ORIGINAL

No. _____

00 5468

IN THE

SUPREME COURT OF THE UNITED STATES

Andrew Stephens — PETITIONER
(Your Name)

VS.

United States of America — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

[ ] Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

have always been able to pay until now,

[✓] Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Andrew Stephens
(Signature)

RECEIVED
JUL 31 2000
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Supreme Court, U.S.
FILED
JUL 31 2000
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

DOCKET NUMBER

_____

In Re: ANDREW STEPHENS

APPLICATION FOR WRIT OF HABEAS CORPUS

ANDREW STEPHENS
REG.NO. 42773-019
FEDERAL PRISON CAMP
P.O.BOX 150160
ATLANTA, GA. 30315

Andrew Stephens

IN THE SUPREME COURT OF THE UNITED STATES

Andrew Stephens, Petitioner, .v. The United States of America Respondent.	Civil Action No: _____ "Petition for Extraordinary Writ," Under Supreme Court Rule, 20. Authorized by 28 U.S.C. § 1651(a). Seeking Sentence Vacated

"PETITION FOR EXTRAORDINARY WRIT"
Seeking Sentence Vacated

COMES NOW, Andrew Stephens, the above named Petitioner and files this petitioner for Extraordinary Writ. While the Petitioner is aware that the Writ sought is not a matter of Right, but of discretion sparingly exercised.

The Petitioner maintains that in the instant case there are present exceptional circumstances, warranting the exercise of this Honorable Court's power's.

Petitioner further maintains that adequate relief cannot be obtained in any other form, or from any other court.

As well he maintains that the District Court and the Eleventh Circuit Court of Appeals, has so far departed from the accepted and usual course of Judicial Proceedings, or sanctioned such a departure by a lower court as to call for an exercise of this Court's power of supervision.

And he maintains that the District Court , and the Eleventh Circuit Court of Appeals has in fact decided a Federal Question in a way the conflicts with applicable decisions of this Court.

REASON FOR NOT SEEKING APPLICATION TO LOWER COURTS

Petitioner did not file into the District Court over jurisdiction of Petitioner, concerning the Habeas Corpus petition, because the §2255 habeas Corpus was filed into that same district without satisfactory results, or fully exploring case law pertaining to the issue, nor examening the full facts concerning evidence of the conspiracy conviction.

Petitioner sought relief under §2255, and to seek relief under Habeas Corpus would be fruitless, where the Appellate Court also concluded that the District Court was correct in its opinion without addressing the issue of Petitioner's actual innocence.

Habeas Corpus review should and must be granted in the interest of justice, when a complete miscarriage of justice has been consummated.

Petitioner's actual innocence depends on this courts prudence and sense of justice for which it stands.

IN AID OF APPELLATE JURISDICTION

Petitioner contested the conviction of conspiracy by remedy of §2255, Habeas Corpus into the District Court, Northern District of Georgia. The issue presented was that Petitioner could not be found guilty of conspiracy with the only other indicted defendant, which was employed by the government as an agent for the government.

Petitioner's only indicted co-defendant, government agent, Freddie Claude Richardson, was aquited by a jury panel of all charges.

The District Court refused to address the issue as presented, and Petitioner appealed. The Eleventh Circuit Court of Appeals adopted the District Courts opinion without addressing the issue.

Seeking a writ of certiorari would have greatly reduced the chance of review of this issue, which has never been addressed in the first instance by the lower courts. Therefore, exceptional circumstances exists to warrant this courts exercise of discretionary powers.

Relief has been sought from the lower courts without success, and further attempts would be fruitless.

"THE QUESTIONS PRESENTED FOR REVIEW"

1.
Question of Law, No:1

Can a defendant in a Criminal Trial for Conspiracy in (4) four counts of a (5) five count indictment be found guilty, when his "only" co-defendant was found not guilty?

When only the Petitioner and the only co-defendant were named in the indictment, and the Petitioner only found guilty, and his only co-defendant is found not guilty in the same jury trial.

The Petitioner cannot conspire by himself, and there was simply no other co-defendant to conspire with. There was left only an unindicted government informant who the Trial Court told the jury that "he" was a government informant or government agent and that the Petitioner could not be found guilty of conspiring with him.

The Petitioner, and one co-defendant were the only two persons named in the indictment for conspiracy and the only two persons tried.

Moreover, the co-defendant was only named in (2) two counts of the indictment. Those being counts (1) one and (2) two, and as stated the co-defendant was found not guilty.

Thus, leaving only the "agent," the unindicted government informant for the Petitioner to conspire with. The law is plain that a defendant cannot conspire with a government informant or government agent.

2.
Question of Law, No:2

Can a verdict stand in a Criminal Trial that is contrary to the Law, and the evidence... after the trial jury had retired to decide the issue of guilt or innocence, of two defendants named in an indictment for conspiracy. The jury came back into the courtroom with a Question to the court... e.g The Question:

> "Can one defendant be found guilty of conspiracy, and the other not guilty?"

