APPEAL NO. 22-5000
IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

UNITED STATES PLAINTIFF/APPELLEE

v. (OKND Criminal 4:09-cr-43 SPF-2)
(OKND Civil Case 4:21-cv-00361-SPF-CDL)

OSCAR STILLEY DEFENDANT/APPELLANT

AN APPEAL FROM THE ORDER DISMISSING PLAINTIFF'S MOTION UNDER 28 USC 2255, AND DENYING A CERTIFICATE OF APPEALABILITY

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THE HONORABLE STEPHEN P. FRIOT PRESIDING

****

APPELLANT'S COMBINED OPENING BRIEF AND APPLICATION FOR A CERTIFICATE OF APPEALABITY

****

By: Oscar Stilley
10600 North Highway 59
Cedarville, AR 72932
479.384.2303
479.401.2615 fax
oscarstilley@gmail.com

CERTIFICATE OF INTERESTED PERSONS (FRAP 26.1(d)(2) and 28(a)(1))

Appellate Court No. 22-5000

Short Caption: United States v. Oscar Stilley

1. The undersigned pro se Appellant, Oscar Stilley, certifies that the following listed persons and entities have an actual, plausible, or potential interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1) Co-defendant Lindsey Kent Springer is not a direct party to this appeal, but does have an interest in this litigation and/or the outcome of this litigation. Springer's direct appeal (10-5055) was consolidated with Stilley's attempt at a direct appeal, 10-5057. Pursuant to the rules, Springer is or at least may be entitled to join part or all of Stilley's appeal. FRAP 28(i); 10th Cir. R. 31-2. Appellant Stilley has attempted to get Charles Anthony O'Reilly, counsel for the government, to disclose the phone number, email, and correct physical address for Lindsey Springer. Mr. O'Reilly refuses, and continues to use an address that is known to be an address of the Department of Justice-Federal Bureau of Prisons (DOJ-FBOP).
2) Jeffrey Gallant is local counsel to Charles O'Reilly. O'Reilly is a California attorney.
3) Vani Singhal is an attorney for the Northern District of Oklahoma attempting to enforce the monetary portion of the judgment under attack. The State of Arkansas, Department of Finance and Administration, will receive the funds collected from Stilley until the alleged "tax losses" of the State of Arkansas are fully satisfied.
4) Jerold Barringer, an attorney from Nokomis, IL, is a former attorney for Lindsey Springer.
5) Government attorneys on the direct appeal of Lindsey Springer, (10-5055) which Stilley was allowed to join, include Frank P. Cihlar, Alexander P. Robbins, and Gregory Victor Davis.

6) Clinton J. Johnson, US Attorney for the Northern District of Oklahoma, has certain duties to supervise Gallant, Singhal, and O'Reilly, over whom he has supervisory control. Oklahoma Rules of Professional Conduct, Rule 5.1.
7) Charles Robert Burton, IV, was standby counsel for Stilley. Robert Williams was standby counsel for Springer. Kenneth Snoke participated in the prosecution until his retirement. Terry Lee Weber was involved as CJA attorney, in some capacity, early in the criminal litigation.

2. The names of all law firms whose partners or associates have appeared for any party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Appellant is pro se and has been such at all stages of litigation, with the possible exception of Terry Lee Weber – see docket. Appellees are represented by Gregory Victor Davis, PO Box 972, Washington, DC 20044.

Appellant's signature: /s/ Oscar Stilley Date: April 15, 2022
Appellant's Printed Name: Oscar Stilley
Address: 10600 North Highway 59 Cedarville, AR 72932
Phone number: 479.384.2303 Fax Number: 479.401.2615
E-Mail Address: oscarstilley@gmail.com

WAIVER OF ORAL ARGUMENT

Appellant waives oral argument. Appellant takes the position that the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument. FRAP 34(a)(2)(c).

TABLE OF CONTENTS

Contents

TABLE OF AUTHORITIES

CASELAW

Cases

STATUTORY AUTHORITY

Statutes

OTHER AUTHORITIES

Other Authorities

RELATED CASES: (taken from the District Court docket)

09-5165 10th Circuit Court
10-5101 10th Circuit
11-10096 US Supreme Court
13-5113 10th Circuit
14-5111 10th Circuit
17-8312 US Supreme Court

Related Case: 4:13-cv-00145-SPF-tlw

Appeals court case numbers:

10-5055 (#340) 10th Circuit,
10-5156 (#428) 10th Circuit,
11-5053 (#447) 10th Circuit,
13-5062 (#497) 10th Circuit,
14-5047 (#554) 10th Circuit,
14-5109 (#588) 10th Circuit,
15-5109 (#607) 10th Circuit,
18-5104 (#659) 10th Circuit,
20-5000 10th Circuit

JURISDICTIONAL STATEMENT

1. This is an appeal from an order dismissing Appellant's motion under 28 USC 2255.

2. Jurisdiction to appeal to the 10th Circuit is at 28 USC § 1291, for appeal from a final decision of a US District Court.

3. The order of dismissal was entered 11-4-2021. Dkt. 719. The judgment was entered the same day. Dkt. 720. Notice of appeal was filed on 1-1-2022, which is within 60 days and thus timely. The opening brief was originally due 40 days from 1-6-2022, or 2-15-2022. A clerk's order extended the time to 3-17-2022. By order dated 3-10-2022, the deadline was further extended to 4-18-2022.

This appeal is from a final order of the District Court, dismissing Appellant's motion under 28 USC 2255 and denying a certificate of appealability. Stilley attempted to also appeal from all other adverse orders entered in the civil (2255) or criminal case. The clerk struck all those designations of other adverse orders, after reviewing the file.

STATEMENT OF THE ISSUES PRESENTED

1. Whether Stilley had a legal right to one direct appeal of his criminal conviction.

2. Whether or not the government had the legal right to deprive Stilley of access to the record as defined by FRAP 10(a), while Stilley is required by 10th Cir. Rule 28.1(A) to cite "precise references in the record,"[1] thus rendering a conforming brief an impossibility.

3. Whether the government had the legal right to deprive Stilley of access to his computer, computer files, internet access, legal research tools including critical resources completely unavailable in prison, printers, etc., for the duration of the time allotted for the preparation of an appeal brief.

4. Whether Stilley still has a right to get the one direct appeal of which he has been unlawfully deprived since sentence and incarceration.

5. Whether Stilley is entitled to judgment based on a truthful record.

6. Whether the government has the right to incarcerate Stilley for 5

[1] Without prejudice to the possibility of "plain error" review.

years on Count 4, despite the government's own evidence presented at trial, that Stilley necessarily lacked the *mens rea* element of that count.

7. Whether the government has the right to preserve Count 4 of the indictment by obstructing Stilley's access to a material witness, namely Stilley's co-defendant Lindsey Springer.

