00-5003

No._____

Supreme Court, U.S.
FILED
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In The

Supreme Court of the United States

October Term 1999

In Re:
Paul W. Graffia,
Petitioner

ORIGINAL

PETITION

CONSTITUTIONAL WRIT OF HABEAS CORPUS

Paul W. Graffia,
In want of counsel
#05918-424 Unit A
Federal Correctional Institution
P.O. Box 1500
Waseca, MN 56093

QUESTIONS PRESENTED

1.

Does Congress' authority to enact laws designating which courts, judges, or justices shall have the power to award the constitutional writ of *habeas corpus* include the authority to redefine the scope and nature of such writ so as to impair, delay, or deny to Petitioner, by imposing the provisions of 28 U.S.C. § 2255, the right to collaterally attack the jurisdiction of the trial court by the constitutional writ of *habeas corpus*?

2.

Did the indictment returned by the grand jury convened pursuant to the United States District Court for the Northern District of Illinois, Eastern Division, meet "constitutional muster" in order to confer jurisdiction on such trial court even though the grand jury session pertinent thereto included commentary by a "SECRETARY" on matters under consideration thereof, and whose presence therein was presumably restricted to stenographic purposes? The trial court denied a pretrial motion to dismiss indictment for, among other reasons, such conduct on the part of the "SECRETARY" during the grand jury session.

3.

Did the aforesaid indictment meet "constitutional muster" in order to confer jurisdiction on the trial court even though such was not presented upon oath, neither was there prefixed to any count therein any statement that the grand jury "*super sacramentum suum ulterious praesentant*"? Unprotected by an affixed solemn oath of the grand jurors, the indictment was amended by the court on the eve of trial.

4.

Was Petitioner denied effective assistance of counsel when after nearly a year into the criminal prosecution pursuant to which he is imprisoned, the trial court disqualified his privately retained counsel and assigned thereto a public defender who had previously

been employed as Assistant U.S. Attorney at the same office and during the time Petitioner was indicted? Petitioner was the first assignment of such public defender acting in that capacity after leaving said U.S. Attorney's Office, and he refused to object to the indictment and the subsequent amendment thereto.

5.

Was Petitioner, who is a citizen of Illinois, denied the judicial power and due process of law under Article 3 of the Constitution by his criminal prosecution in the United States District Court for the Northern District of Illinois, Eastern Division, which court adjudicates matters beyond the constraints of Article 3?

6.

The instant Petition is Petitioner's fourth attempt to gain access to the Supreme Court due to three previous refusals by the Clerk to docket his Petition due to perceived shortcomings in form:

i.) In determining the sufficiency of the pleading for a writ of *habeas corpus* from an impoverished inmate proceeding in want of counsel, is the Clerk of the Supreme Court of the United States subject to the proclamations of the Court to liberally construe and to generally disregard the legalistic requirements of such pleadings?

ii.) Does the exercise of discretion in making such determination against docketing a petition infringe upon Petitioner's fundamental right of access to the courts?

iii.) Does the exercise of discretion in making such determination violate the limitations of the ministerial capacity of the Clerk?

PRIOR PROCEEDINGS

On or about October 18, 1999 Petitioner caused to be presented his petition for a writ of *habeas corpus* styled to a "Judge of the United States" sitting as an Article 3 judge or as a constitutional court[1] in the District of Minnesota wherein Petitioner is imprisoned. Instead, such petition was misdirected to the "United States District Court for the District of Minnesota," which court adjudicates matters beyond the constraints of Article 3 of the Constitution. Notwithstanding that Petitioner's application for the writ of *habeas corpus* was neither addressed to nor invoked such district court's jurisdiction, nonetheless said court proceeded to act and purportedly deny such petition. (See Appendix; Exhibits A, B, & C) Consequently, because no "Judge of the United States" would entertain his petition, Petitioner renews his petition for a writ of *habeas corpus* in this Court.

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[1] As used herein, the terms "legislative court" and "constitutional court" have the same meaning as articulated by Justice Douglas in Glidden Co. v. Zdanok, 370 U.S. 530, 593 (1962)(dissenting opinion). Specifically:

> "Those [courts] established under the specific power given in section 2 of article 3 are called constitutional courts. They share in the exercise of the judicial power defined in that section, can be invested with no other jurisdiction, and have judges who hold office during good behavior, with no power in Congress to provide otherwise. On the other hand, those created by Congress in the exertion of other powers are called legislative courts. Their functions always are directed to the execution of one or more of such powers and are prescribed by Congress independently of section 2 of article 3; and their judges hold for such term as Congress prescribes, whether it be a fixed period of years or during good behavior." [Reference to Ex parte Bakelite, 279 U.S. 438, 449 (1929)]

The term "statutory court" shall herein be deemed synonymous with "legislative court" per Williams v. United States, 289 U.S. 553, 570 (1933).