The Court's answer, e.g:

> "Yes, but only if you find the other defendant conspired with someone other than 1) a government informant, or, 2) a government agent."

The Court went on to tell the jury that "Mr. Cross" was both government informant and government agent. (Trial Transcript pg. 526 lines 4-10.)

However, there was no other defendants named or tried, and Petitioner's only co-defendant was found "not guilty."

Here in the instant case two defendants, one found not guilty, one found guilty of conspiracy together. 'Can such a verdict stand?'

3.
Question of Law No:3

Can a defendant be found guilty of a crime in a Court of Law, in a count of a criminal indictment that he was not even named in?

The Petitioner was 'not' named in count (2) 'two' of the criminal indictment No: **1:92-CR-093-1.**

Only Petitioner's co-defendant was named in count (2) 'two,' and his co-defendant was found not guilty on 'all' counts in which he was named. The same for conspiracy to distribute drugs e.g. cocaine.

However, the Petitioner, who was not even named in count (2) 'two' was charged at sentencing with the (8) eight kilograms of cocaine in count (2) two, and sentenced for them.

Although he was not named in count (2) 'two' and his only co-defendant being the only person in that count Petitioner was sentenced for the same...e.g., Trial Transcript Pg. 2 Lines 9-25.

Therefore, is such sentence unlawful?

4.
Question of Law, No:4

The Petitioner was not indicted for any gun charge, whatsoever, nor was a notice given by the government to enhance, because of gun charges. Moreover, the Trial Court would not allow the jury to hear anything at all about a gun, nor allow anything to be introduced at trial absent any gun whatsoever. (Sentencing Transcript Pg. 14 Lines 5-7.

However, after trial at sentencing, the Trial Court sentenced Petitioner under 18 U.S.C. § 924(c), "use of a weapon charge." There was no use of any weapon whatsoever, Petitioner was never indicted for any weapon, nor tried, nor was the jury even allowed to hear about any weapon. Moreover, this Court held in **Bousley -v- Brooks**, Case No. 96-8516, Oct, Term, 1997, Title 18 U.S.C. 924(c) requires the use of a weapon.

What's important here is the question whether a federal pris-

conflicts with applicable decision of this court.

The Petitioner maintains that the Eleventh Circuit Court of Appeals' decision in the instant case dated, Dec. 7, 1998, Case No: 98-8697, is contrary to the Law, and this Court's decisions.

Thus, this Court is proper as to jurisdiction.

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Statement of the Case

The Petitioner, Andrew Stephens, was indicted by a superceding criminal indictment in the United States District Court for the Northern District of Georgia, Atlanta Division. Criminal Indictment No: 1-92-CR-093-1. (Copy of same attached) The same shows no term of court dated April 21, 1992. It states only a "True Bill" and is not signed by a grand jury foreperson. The only date shown is a "stamped filed in open court, April 21, 1992."

The Petitioner was named in (4) four counts of the (5) five count indictment, or "True Bill."

The Petitioner was named in counts one, three, four, and five.

Petitioner's co-defendant was named in counts one and two.

The charge was did combine, conspire, confederate to violate Title 21 U.S.C. § 841. Conspiracy to distribute cocaine, counts one, two, three, and four, were in violation of 21 U.S.C. 841.

Count (5) five was in violation of Title 21 U.S.C. § 846.

The superceding indictment or "True Bill" named above, stemmed from indictment or "True Bill" No: 1-92-CR-093, which is also not signed by a grand jury foreperson, a term is not named in it,

and it is not dated. It only shows a stamped filed in court date of March 13, 1992. The only difference in the two "true Bills" being count (5) five added to the latter, the superceding "True Bill." Both show "a forfeiture provision against only one defendant" the Petitioner.

A trial by jury from Nov. 16, 1992, through Mon. 19, 1992, took place in the United States District Court for the Northern District of Georgia, Atlanta, the Honorable, Harold L. Murphy United States District Judge was the trial judge.

After a finding of not guilty of one defendant, the other defendant was found guilty, the Petitioner was the only one found guilty of the only two defendants.

The Petitioner was found guilty of counts one, three, four, and five.

And was later sentenced for the same, to a sentence of 235 months in a federal prison.

The Petitioner was as well sentenced under a gun charge that he was indicted for, not tried or convicted for. Thus receiving a sentence, and enhanced sentence under 18 U.S.C. 924(c), use of a weapon. As well the Petitioner was sentenced for the (8) eight Kilograms of cocaine in count two of the indictment or "True Bill."

However, the Petitioner was not even named in count two of said "true Bill." As well it should be noted that the "cocaine mentioned in count two, the 8 Kgs," was the only Physical evidence in the entire case. (Trial Transcript Pg. 16¶16.)

At this time the Petitioner has repeatedly tried to have the Eleventh Circuit Court of Appeals to hear his cause. He has

done so in a lawful manner by law. Yet his attempts to have the Court of Appeals Rule on his issues have failed.

Therefore, Petitioner prays his constitutional rights will be granted by this Honorable Court.