8. Whether the government has the right to enforce a judgment on a theory not alleged in the indictment, not raised at trial, indeed not raised at all until after the final dispositive motion deadline.

9. Whether the District Court had the right to manufacture a new rule allowing it to add the pages of a motion to the pages of a brief, *sua sponte* declare the brief "overlength," deny opportunity to shorten the pleadings, and refuse to rule on the merits of said pleadings.

10. Whether Stilley may lawfully be convicted and incarcerated for performing an act which Stilley had a legal duty to perform.

11. Whether Stilley may lawfully be convicted and imprisoned for paying money out of his IOLTA account, to a person who according to the alleged grand jury and the government's pretrial theories had "earned" the money and was thus legally entitled to it.

12. Whether Stilley may lawfully be sentenced to prison for failing to

conclude that a *civil* rule had been incorporated into the local *criminal* rules, on the basis of ambiguous language in the local criminal rules.

13. Whether Stilley may lawfully be convicted for failure to make *Springer's* tax returns, despite the fact that numerous laws, rules, regulations, forms, and legal principles prevent Stilley from doing that.

14. Whether Stilley may lawfully be convicted for failing to make Springer's tax return, when Springer actually made a tax return for that year, within the meaning of the law, before the "tax deadline," and where the government also seized evidence sufficient to constitute a tax return, within the contemplation of 10th Circuit case law, before the "tax deadline" for that year.

15. Whether or not the District Court, who was originally hand picked by OKND District Judge Claire V. Eagan on the authority of an order by 10th Circuit Judge Robert Henry designated as "Miscellaneous 23" may nevertheless preside over the civil case under 28 USC 2255 based upon this now discontinued order.

16. Whether Stilley may lawfully be punished based upon perjurious evidence.

17. Whether Stilley may lawfully be punished based upon laughably

false evidence lacking the element of *knowledge* of the falsity.

18. Whether Stilley may be punished based on math errors, with respect to which he has ***not yet*** been accorded one direct appeal.

19. Whether apparent *ex parte* communications between the government and the District Court, highly prejudicial to Stilley, amount to a fraud upon the court, or contribute to such a finding based on additional factors.

20. Whether or not the government has the right to oppose Stilley's claims of attacks on his ability to defend in a criminal case, by dismissively claiming that denials "need not be said."

21. Whether or not the government's raising of the statute of limitations is lawful, in light of the fact that they engineered Stilley's inability to prepare the opening brief for the one direct appeal to which he is by law entitled.

22. Whether or not a pattern of acts and omissions that destroyed Stilley's ability to get rulings on the merits of his claims, at district court or at the 10th Circuit, under circumstances that strongly suggest *ex parte* communication with the District Court, constitute or contribute to a "fraud upon the court" within the meaning of applicable law.

23. Whether Stilley had a right to a judicial ruling on his claim that the statute of limitations never commenced, consistent with the plain language of 28 USC 2255(f)(1) & (2).

24. Whether or not the government was entitled to dismissal on grounds of limitations, on which they as proponent had the burden of proof as to the date of commencement, without putting forth so much as a scintilla of evidence in favor of their position. Dkt. 713, pg. 4-6.

25. Whether the District Court's refusal to acknowledge and rule on Stilley's claim that he was deprived of his ***docket and docket items*** altogether, rather than merely suffering a **delay** in procuring his transcripts, constitutes a "defect in the integrity of federal habeas proceedings."

STATEMENT OF THE CASE

Oscar Stilley for many years was an attorney known for advocacy on behalf of taxpayers, in civil, criminal, and administrative proceedings, etc. Stilley primarily worked for individuals in criminal or civil trouble with the IRS.

Stilley came to be under criminal investigation in the middle of 2004, when he prepared a 10th Circuit criminal appellate brief[2] for Ms. Judy Patterson, concerning amongst other things the Paperwork Reduction Act (PRA). Stilley drafted it, Patterson's attorney Jerry Barringer read, signed, and filed it.

The DOJ through various machinations procured a deal for Judy to drop her appeal in exchange for immediate termination of her prison sentence. *Id*. At the same time (middle of 2004) the DOJ started a retaliatory criminal investigation on Barringer, Stilley, and Lindsey Springer.

Springer and Stilley were purportedly indicted almost 5 years later, in 2009. The proper term is ***purportedly,*** because **no** indictment

---

[2] This is the docket only. Apparently the filed brief is unavailable.

was returned in open court.

The government proceeded under not less than 4 different theories of criminal liability. Dkt. 701, pg. 24. Two theories were claimed pretrial, one was deceitfully raised during trial, and one was raised post-trial. The government resisted any response to a bill of particulars, on the very theory that the government is ***bound by the particulars so stated***. Dkt. 42, pg. 8.

During trial, O'Reilly casually handed Springer and Stilley copies of a proposed "gift" jury instruction, effectuating the theory switch from the pretrial theories to the trial theory.

This instruction was not filed ***by the government***. Nor was it ***openly*** presented to the District Court. O'Reilly and company ***left no fingerprints*** on it. The District Court *sua sponte* came up with basically the same jury instruction, tweaked to make it harsher on the defendants, and submitted that instruction to the jury. Dkt. 244, pg. 29-31.

On information and belief, O'Reilly engaged in *ex parte* communication with the District Court, to provide him with the jury instruction and theory switch that O'Reilly desperately needed, to avoid

an adverse jury verdict.

On 12-8-2009, Stilley filed a consolidated motion for judgment as a matter of law, and motion for new trial, along with a brief in support. Dkt. 261 and 263.

The District Court struck both pleadings *sua sponte* Dkt. 264. This was utterly contrary to the District Court's stated opinion of the law, in written decisions both before and after striking Stilley's pleadings. Dkt. 701, pg. 44-49.

Having had a premonition of some writings on the wall a week prior to Stilley's JAML, on 12-1-2009 Stilley filed a 5 page motion, Dkt. 254, and a five page brief, Dkt. 255. These pleadings laid out the utterly destructive impact of incarceration on Stilley's ability to prosecute an appeal, and requesting transcripts at public expense. The government didn't respond at all – on the record. Judge Friot burned the clock from 12-1-2009 to 1-12-2010, some 42 days, then denied the unopposed motion. Dkt. 278.

The District Court's theories were laughably false and utterly incompatible with the published policy of the Administrative Office of the Courts. See Dkt. 701, pg. 59-67, esp. pg. 62 On information and

belief the District Court once again engaged in *ex parte* contact with the government, to make this decision. Dkt. 278. By the District Court's own admission he was getting information from sources not disclosed on the record. *Id*.

The District Court on 1-22-2010 issued another *sua sponte* order, Dkt. 290 this one much more subtle that the one described above. This was in a scheduling order, quite often done *sua sponte*, without malice and without prejudice to the parties.