JURISDICTION

In implementing the *habeas corpus* provision of the Constitution of the United States[2] (Article 1, Section 9), the Judiciary Act of September 24, 1798, ch. 20 § 14 (1 Stat. 82) provides that "justices of the supreme court, as well as judges of the district courts, shall have power to grant writs of *habeas corpus* for the purpose of an inquiry into the cause of commitment." If a judge of the United States refuses to entertain the writ of *habeas corpus*, the proper remedy is to renew the application in the Supreme Court. (Church on Habeas Corpus, § 98, p.160, n. 2)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(Appendix, Exhibit D)

Amendment 5 — Grand Jury Indictment; Due Process of Law.
(Constitution of the United States, Amendment 5)

Amendment 6 — Assistance of Counsel
(Constitution of the United States, Amendment 6)

Article 1, Section 9, Clause 2— Writ of Habeas Corpus
(Constitution of the United States, Article 1, Section 9, Clause2)

Article 3, Sections 1 & 2 — The Judicial Power of the United States
(Constitution of the United States, Article 3, Sections 1 & 2)

Title 28 of the United States Code, Section 2255

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[2] As used herein, unless otherwise apparent from the context in which such is used or expressly defined differently, the term "United States" means the collective name of the states united by and under the Constitution. (See Hooven v. Evatt, 324 U.S. 652, 671-72 (1945))

STATEMENT OF THE CASE

Petitioner is in want of counsel, impoverished, and imprisoned at the Federal Correctional Institution, Waseca, Minnesota, pursuant to sentence imposed on or about October 21, 1996 by the United States District Court, Northern District of Illinois, Eastern Division, Case No. 93 CR 842, Marovich, J. (See copies of the appertaining mittimus—included as Exhibit E in the Appendix.) The United States Court of Appeals, Seventh Circuit, affirmed such judgment on or about July 22, 1997. (120 F. 3d 706)

Petitioner's only previous application for a writ of *habeas corpus* was to a judge in the district of Minnesota as aforesaid. Petitioner did not apply for post judgment relief pursuant to 28 U.S.C. § 2255 due to lack of assistance from persons adequately trained in the law and due to inadequate prison law library facilities and access thereto. Notwithstanding such deprivations of assistance and law library facilities, nonetheless Petitioner did manage to file in the trial court a "MOTION TO NOTICE 'PLAIN ERROR'" on January 26, 1998, wherein the grand jury proceedings and ineffective assistance of counsel matters, among others, were posed to the trial court in an effort to gain post-judgment relief. There was no response thereto from the trial court. At the time, Petitioner was impoverished and without sufficient legal knowledge to know the proper post-judgment legal procedure.

Prior to trial on March 9, 1995 the trial court disqualified Petitioner's privately retained counsel who had filed his initial appearance on May 2, 1994. The trial court subsequently appointed a public defender that had previously been employed as Assistant U.S. Attorney at the same U.S. Attorney's Office that was conducting the criminal prosecution of Petitioner. The successive representations by such public defender of the United States immediately followed by Petitioner was permitted by the trial court

notwithstanding that the investigation and indictment of Petitioner coincided with the public defender's tenure as Assistant U.S. Attorney. Petitioner was the first assigned case to said public defender in such new role after leaving such U.S. Attorney's Office.

The trial court denied a pretrial motion to dismiss the indictment for, among other reasons, conduct on the part of a "SECRETARY" of contributing commentary on matters under consideration during the grand jury session. (See Appendix: copy of motion included as Exhibit F; and copy of pertinent portion of the transcript of the grand jury session, Exhibit G) Even though aware of the matters raised in said pretrial motion to dismiss the indictment, nonetheless said public defender refused to endorse such motion, and refused to raise any objection whatsoever to the indictment, even after the trial court extensively amended the charging instrument without resubmitting same to the grand jury. Ironically, such public defender did file on behalf of Petitioner a post-trial motion for a new trial, for an arrest of judgment, and for judgment notwithstanding the verdict for, among other reasons, the impermissible amending of the indictment. Curiously, such post-trial motion did not include any objection to the conduct of the "SECRETARY" as aforesaid even though the public defender had full knowledge thereof.

To date there has been no adjudication whatsoever to the merits of the claims set forth in Petitioner's application for a writ of *habeas corpus*.

REASONS FOR GRANTING THE PETITION

Petitioner's conviction and imprisonment are in violation of the Constitution of the United States. Apparently, the writ of *habeas corpus* has effectively been suspended in the District of Minnesota by reason of enactments of Congress generally set forth under Title 28 of the United States Code, Section 2255. Should this Court refuse

Petitioner's instant application for the writ of *habeas corpus*, then Petitioner shall have been denied a fundamental right and safeguard of liberty, in violation of an express provision of the Constitution of the United States intended to remedy the injustice of wrongful imprisonment. Additionally, the continued evisceration of the "Great Writ" of liberty by the imposition of preconditions and qualifications generally believed to be applicable by reason of 28 U.S.C. § 2255 (including a statute of limitations), all of which are unknown to the common law, shall be sanctioned by the Court in violation of the Constitution. Boyd v. United States, 116 U.S. 616, 635 (1886) ("It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.")

To the extent that 28 U.S.C. § 2255 stands as an impediment or bar to Petitioner's application for a writ of *habeas corpus*, this Court needs to address the constitutional issues first presented to the Court in United States v. Hayman, 342 U.S. 205 (1952), which the Court decided without "...reach[ing] constitutional questions." (342 U.S. at 223.