8

"Argument Relied on for the Allowance of Writ"

In considerations governing review on Petition for Writ sought, the Petitioner maintains that: That the district court and the United States Court of Appeals for the Eleventh Circuit has decided a Federal Question that so far departed from the accepted and usual course of Judicial Proceedings, or sanctioned such a departure by a lower court as to call for an exercise of this Court's Power of Supervision. And that said courts "have not decided" but should have decided an important Question of Federal Law.

And the same should be settled by this court.

Insomuch that the lower courts have decided a question in a way that conflicts with applicable decisions of this Court.

And further maintains that the Petitioner has been denied the Right to have his issues "authoritatively decided."

He further maintains that it has been no fault of his, that he was denied the Right to have the issues "authoritatively decided," in that the Petitioner, as the record will show, has tried to raise his constitutional claim to the issues repeatedly and that the courts have failed to hear the same.

The Petitioner notes here that the denial of trial Transcripts, and documents for years did hinder him in his course for

S OFFICE
Atlanta

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUN 19 1998

THOMAS K. KAHN
CLERK

JUN 19 98

By: Deputy Clerk

Andrew Stephens,

Petitioner,

v.

United States of America,

Respondent.

CIVIL ACTION FILE
No. 1:97-CV-2298-HLM
No. 1:97-CV-0103-HLM

CRIMINAL ACTION FILE
NO. 1:92-CR-093-01

ATTEST: A TRUE COPY
CERTIFIED THIS 6/19/98
Luther D. Thomas, Clerk
By: Deputy Clerk

ORDER

This case is before the Court on its own motion. On May 27, 1998, the Court entered an Order denying Petitioner's request to proceed on appeal in forma pauperis and denying Petitioner's request for a certificate of appealability pursuant to 28 U.S.C.A. § 2253(c)(1).

The Court believes that reconsideration of these rulings is appropriate with respect to one issue. In its Order denying Petitioner's § 2255 Motion, the Court held that, because the Eleventh Circuit likely would not have considered Petitioner's claims of ineffective assistance of counsel on direct appeal, Petitioner was not obliged to show cause and prejudice for failing to raise the claims on direct appeal. (Order of April 16, 1998, at 16.) The Court then proceeded to address the claims on the merits.

This issue is one of first impression in this circuit. Moreover, as the Court observed in its April 16, 1998, Order, dicta published by the Eleventh Circuit suggests that the

cause and prejudice tests are indeed applied to ineffective assistance of counsel claims not raised on direct appeal. (Id. at 13-15.) Consequently, the Court concludes that this issue is "debatable among jurists of reason; that a court could resolve the [issue] in a different manner; or that the question[is] 'adequate to deserve encouragement to proceed further.'" Lozada v. Deeds, 498 U.S. 430, 432 (1991) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983)). Moreover, resolution of this issue by the circuit court would greatly assist the district courts in disposing of these claims in the future.

In sum, the Court concludes that Petitioner is entitled to a certificate of appealability to the extent that the issue identified above is presented by Petitioner's appeal. Moreover, Petitioner should be entitled to proceed in forma pauperis on appeal to the extent he wishes to present this issue to the circuit court. The Court otherwise reaffirms the conclusions reached in its May 27, 1998, Order in all other respects.

ACCORDINGLY, the Court **AMENDS** its May 27, 1998, Order in the manner set forth above.

IT IS SO ORDERED, this the 15th day of June, 1998.

UNITED STATES DISTRICT JUDGE

AO 72A
(Rev 8/82)

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

ANDREW STEPHENS,

PETITIONER,

VS.

UNITED STATES OF AMERICA,

PLAINTIFF.

_____/

CASE NO.: 00-5468

Supreme Court, U.S.
FILED
OCT 12 2000
OFFICE OF THE CLERK

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SUPREME COURT, U.S.

PETITION FOR REHEARING

Comes Now, Andrew Stephens, pro-se, herein petitioner, in response to the clerk of the court's letter, dated October 17, 2000, received on November 21, 2000. Pursuant to rule 44 of the Supreme Court Rules; would state the following grounds, and hereby certify's that the grounds are limited to intervening circumstances of substantial grounds not previously presented. I also certify's that this petition for rehearing is presented in good faith and not for a delay:

STATEMENT OF THE GROUNDS ASSERTED TO MERIT REHEARING CONSIDERATION

I. WHETHER THE DISTRICT COURT HAD SUBJECT MATTER JURISDICTION TO ALLOW PETITIONER TO BE CONVICTED AND SENTENCED FOR CONSPIRACY.

II. WHETHER THIS COURT ADDRESSED PETITIONER NEW GROUND ON AN ISSUE THAT WAS A NEW RULE OF CONSTITUTIONAL LAW, THAT WAS NOT PRESENTED IN THE LOWER COURTS, BUT WAS RIPE FOR ADJUDICATION BY THIS COURT.

GROUND I

Petitioner asserts, that the district court lost subject matter jurisdiction to enforce the conviction and impose sentence, due to the juries verdict of not guilty on the only sole co-defendant that was indicted with petitioner in the conspiracy.