Tucked into this order was a cutoff date of 2-1-2010, for dispositive motions. A mere 12 days later the government switched to a "theft" theory of criminal liability, at least as to Count 4. See comment made 2-12-2010, at Dkt. 310, pg. 11, about Patrick Turner's "naive belief" that "Defendant Springer had any intention of repaying the money Defendants stole."

In other words, the government admitted that their pretrial theories, as well as their brand new theory trotted out in the middle of trial under the most suspicious of circumstances, were all ***thoroughly*** incapable of supporting a criminal judgment.

Indeed, the government on 3-3-2010 confessed that if the trial jury

had not adopted the post-trial "stealing" theory of the case, they would have returned verdicts of "not guilty," at least as to Count 4. Objections to PSR, page 3. They could do this with great confidence, since the District Court had ***cut clean off*** any opportunity to file any dispositive motions. Stilley was relegated to seeking relief on appeal. The government utterly crushed and destroyed this legal right – precisely because they knew the probable outcome of a ***competent*** appeal by Stilley.

At sentencing, the government manufactured brand new theories of "tax loss" which resulted in dramatically higher offense levels and restitution amounts. These new theories were all either the product of 1) perjury, or 2) false evidence not arising to the level of perjury, or 3) mathematically impossible claims that won't even survive a trip to a calculator.

US Probation found a Total Offense Level of 26, corresponding to a guideline range of 63-78 months. *Original PSR dated 2-25-10, pg. 16, 19.* Stilley by objection got the calculated Total Offense Level down to 24, for a guideline sentence of 51-63 months. *Revised PSR dated 4-8-10, pg. 15, 19.*

The government argued for a Total Offense Level of 32, with a Guideline Range of 121-151 months. The District Court mixed and matched, but still came up with the government's requested Total Offense Level and Guideline Range.

The District Court then slammed both Springer and Stilley with 180 months, denouncing Stilley as a "thief with a law degree." Sent. TR 450. When Stilley complained about the upward departure, the District Court claimed that it was a variance rather than a departure. Sent. TR 466. This can be fairly described as a distinction without a difference.

O'Reilly successfully opposed release pending appeal – once again, because he knew the devastating effects of a ***competent*** appeal upon his ***fraudulent*** case. The District Court ordered both defendants to jail that day, directing that Stilley and Springer not be incarcerated together. Dkt. 338, pg. 2.

The District Court 1) acknowledged that the right of self-representation is an important right, 2) that incarceration has a negative impact on the ability to exercise that right, and 3) promised to do what he reasonably could to ameliorate the impact of incarceration. Sent. TR 455-456.

The DOJ, by and through its subsidiary the Federal Bureau of Prisons (DOJ-FBOP) made a complete mockery of the administrative remedy process. Dkt. 701, pages 70-80. They rendered it impossible to even get through the process during the pendency of the direct criminal appeal proceedings. *Id*.

Since coming to home confinement, Stilley has compiled the 10-5057 docket into convenient and readily accessible form, with links to material filings. For a stacked 448 page set of 10-5057 docket items, click here.

This docket shows that from May 2010 through December 2011, Stilley filed not less than 13 pleadings in this Court, trying to get access to the basic wherewithal for a ***competent*** appeal. 10-5057 docket ## 9, 11, 20, 21, 26, 28, 29, 34, 40, 43, and 56.

Stilley's wife packed up a set of the docket and docket items (created by Stilley prior to incarceration) and mailed them to Stilley. Dkt. 701, pg. 75. The DOJ-FBOP arbitrarily returned them to her, without even giving Stilley a due process right to object.

Near the end of the proceedings in 10th Circuit 10-5057, Stilley

filed a 6 page motion[3] (10-5057 Dkt. 56) asking for permission to file an appeal brief after having completed the ridiculously pathetic administrative remedies to which he had been relegated.

The panel rejected the request, but not for the most obvious reason that could possibly be cited. If any judge on the 10-5057 panel thought Stilley had *already prosecuted* the one direct appeal to which he was entitled, they easily could have said that.

Not one of these judges did that. Stilley specifically asked for a court order commanding the clerk to withhold issuance of the mandate pending completion of the administrative remedy process and court litigation of his right of reasonable access to the courts. Circuit judges Lucero, Baldock, and Tymkovich construed the motion "as a motion to stay the mandate." 10-5057 Dkt. 57. Knowing full well that Stilley wanted opportunity to brief the court at the conclusion of administrative remedies, and any legal challenges to follow, the panel denied the motion.

---

[3] Stilley has no idea how the second page of the document appears to be extraneous. Stilley was in prison, someone else helped him file the document. Filed page 2 has the correct filemark headers at the top.

Stilley on 4-15-2011 filed a district court motion with included brief (Dkt. 443) that the DOJ-FBOP was rendering the exhaustion of administrative remedies a practical impossibility. O'Reilly sprang into action, now willing to write, to oppose any relief. (Dkt. 444). Stilley replied. (Dkt. 454). The District Court denied the motion on the ground that Stilley was still seeking relief through administrative remedies. (Dkt. 455) Nothing was said about the allegations that the DOJ-FBOP was rendering administrative relief "unavailable" within the meaning of *Ross v. Blake*, 578 U.S. 632, 136 S. Ct. 1850 (2016)

Stilley spent over 400 days in SHU (Special Housing Unit, or jail for the prison) mostly either directly or indirectly due to his efforts to get the right of peaceful petition and due process. Dkt. 701, pg. 65. Stilley has been force fed with a nasogastric tube 8 times, and threatened with it many more times. Dkt. 701, pg. 75.

Stilley suffered approximately 13 "shots" (formal disciplinary incident reports) and lost about 6 months of "good conduct time," all or nearly all of which amounted to attacks on his right of due process and peaceful petition. Stilley's direct appeal of a district court challenge to the DOJ-FBOP's denials, evasions, retaliatory "shots," dirty tricks in

the administrative process, etc., is still pending in the 5th Circuit. *Stilley v. Garland* et al, 5th Cir. 21-60022. Stilley's opening brief, the government's response brief, Stilley's reply brief, and the official record on appeal are all available online.

The government claims, with a straight face, that Stilley has attempted over 50 administrative remedies while in DOJ-FBOP custody, and has failed to exhaust a single remedy. Stilley v. Garland, government response brief, pg. 21.

The truth of the matter is that Stilley did exhaust his administrative remedies – long after the panel in Stilley's vain attempt for his one direct appeal as of right, (10th Cir. 10-5057) had rendered its opinion. The DOJ-FBOP just clammed up and refused to admit it.

After coming to home confinement, Stilley filed a motion for reduction of his sentence pursuant to 18 USC 3582(c). Dkt. 694. Stilley submitted a proposed preliminary order, (*Id.*) which made it plain that Stilley's goal was to first get a truthful record, and then to get a ruling on his motion for reduction of sentence. Stilley didn't get the truthful record. The District Court denied the motion.

