity and credibility. Simply
put Jason Knight could lie in his document with
little to no risk. Additionally, Judge Mary S.
McElroy granted AUSA Vilker's motion in less
than 24 hours, even though the Petitioner had
until 11/10/2022 to reply. The fact that Judge
McElroy had total disregard for the Petitioner

page 3

and any opposition he might have to the Government's motion is only overshadowed by the fact that during this time period the Petitioner was denied access/copies of the Court Docket as well as notices, decisions, filings for over 85 days and he had no knowledge of these actions and decisions.

The statements by Knight are replete with falsehoods and newly created narrative never before mentioned in any of Knight's previous testimony.

Knight never reviewed any evidence with the Petitioner including without limitation, the newly surfaced four items he cited in his unsworn statement such as a video, etc.

This is a complete fabrication and is completely inconsistent with previous statements by Knight. Petitioner has never reviewed any video of any kind.

The following timeline of events also undercuts the veracity of the statement provided by Knight.

1. Defendant enters a plea on 5/6/21

2. Defendant receives a letter on 5/30/21 dated 5/27/21 (See Attachment 4) from Defense Counsel Jason Knight stating, "reach out to Luz Jimenez (at Wyatt Detention Facility) and request to review the evidence in your case." This was the Defendants first opportunity to review evidence in his case. Three (3) plus weeks after entering a coerced plea. Had Knight reviewed the evidence with the Petitioner prior to signing the plea, there would have been no reason to send Knight's letter of May 27, 2021, which contradicts Knight's claim of having reviewed the evidence with Petitioner. Petitioner would never have accepted the plea if his Defense Counsel would have effectively reviewed the evidence with him and going to trial would have been viable.

3. After months of letters, texts and requests by the Defendants mother for Attorney Jason Knight to explain why the Defendant was not presented with the evidence prior to signing a plea. Attorney Knight three (3) months later arrived at Wyatt Detention Facility on 8/4/21, one day prior to the Court scheduled sentencing.

4. On 7/14/21, Defense Counsel Jason Knight, without Defendants consent, moved the scheduled

1/20/23
page 5

4. (cont.) sentencing hearing and did not attempt to notify Defendant. Knight admits this occurred and that his non-consensual actions were wrong in State of Rhode Island Disciplinary Board testimony. Knight further admits he committed this harm to his client without the Defendant's knowledge.

5. What is curious to the Petitioner is the Docket reflects the sentencing hearing was rescheduled for 9/30/21. Then the Docket reflects that the hearing was cancelled on 9/29/21, yet when Jason Knight came to see the Defendant on 8/4/21, he specifically stated the hearing date was ninety (90) days away and set for 10/5/21. This sits in the Defendant's mind because when Knight was asked, why (90) ninety more days?, he stated he needed that time to acquire evidence on behalf of the Defendant. Evidence/Discovery that as proven by an AUSA Lee Vilker filing was actually already provided to Defense Counsel Jason Knight in March of 2021.

6. On 8/4/21 Petitioner asked Knight why he never provided the Petitioner with the ability to review and discuss the Government's evidence prior to signing a plea? Knight responded

6. (cont.) that it was Wyatt Detention Facilities responsibility and their fault. Petitioner said to Knight that he wanted the Prosecutor and U.S. Attorney's office notified of this error. Knight's response was aggressive and threatening in saying he would immediately withdraw if the U.S. Attorney's office was notified and the Petitioner could expect more extensive delays in his case. Knight was adamant on not informing the Government. The obvious motivation for Knight's adamant refusal to address the issue was to spare himself the embarrassment of having to admit his negligence. This is directly contrary to his obligation, professionally and ethically to represent the Petitioner zealously and to keep the Petitioner reasonably informed of matters in his case, especially where his Constitutional liberty interest is implicated. Knight simply refused to take responsibility for his negligence and compounded that negligence by not advising Petitioner he could have withdrawn his plea prior to sentencing or if the sentence imposed did not match the plea agreement.

7. Defendant had numerous emails with Luz Jimenez during the month of June 2021 (e-mails provided to the Court in ECF: 79) In these emails,

7. (cont) Mr. Jimenez states, "it was your Attorney's (Jason Knight) obligation to inform you (Defendant) that evidence was at Wyatt for review." Either Knight's or Wyatt's incompetence resulted in the Defendant never seeing evidence presented by Prosecution in this case, until mid-June 2021 after a plea was signed. Based on Knight's letter of May 27, 2021 it is clear Attorney Knight was fully aware his client (Defendant) never saw evidence prior to coersing him to sign a plea.