SUMMARY OF THE ARGUMENT

Procedural Matters (Question 1)

It appears that the burden Petitioner bears of showing why he is not procedurally barred from making application for a writ of *habeas corpus* is significantly greater than the burden of showing that his criminal prosecution was conducted in violation of the Constitution. It is difficult to perceive how this apparent preoccupation with, and deference to, procedure over substantive matters comports with the intent of the framers of the Constitution to secure the privilege of the writ of *habeas corpus* inviolate (except only as therein stated), particularly with respect to an impoverished inmate, proceeding in

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JUDGE of the UNITED STATES
FOR THE DISTRICT OF MINNESOTA

c/o UNITED STATES DISTRICT COURT – DISTRICT OF MINNESOTA

Paul W. Graffia Petitioner	)	PETITION FOR A WRIT OF HABEAS CORPUS
v.	)	
Richard Stiff, Warden Federal Correctional Institution Waseca, Minnesota Respondent	)	[99 CV 1585]

OBJECTION TO MAGISTRATE'S "REPORT AND RECOMMENDATION"

NOW comes Paul W. Graffia, in want of counsel, Petitioner for the above styled writ of *habeas corpus* (hereinafter "Petitioner"), and as and for an OBJECTION TO MAGISTRATE'S "REPORT AND RECOMMENDATION", and in support thereof shows as follows:

The undersigned Petitioner hereby objects to United States Magistrate Judge John M. Mason's "REPORT AND RECOMMENDATION" (hereinafter, "R & R") purportedly relating to the above styled Petition for writ of *habeas corpus* for all of the following reasons:

1.

The R & R asserts that such is pursuant to "28 U.S.C. § 636 and Local Rule 72.1(c)." (R & R, p.1) However, the VERIFIED PETITION FOR WRIT OF HABEAS CORPUS (the "Petition") as submitted by the undersigned Petitioner is styled to a "Judge of the United States sitting as an Article 3 judge or as a constitutional court, … [and] specifically not directed to a judge sitting as a United States District Court"[1] (Petition, pp.

[1] The meaning of terms used herein shall be and is the same as such terms have been defined in the VERIFIED PETITION FOR WRIT OF HABEAS CORPUS and in the BRIEF IN SUPPORT thereof.

EXHIBIT B # of Pages: 12

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

PAUL W. GRAFFIA,

Petitioner,

v.

RICHARD STIFF, Warden,

Respondent.

Civil File No. 99-1585 (MJD/JMM)

REPORT AND RECOMMENDATION

THIS MATTER is before the undersigned United States Magistrate Judge on Petitioner's self-styled application for habeas corpus relief. (Docket No. 1.) The matter has been referred to the undersigned for report and recommendation pursuant to 28 U.S.C. § 636 and Local Rule 72.1(c). For the reasons discussed below, it is recommended that the petition for writ of habeas corpus be SUMMARILY DISMISSED WITH PREJUDICE, pursuant to Rule 4 of The Rules Governing Section 2254 Cases In The United States District Courts.[1]

I. BACKGROUND

At the conclusion of a 1996 jury trial in the U.S. District Court for the Northern District of Illinois, Petitioner was found guilty on ten counts of conspiracy, wire fraud, and

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[1] Rule 4 provides that "[i]f it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the petitioner to be notified." Although The Rules Governing Section 2254 Cases are most directly applicable to habeas petitions filed by state prisoners pursuant to 28 U.S.C. § 2254, they may be applied to other habeas cases as well. Rule 1(b); Bostic v. Carlson, 884 F.2d 1267, 1270, n.1, (9th Cir. 1989); Rothstein v. Pavlick, No. 90 C 5558 (N.D.Ill. 1990), 1990 WL 171789 at *3.

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EXHIBIT C # of Pages: 11

other fraudulent monetary transactions. He was sentenced to sixty-four months in federal prison. (Petitioner's Appendix, [Docket No. 4], Exh. A.) Petitioner took a direct appeal to the Seventh Circuit Court of Appeals, which affirmed his convictions and sentence in a decision dated July 22, 1997. U.S. v. Graffia, 120 F.3d 706 (7th Cir. 1997).[2] Petitioner is currently serving his sentence at the Federal Correctional Institution at Waseca, Minnesota.

In his present habeas corpus petition, Petitioner is once again challenging his 1996 criminal convictions. He claims that his convictions should be set aside because (i) he received ineffective assistance of counsel, (ii) he was denied due process during the course of the grand jury proceedings that resulted in his indictment, and (iii) he has not had adequate access to legal resources while serving his federal prison term.

For the reasons discussed below, the Court concludes that Petitioner's current claims can be brought only in a motion for relief under 28 U.S.C. § 2255. The Court further concludes that the instant petition cannot properly be construed as a motion for relief under § 2255 and entertained as such. The only proper disposition of the instant petition is to dismiss it with prejudice.

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[2] The Court of Appeals' opinion includes a recitation of the facts underlying Petitioner's convictions. It appears that he was an active participant in a sophisticated loan scam, which defrauded its victims of substantial sums of money.