Stilley filed his motion under 28 USC 2255 9-1-2021, within one

year of coming to home confinement. Dkt. 701 The following day he filed a motion for the phone, email, and mailing address of his codefendant Lindsey Springer, as well as a request for the District Court to explain how he still has any authorization to hear the case, since no version of Miscellaneous #23 is currently valid. Dkt. 702.

The government moved to "dismiss" Dkt. 701 and Dkt. 702. Dkt. 705, Dkt. 707. The District Court treated the entire 81 page motion, with numbered paragraphs under oath, as mere "argument." Dkt. 719. Since he unilaterally converted all of Stilley's evidence into "argument," Stilley couldn't possibly have any "new" evidence. The District Court didn't deny that Stilley is "***actually innocent***." The District Court "dismissed" both motions without acknowledging or discussing Stilley's ***evidence***. Id.

Stilley prepared a district court docket with entries from the time he came to home confinement to the present. This is essentially a docket with active links to pertinent pleadings, and also to the proposed order previously mentioned. OKND 4:09-cr-43, ##693-730

In summary, this is what has transpired.

1) Stilley and Springer utterly devastated the government's

pretrial theories, so much that the government abandoned them in favor of theories laughably inconsistent with the indictment.

2) Stilley was denied a trial, fair or otherwise, on the allegations of the purported indictment. Everyone concedes Stilley is innocent ***of that***.

3) Stilley was denied any consideration of his motion for new trial and judgment as a matter of law, altogether contrary to the District Court's own written belief of the requirements of due process.

4) Stilley was denied an unopposed motion for transcripts, at a time that would have allowed him to prepare appellate arguments on the issue of criminal liability, prior to incarceration. Stilley was denied transcripts until the DOJ[4] was able to deprive its ***adversary*** Stilley of access to the official record as defined by FRAP 10(a).

5) The District Court *sua sponte* slammed the door on dispositive motions, just days before the government abandoned the trial theory of liability (itself contradictory to the pretrial theory) and

[4] By and through its subsidiary the DOJ-FBOP.

adopted the "theft theory."

6) The government for purposes of sentencing more than doubled its pretrial alleged "tax losses," knowing full well that the evidence in support of this claim was false and fraudulent. Dkt. 701, pg. 26.

7) Stilley and Springer were both locked up immediately upon the imposition of sentence, with instructions to keep the two separate. Dkt. 338, pg. 2. The District Judge ignored objection to interference with the US mails, committed with the apparent intention of obstructing peaceful petition and due process. Dkt. 364, 376.

8) Stilley repeatedly sought the wherewithal to prepare a competent appeal brief, by pleadings filed from May 2010 through November 2011. 10-5057 docket

9) Stilley sought relief from District Court, for denial of access to those things necessary for a competent appeal, explaining that his administrative remedy requests were being obstructed, but was denied. Dkt. 443, pg. 7.

10) Stilley has exerted full efforts since that time, and has a 5th

Circuit appeal currently pending, with respect to amongst other things the denial of ***access to*** those things necessary for the preparation of competent appeal briefs.

11) Stilley filed a motion for sentence reduction under 18 USC 3582(c), requesting that the District Court first issue a preliminary order ensuring that the District Court could rule on the basis of an ***honest*** record. Dkt. 694. The District Court declined to order such relief.

12) Stilley filed his motion under 28 USC 2255 within one year of coming to home confinement, same being the earliest plausible time that Stilley was freed from obstruction of access to those things indispensable to a competent appeal. Nobody contends otherwise.

13) The District Court "dismissed" Stilley's 2255 motion, as well as his motion for Springer's contact information, and the District Court's claim of authority to decide this case. Dkt. 719. The District Court feigned belief that Stilley's verified motion under 28 USC 2255 was really just "argument."

Thus we can see that Stilley wasn't ***tried*** on the allegations of the

indictment, was denied ***any*** consideration of the most critical post-trial motions, was sentenced on an ***altogether new theory***, after being barred from challenging it, was tagged for obviously ***false and fraudulent*** sentencing guideline "points" and restitution, was denied the ***one direct appeal*** to which he was legally entitled, was denied his 1st Amendment right of peaceful petition and due process for the duration of his incarceration, was repeatedly and extensively punished for efforts to get due process and the right of peaceful petition, and has never had so much as a pretense that any district court has considered or decided any motion under 28 USC 2255 ***on the merits***.

SUMMARY OF ARGUMENT

Please note that the summary of argument does not precisely follow the order of the points on appeal. Stilley trusts that the reasons for the order will become apparent in the reading of the full document.

1. Stilley in his verified motion under 28 USC 2255 declared under penalty of perjury that he was denied access to the docket and docket items, after he was incarcerated 4-23-2010, the day of his sentencing. Dkt. 701, pg. 65, 75. The government didn't deny this fact. The District Court dodged the allegation, pretending to believe that Stilley complained only of "delaying the production of trial transcripts." Dkt. 71 9, pg. 2.

2. Neither the government nor the District Court questioned Stilley's factual statement that it was impossible to prepare a competent appeal brief without the docket and docket items, Dkt. 701, pg. 55, 65, 72. which at the time amounted to over 4,000 pages. With Springer's additions after sentencing, the docket and docket items now exceed 7,000 pages.

3. The government had the burden of proving the affirmative defense of statute of limitations. Dkt. 713, pg. 4-9. Other than the completely

frivolous claim that Stilley's 2255 motion was overlength, limitations was the only issue the government raised. Dkt. 705, pg. 3.

4. The government submitted no evidence at all in support of their claim of limitations. The government provided no evidence to rebut any of Stilley's 510 numbered paragraphs, or anything else in Stilley's motion.

5. Stilley alleged ***facts*** which if true unequivocally require that his judgment and commitment order be set aside.

6. The willful, intentional, and collusive refusal to allow a criminal defendant to get a ruling on material issues amounts to a fraud upon the court, and furthermore constitutes a "defect in the integrity of federal habeas proceedings," according to binding 10th Circuit precedent.

7. Fraud upon the court prevents the criminal judgment from ever becoming "final."

8. The government and the District Court engaged in a systematic pattern of acts constituting fraud upon the court.

9. Stilley had no knowledge of the plan of Springer and Patrick Turner, to use Stilley's IOLTA account to convey $250,000 from Turner

to Springer, until long after all the money was gone from the IOLTA account.

10. Based on the jury instructions given, Stilley could not possibly be guilty of Count 4 of the indictment. This means that Stilley is entitled to walk free immediately, since he has already served over 10 years, the maximum for the other two counts of conviction by any reckoning.

11. The pretrial theory of liability was abandoned by the government at trial.

12. Post-trial, the District Court slammed the door shut on dispositive motions just before the government switched from the trial theory to the theory of "theft."