8. With obvious concern and much anxiety Defendant felt he must inform the Government that evidence was never seen or reviewed by the Defendant prior to signing the plea. On 8/21/21 a certified letter (see Attachment 2) with Knight's letter of 5/27/21 and internal e-mails from/with Luz Jimenez of Wyatt Detention Facility were provided to and signed for by AUSA Lee Vilker and/or his office (See Attachment 3). Again on 8/24/21 a letter and all previously mentioned support documents totaling eight (8) pages was also faxed to AUSA Lee Vilker (See Fax Confirmation Attachment 3). AUSA Vilker never responded to the Defendant or his mother the sender or any confirmation he now was aware the Defendant had not seen evidence in these proceedings.

page 8

8. (cont.) With no response by AVSA Vilker on 9/14/21 the same materials, documents and written evidence demonstrating the Defendant had never seen or reviewed the evidence in this case prior to signing a plea was sent by Certified Mail (See Attachment 4) to the newly appointed U.S. Attorney Zachary Cunha, these evidentiary materials were received and signed for by U.S. Attorney Cunha's office or his representative on 9/17/21. Neither AVSA Vilker nor U.S. Attorney Cunha ever communicated, acknowledged or notified the Court of this clear malfeasance by Defense Counsel Jason Knight.

9. Furthermore, at sentencing on October 7, 2021 when Defendant asked Knight if AVSA Vilker or U.S. Attorney Cunha ever talked to him about his client/the Defendant not seeing the evidence in this case prior to signing a plea, Knight stated, "Yes... but they don't care... too late." This heinous oversight, more intentional disregard for the Defendants rights was finally brought to light in the 2255 filing by the Defendant and has still not been addressed in any objection or opposition filing by the Prosecution. Knight never advised the Defendant/Client he could withdraw the plea

page 9

1215

1:22-cv-00315-MSM

10. Additionally, noted on the Docket are Sentencing hearings rescheduled for 9/30/21 which was cancelled on 9/28/21. "due to the Covid-19 outbreak at Wyatt Detention Center, sentencing scheduled in Jury Assembly room is hereby cancelled". Then on 10/5/21 remote hearing is cancelled. All of these Court actions were never communicated to Defendant.

11. Yet on 10/7/21 just one week after cancelling and still in the heart of the pandemic the sentencing hearing in the Jury Assembly is back on even though there should not have been an in-person hearing based on the Government reported health risks. Judge Mary S. McElroy and AUSA Vilker with complete support by Defense Counsel, but not the Defendant, conduct a hearing in the Jury Assembly with numerous members of the media invited. Seems strange during such trying pandemic times and so many health concerns that the only concern of AUSA Vilker and Judge Mary S. McElroy was the presence at the media and the positive publicity and career advancing they so expectedly would receive, all at the Defendants expense.

12. Due to Judge Mary S. McElroy's Denial at

12. (cont.) three (3) motions/requests for evidentiary hearings the Petitioner in preparation for the collateral hearing on the 2255 petition or through Civil Process will seek to depose the "co-defendant/cooperating witnesses" - Butzinger, prior counsels Knight and Josephs, AVSA Lee Vilker, U.S. Attorney Zachery Cunha, FBI Agent Christine Grady, U.S. Marshall Alvin Silver, IRS Agent Niro and others who have made false statements to the Court, including but not limited to recused Judge Mary S. McElroy. FBI Agent Christine Grady, inadvertently provided Petitioner's mother with exculpatory evidence in this matter which was withheld from Appellant. This was brought to Judge McElroy's attention in a motion which she denied without explanation or investigation.

The foregoing amply demonstrates that Defense Counsel Jason Knight breached his professional and ethical obligation to represent the Petitioner competently, zealously and to a reasonable standard. Knight never reviewed the evidence with the Petitioner prior to coercing the Petitioner to sign a plea which was not in his best interest solely to save himself from the consequences of his negligence or malfeasance. Petitioner

would never have signed a plea nor allowed
it to be entered if Defense Counsel Jason
Knight had fully advised him of his rights
and reviewed the government's evidence
or lack thereof, in totality with him
as Knight is required to do.

Respectfully submitted

David A. Staveley
Pro Se