13. There is exactly zero evidence in the record, to the effect that Stilley intended to steal money from Turner, or help anyone else steal money from Turner, or even had knowledge of Springer and Turner's plans.

14. Stilley had a legal duty to pay out the money to Springer, on both counts 3 and 4, based on the government's pretrial theories.

15. The District Court *sua sponte* struck Stilley's motion for judgment as a matter of law and for new trial.

16. The District Court opined in writing, both immediately before and after striking Stilley's pleadings, that such an action violated the US constitution.

17. Supreme Court caselaw says that such an unconstitutional order must be set aside, so the litigant is in the position he was in prior to the illegal order.

18. Stilley is currently in custody for having performed an act that he was legally required to perform, based on the government's own pretrial theories.

19. Based on the theories of the government and the District Court, Stilley only had a choice of which crime to commit: 1) pay money to the party the government in pretrial pleadings said was ***entitled to the money***, or 2) refuse to pay the money, whereupon Stilley would unquestionably have criminal, civil, and ethical liabilities, all with severe, life shattering consequences.

20. The government and the District Court have worked together, repeatedly, to commit fraud upon the court, within the meaning of applicable law.

21. District Judge Stephen P. Friot, a judge of the Western District of

Oklahoma, sat on the OKND civil case under 28 USC 2255 below, despite the fact that Miscellaneous 23 hasn't been effective for many years, and there is no other obvious reason he should be allowed to sit on a case in a judicial district to which he ***has not*** been appointed by the president, approved by Congress, or given a commission.

22. Stilley's judgment and commitment order is based upon monetary claims, not one dollar of which is based upon the ***truth***.

23. The government obtained its judgment and commitment order, and its order of restitution, on the basis of 1) willful, malicious perjury, 2) false evidence, and 3) mathematical errors.

24. The government would love to correct the mathematical error, save and except for the fact that such an action would shine the hot glare of the spotlight on their perjury and laughably false claims occasioned by the fact that they were tripped up worse than Stilley, by the lack of transcripts for sentencing.

25. Any competent attorney, having access to the record and the usual and customary tools of attorneys, could have won Stilley's appeal on the grounds of insufficiency of the evidence, denial of the 5th Amendment right to indictment, etc.

26. Stilley is legally entitled to consideration of his sufficiency of the evidence claim ***first***, so as to protect his constitutional right to be free from double jeopardy.

APPELLANT'S ARGUMENT

I. The District Court Continued Its Pattern And Practice Of Refusing To Rule On The Merits, When Due Process Would Allow The Defendant To Walk Free.

A. Standard of review.

A certificate of appealability requires a "substantial showing of the denial of a constitutional right." A petitioner must show a substantial denial of a constitutional right by demonstrating "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *United States v. Kennedy*, 225 F.3d 1187, 1193 (10th Cir. 2000).

The 10th Circuit reviews the district court's legal rulings on a § 2255 motion de novo and its findings of fact for clear error." *United States v. Pearce*, 146 F.3d 771, 774 (10th Cir. 1998); *accord United States v. Blackwell*, 127 F.3d 947, 950 (10th Cir. 1997). Under 28 U.S.C. § 2255, the district court is required to conduct an evidentiary hearing "unless the motion and files and records of the case conclusively show that the prisoner is entitled to no relief." *United States v. Lopez*, 100 F.3d 113, 119 (10th Cir. 1996).

It is impossible for this Court to ***review*** findings of fact for clear error without ***knowing the facts***, as alleged. Therefore we need to understand what facts are alleged, and the consequences of those allegations.

B. On motion to dismiss, factual allegations are presumed true.

On motion to dismiss, well pleaded allegations are presumed true, with allegations viewed in the light most favorable to the non-moving party. *United States v. Gallegos*, 459 Fed. Appx. 714, 716 (10th Cir. 2012) *Kerber v. Qwest Group Life Ins. Plan*, 647 F.3d 950, 959 (10th Cir. 2011) (quotations omitted)

In this case the government claimed that Stilley's 2255 motion, at 81 total pages, was an overlength brief.[5] Other than this frivolous claim, the government never argued any rule authorizing dismissal, outside of FRCivP 12(b)(6). Dkt. 705.

The District Court never claimed that it was dismissing on the basis of any authority other than FRCivP 12(b)(6). Dkt. 719. For the convenience of the panel, the pleadings referenced in this brief will be

[5] Actually the government perfectly alternated between calling the pleading a motion and a brief, until giving up and calling it a "pleading." Dkt. 713, pg. 9-10.

made available by links, directed to the appropriate page of the document. Appellant will presume that the members of this panel are familiar with the allegations of Stilley's 2255 motion.

Consider the following text from the authorized form of a 2255 motion, taken directly from www.uscourts.gov.

> 5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit any legal arguments, you must submit them in a separate memorandum. Be aware that **any such memorandum may be subject to page limits set forth in the local rules of the court where you file this motion**. (Emphasis added.)

Litigants are warned that ***memoranda*** of legal arguments may have page limits. No such warning is made about the ***motion***. Now consider paragraph 9 from the same form:

> **9. CAUTION: You must include in this motion all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.**
> (Bold emphasis in original.)

The federal judiciary, by promulgating this form, tells prisoners that they are duty bound to raise all their grounds, regardless of the

length of the motion, in default of which omitted grounds will be deemed waived.

C. The District Court avoided ruling by mischaracterizing the factual allegations of the 2255 motion as "argument."

The District Court relegated 81 pages of text to the status of mere ***argument***. That's how he manages to summarily dismiss all of it. He didn't have to presume ***arguments*** to be true.

That's what the District Court has done, repeatedly, when faced with facts that ***mandate*** a judgment of acquittal. He either strikes the document altogether, or relegates it to status below that of ***factual allegations***, or otherwise finds a way around the issuance of a ruling on the merits.

The 10th Circuit soundly condemned such practices in *United States v. Espinoza*, 421 F. App'x 817, 819 (10th Cir. 2010), saying:

> We have observed that a "failure to make any ruling on a claim that was properly presented in a habeas petition" represents a "defect in the integrity of federal habeas proceedings." *Peach v. United States,* 468 F.3d 1269, 1271 (10th Cir. 2006) (quotation and alteration omitted). Because the district court never ruled on Espinoza's Brady claim, we: (1) **VACATED** our prior order denying COA with respect to the Brady issue in the accompanying order granting panel rehearing and now; (2) **GRANT** a COA on the Brady claim and; (3) **REMAND** the matter to the district

court with instructions to rule on the Brady claim in the first instance.

Any honest consideration of the ***facts and evidence*** requires that Stilley be granted his full liberty, that the convictions and judgments be set aside and held for naught, and that Stilley be restored to his status prior to the initiation of charges.

That's the problem we've had from square one. District Judge Stephen P. Friot was hand picked because of his experience and record, in denying litigants due process. Stilley alleged facts showing that he sent Skoshi Thedford Farr to prison by a strategic refusal to rule. Dkt. 701, 59-62. By all appearances he retaliated against Farr for putting up a good fight, by sentencing her to an extra 3 months in prison the second time around. Id. At 60.

He knows the ***process due***. He just intends to find a way around it, no matter the damage to the reputation of the bench and bar.

Stilley alleged this as Ground 9 of his motion. Dkt. 701, pg. 49. The District Court's refusal to acknowledge and respect due process, 1st Amendment peaceful petition, etc., is the reason for this lengthy litigation process, and the appeal now before this court.

II. Defendant Stilley had no knowledge of any intent to use his IOLTA account to move money from Patrick Turner to Lindsey Springer, until long after all the money had left his account.

A. Standard of review

This Court reviews the district court's legal rulings on a § 2255 motion de novo and its findings of fact for clear error. *United States v. Pearce*, 146 F.3d 771, 774 (10th Cir. 1998).

B. Loss of any count requires restoration of liberty.

Stilley was convicted of counts 1, 3, and 4 of the indictment, and sentenced to 5 years consecutive on each count, same being the maximum, by the District Court's understanding. Thus the loss of ***any*** count means that Stilley must go free immediately.

C. The government proved no guilty mental state on Stilley, with respect to count 4.

Count 4 of the indictment was based upon a plan to loan $250,000 from Patrick Turner to Lindsey Springer. However, Stilley had no knowledge of that plan, until long after all such funds had been disbursed from Defendant Stilley's account. Nor does the official record

as defined by FRAP10(a)[6] contain evidence of such knowledge.

This Court provided an example of how to get such information, at Sent. TR 288, with this colloquy:

> 12 THE COURT: Perhaps you didn't understand my
> 13 question. My question was very simple: **To what extent did**
> **14 Mr. Stilley have knowledge of this letter or its contents at**
> **15 the time that it was provided to Mr. Hawkins?**
> **16 MR. SPRINGER: Fully aware of it**.
> (Emphases added)
> (Question regarding Stilley's knowledge of Exhibit 204 when sent.)

The government knows how to get essential testimony at trial. They just didn't.

Stilley at all relevant times reasonably believed that Patrick Turner was simply another prospective client, who wished to retain the legal services of Stilley. He was totally left in the dark about plans to promptly cause Stilley to convey that money to Lindsey Springer.

As the Court explained in its jury instructions, Stilley had no burden to prove or disprove anything. See Jury Instruction #5, given by the District Court.

---

[6] Unless otherwise noted, the term "official record" refers to the entirety of the District Court record in OKND 4:09-cr-43, as contemplated by FRAP 10(a), not the limited record filed in this court for an appeal of the denial of a motion under 28 USC 2255.

Defendant Stilley was puzzled about why he was getting tagged for prior year taxes of Patrick Turner, when he didn't even know Turner at that time. Brian Shern explained as follows, at Sentencing 164-165:

> 24 Q. Can you tell this Court what Oscar Stilley should have
> 25 done differently so that he would not be charged with this
> 164
> 1 substantial sum of money as being relevant conduct?
> 2 A. **Not helped Mr. Springer hide Mr. Turner's $250,000 by**
> **3 going through your account. Just walk away from the**
> **4 transaction.**
> (Emphasis added)

That's a fine theory, but it raises the question of what Stilley knew, and when he knew it. At trial the government claimed that Turner had made his $250,000 transfer of funds look like an ordinary attorney retainer payment. TR 1465; Sent. TR 82. Concerning whose idea it was to convey the money in this manner, consider TR 1461:

> 3 Did Mr. Springer come up with an idea for a
> 4 course of action to take?
> **5 A. No, sir. I did**.

> At TR 1462 we see:
> 7 Q. **You then agreed with Mr. Springer** to do something
> 8 about this; is that correct?
> **9 A. Right. That's correct.**

> At TR 1464 we see:

> 13 Q. -- what did you do with the funds that you received?

14 A. I transferred them -- we wanted to make this as out
15 in the open as possible.
16 Q. Who is "we"?
17 A. Lindsey and I.
(Emphases added throughout)

At no time did the government prove that Stilley knew or believed that the money was anything other than a legitimate, bona fide retainer for the purpose of legal representation in the pending criminal investigation, and criminal trial if any, during the time that any of the funds remained in Defendant Stilley's IOLTA account.

The District Court had a solemn legal duty to enter judgment as a matter of law, with respect to Oscar Stilley, on Count 4 of the indictment.

III. The Government Abandoned The Alleged *Grand Jury* Indictment Wholesale.

A. Standard of review

This Court reviews the district court's legal rulings on a § 2255 motion de novo and its findings of fact for clear error. *United States v. Pearce*, 146 F.3d 771, 774 (10th Cir. 1998).

B. The Government Admits That Stilley Cannot Possibly Be Guilty of Count 4, As Charged in the Purported Indictment.

The government on March 3, 2010, at page 3 of its Objections to the Presentence Reports of Springer & Stilley stated:

> All of Defendant Springer's income was generated from his elaborate con, defrauding numerous individuals with false promises and enticements in order to separate them from their money. In addition, the jury verdict indicates that the jury found that Defendants **Springer and Stilley stole money from Mr. Patrick Turner**. Had the jury found that Defendant Springer borrowed from Mr. Turner, **the jury would have acquitted Defendants** of the tax evasion count ***for 2005.***[7] Their return of a guilty verdict with respect to that count, corroborated by the evidence at trial, proved that Defendant Springer and Defendant Stilley, utilizing wire communications, stole $250,000 from Mr.Turner during 2005.
> (Emphases added)

This bold pronouncement is just another way of saying that the government ***necessarily*** failed to prove the allegations of the purported indictment. If the verdicts ***ipso facto*** prove theft, that means that the government ***concedes*** that the trial evidence cannot possibly support the government's ***theory at trial***. That being said, let's list off the government's most prominent overall theories, including when they started and stopped. We are assisted by Dkt. 694-4, a Timeline[8] of the

---

[7] Count 4 of the purported indictment.

[8] The filemarked version of this document has corrupted links, which don't work at all outside the court system. They work only badly inside the court computer system, because they won't take the user to the correct page. Thus the use of an unfiled version of this document.

proceedings. The following recitation is from page 24 of Dkt. 701, Stilley's verified motion to set aside or correct his sentence, under 28 USC 2255.

> 1) Springer earned money and concealed the fact of receipt of that money from the government. In the first seven pages of the Timeline, covering 3-10-09 (date on the purported indictment) through the first day of trial (10-26-09) the government not less than 6 times emphatically declared that Springer ***earned*** income, and hid ***the fact*** of receiving that income. Springer is blasted for claiming the funds are gifts or donations. At Dkt. 212, filed on the 1st day of trial, the government said "[Ms. Wiggins] caused the issuance of these five checks to Defendant Springer for services, and ***not as gifts or donations***. (Emphasis added)
>
> 2) Although Springer freely disclosed all of his gross receipts to the IRS, Springer concealed from the IRS the true nature of the payments by claiming that they were gifts when they weren't; See e.g. Dkt. 173 pg. 4.
>
> 3) On 11-2-09, the 6th day of trial, Brian Miller says that the question of whether transfers were gifts or donations is "almost a moot point" in this case, because **either way**, they're income to Springer, that he was required to report on a federal individual income tax return. TR 1295-1296
>
> 4) Springer stole the money, pure and simple. See comment made 2-12-10, at Dkt. 310, pg. 11, about Patrick Turner's "naive belief" that "Defendant Springer had any intention of repaying the money Defendant**s** stole." Then on 3-3-10, in the quote provided at the beginning of this section, the government firmly committed that (at the very least as to count 4) there was ***no other theory*** that would sustain the conviction. This theory was promoted through the day of sentencing, on 4-23-10, where this District Court said "Mr. Stilley, you are not a

> lawyer in any normal sense of the word. You are a ***thief with a law degree***." Sent. TR 450
> (Emphases added)

It's not like there was any great effort at consistency. At Sent. TR 84-85, during Springer's cross examination of Brian Shern, the Court whipsawed back to the 1st or possibly the 2nd theory of liability, telling Springer that "the overarching question of whether the funds that you received over the years that were involved in this case were **received by you for *services rendered*** has been **conclusively resolved against you** by the jury verdict." (Emphases added)

Defendant Stilley was bound by his oath as an Arkansas attorney not to refuse the causes of Turner, Patterson, or other persons similarly situated, for reasons personal to himself. Fifteen years of prison for crimes he ***could not possibly have committed*** is a reason personal to himself.

IV. The District Court Denied Due Process By Striking Stilley's Motion And Brief (Dkt 161, 163).

A. Standard of review.

This Court reviews the district court's legal rulings on a § 2255 motion de novo and its findings of fact for clear error." *United States v. Pearce*, 146 F.3d 771, 774 (10th Cir. 1998).

B. The District Court acted contrary to its own belief and understanding of the law of due process.

The District Court *sua sponte* struck Plaintiff's consolidated motions for judgment as a matter of law (JAML) (Dkt. 261) and new trial, (Dkt. 263) despite stating the knowledge and belief, in other opinions and orders, that such a *sua sponte* motion violates constitutional due process. For example, consider the case of *United States v. Ladell Fitzgerald Pace*, 2016 U.S. Dist. LEXIS 182029, *4-5, where this Court, Stephen P. Friot, opined as follows:

> Consequently, defendant's motion appears to be untimely and subject to dismissal with prejudice. District courts are "permitted, but not obliged" to review, ***sua sponte***, a federal prisoner's § 2255 motion to determine whether it has been timely filed. The Tenth Circuit case law makes clear that a district court may raise a procedural bar on its own motion. [citations omitted]. If the district court acts on its own raising a limitations defense, **however, it must "accord the parties fair notice and an opportunity to present their positions."** *Day v. McDonough*, 547 U.S. 198, 209, 126 S. Ct. 1675, 164 L. Ed. 2d 376 (2006)**. The court therefore shall permit defendant to file a response within 30 days demonstrating why his Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a**

> **Person in Federal Custody should not be dismissed as time-barred.** ...
> (Emphases added)

That was 2016, and plainly shows what the District Court thought the law was on July 20, 2016. The District Court struck pleadings that would have necessarily resulted in the entry of a judgment of acquittal, as to Oscar Stilley, as a matter of law, on 12-8-2009. Dkt. 261 and 263.

This gives rise to the question of this Court's understanding of the law *before* striking Stilley's critical pleadings. In fact, the District Court's understanding of the law prior to Stilley's trial was no different than it was afterward. Consider *United States v. Holly*, 2009 U.S. Dist. LEXIS 95021, 2009 WL 3275087, where this Court said:

> The court further notes that defendant's motions appear to be untimely filed as they were not filed within three years after the verdict or finding of guilty in defendant's criminal case. Rule 33 (b)(1), Fed. R. Crim. P. ("Any motion for a new trial grounded on newly discovered evidence must be filed within 3 years after the verdict or finding of guilty."). The court, however, **does not raise the issue sua sponte**. See, e.g., *United States v. Mitchell*, 518 F.3d 740 (10th Cir. 2008).
> (Emphases added)

Mitchell cited to *Day v. McDonough*, and discussed it extensively. There can be no reasonable doubt as to why the District Court cited to *Mitchell* in support of its statement that it would not raise the

timeliness issue *sua sponte*. Anything less constitutes a violation of US constitutional due process. In other words, the District Court is saying that a *sua sponte* order raising and ruling on issues in one fell swoop is a "***denial of a constitutional right,***" pursuant to well established US Supreme Court case law.

United States v. Holly was decided by this Court on 10-13-2009. The District Court held the final pretrial conference in this case just eight (8) days later, on 10-21-2009, and started the trial on 10-26-2009. It is hard to imagine better proof that this legal principle was fresh in the District Court's mind.

The District Court's order [Dkt. 264] cites no authority except LCvR7.2(c). That document wasn't picked up by LexisNexis, but another order on the same subject was. [Dkt. 293] *United States v. Springer*, 2010 U.S. Dist. LEXIS 6906, 2010 WL 419936. Shepardization of that case discloses that it has been cited nowhere except in another Springer case, namely *Springer v. Willis*, 2015 U.S. Dist. LEXIS 186334. Defendant Stilley cannot find one other case in which a federal *criminal* defendant has had a pleading stricken based on LCvR7.2(c).

We must face multiple issues. First, we're looking for a federal criminal case in which LCvR7.2(c) is applied so as to limit the length of a criminal pleading. Second, we're looking for a case in which the court "stacked" a motion and brief, determined the ***combined*** page count to be over-length, then struck ***both documents***. ***Both propositions*** are conspicuous by their absence.

The District Court wasn't confident of its own theories. The District Court denounced Springer for his very long pleadings, sometimes triple the 25 pages allowed by the civil rules, for an opening brief in support of a motion. Dkt. 293, pg. 14. But that just throws the hot glare of the spotlight onto Stilley's brief. Dkt. 263 With a mere 13 pages (excluding the certificate of service) Defendant Stilley's brief wasn't even long enough to require tables of contents and authorities - under the civil rules. It wasn't over-length at all - until the District Court construed the motion as "argumentative," [Dkt. 293, pg. 18] added the 18 countable pages of the motion, and even then had a page count a mere 24% over the max allowed by the civil rules.

We are assisted in judging the District Court's credibility in 2009, with the District Court's characterization of Stilley's motion under 2255

filed in 2021. Dkt. 701. The District Court claims to find ***nothing but*** argument out of 81 pages, with 510 separately numbered paragraphs. Dkt. 719, pgs. 2-5. If this tactic is successful in the face of a challenge on appeal, the characterization of factual allegations as mere "argument" is sufficient to defeat ***any*** claim, no matter how meritorious.

On 6-18-09, at Dkt. 87, this Court denied a motion to strike a 28 page reply brief. By this Court's *sua sponte* theories, that brief exceeded the civil rule limit by 80%, (almost double) and furthermore had no table of contents or authorities. There was no commentary to the effect that, for future reference, the parties should be more concise, or should file motions for over-length brief, or should include tables of contents and authorities.

How was Defendant Stilley to construe such an order on the part of the District Court?

All the Court had to do to get compliance with the ***civil*** rules, in a ***criminal*** case, was to say that in the future the page limits of the ***civil*** rules would be enforced in ***criminal*** cases. That's not hard to do - see Dkt. 290 for an example. The problem with that expression of intent is that it was too late. The Court had already stricken a critical pleading,

and denied Defendant Stilley any opportunity to amend his pleading to comply with the newfound "rules."

Pushed on the issue, this Court said that if it couldn't construe a motion as part of a brief, then litigants would always be able to evade the rules. Dkt. 293 The easiest answer to that logic is the fact that Defendant Stilley could have easily prepared a motion for new trial, and a separate motion for judgment as a matter of law, with briefs for each, each incorporating the other brief and motion as if set forth word for word. Furthermore, the District Court almost certainly would have granted a motion for overlength "brief" if Stilley had asked in advance. Striking the motion and brief was a "gotcha" tactic, a highly unethical evasion of judicial responsibilities.

Pleadings drafted on Trulincs allow a word count per page about twice as much as that of a pleading drafted on word processor, in accordance with the rules. Take a look. Dkt. 454 Defendant Stilley has prepared countless pleadings on Trulincs, for himself and others, and has never had one stricken for length, or because they conform to virtually no court rules ***anywhere***.

Springer filed a motion for over-length brief in support of his first

motion pursuant to 28 USC 2255. Dkt. 470. Judge Friot denied the motion. Dkt. 471. Thereupon Springer filed a 90 page motion, (Dkt. 472) a 148 page "declaration," (Dkt. 474) and a brief that didn't exceed 25 pages, excluding technical parts. Dkt. 473.[9]

O'Reilly made no complaint. District Judge Friot didn't complain. Everyone knew and understood that the local rule constrained the length of briefs, not motions, affidavits, declarations, etc.

The Supreme Court has already stated the requirement that an illegal order be set aside, giving the litigant a fresh start. As the Court explained in *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S. Ct. 1187, 1191, 14 L. Ed. 2d 62, 66-67 (1965):

> A fundamental requirement of due process is "the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 394. **It is an opportunity which must be granted at a meaningful time and [****13] in a meaningful manner.** The trial court could have fully accorded this right to the petitioner only by granting his motion to set aside the decree and consider the case anew. Only that would [***67] have wiped the slate clean. **Only that would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place.** His motion should have been granted. (Emphases added)

---

[9] Click docket entries to review this portion of the docket. Free links to the individual items aren't provided.

Applying the teachings of *Armstrong v. Manzo*, this Court should overrule and remediate the District Court order striking Dkt. 257, 258, 260, 261, and 263.

The Northern District of Oklahoma has now placed the rules for criminal briefs within the Local Criminal Rules proper. OKND LCrR47-5. That's all well and good, and should have been done long ago. No litigant should pay, with years of his life, for ambiguity in local rules.

V. The District Court Violated Due Process By Convicting Stilley Of A Legally Required Act.

A. Standard of Review.

This Court reviews the district court's legal rulings on a § 2255 motion de novo and its findings of fact for clear error." *United States v. Pearce*, 146 F.3d 771, 774 (10th Cir. 1998).

B. Due process requires fair warning that conduct may be criminal.

In *United States v. Conley*, 942 F.2d 1125, 1127-1128 (7th Cir. 1991) the Court explained:

> [**2] Under *Commissioner v. Duberstein*, 363 U.S. 278, 285, 4 L. Ed. 2d 1218, 80 S. Ct. 1190 (1960), the donor's intent is the "critical consideration" in distinguishing between gifts and

> income. We reverse Conley's conviction and remand with instructions to dismiss the indictment against her because the government failed to present sufficient evidence of Kritzik's intent regarding the money he gave her. We also reverse Harris' conviction. The district court excluded as hearsay letters in which Kritzik wrote that he loved Harris and enjoyed giving things to her. These letters were central to Harris' defense that she [*1128] believed in good faith that the money she received was a nontaxable gift, and they were not hearsay for this purpose.
>
> **We do not remand Harris' case for retrial, however, because Harris had no fair warning that her conduct might subject her to criminal tax liability.** Neither the tax code, the Treasury Regulations, or Supreme Court or appellate cases provide a clear answer to whether Harris owed any taxes or not.
> .....
> (Emphasis added)

Consider the facts:

1) The government says it is not criminal to earn income. Dkt. 42 pg. 3

2) The government claimed not less than 6 times that Springer had earned income, which by necessary implication means he was ***entitled*** to the money; Timeline pg. 1-5

3) Pursuant to Arkansas Rule of Professional Conduct 1.15 (Ark. R. Prof. Cond. 1.15), Stilley had a legal and ethical duty to ***promptly deliver*** any "third person entitled to receive" such moneys, or face professional discipline. This is true whether the money was compensation, donation, or gift.

4) Asked if Stilley or Springer had interfered with any IRS official in the performance of their official duties, Brian Miller, who watched the whole trial, couldn't think of a single name. TR 2127

5) Stilley couldn't file Springer's tax return if he tried, amongst

other reasons because of the requirements of Form 56 and Form 2848.

6) Springer answered all questions from IRS employees. TR 563; TR 2366 Without controversy, the IRS had sufficient information from which it could have assessed a tax, giving Springer fair notice and opportunity to litigate his contentions in a civil proceeding.

7) The government seized all of Springer's financial papers, and Springer provided answers to all questions asked such that Brian Miller was confident of his ability to calculate the tax due. Thus Springer already provided papers and answers sufficient to constitute a "tax return" as defined by *United States v. Stillhammer*, 706 F.2d 1072, 1074-1075 (10th Cir. 1983) and *United States v. Patridge*, 507 F.3d 1092, 1094-1095 (7th Cir. 2007). Dkt. 701, pg. 40.

Springer bitterly complained that he faced a "heads I win tails you lose" proposition, because O'Reilly said ***keeping*** property on which Patrick Turner had a lien was theft, but ***giving it back*** was tax evasion. Sent. TR 339

C. Conduct may not at once be legally mandatory and criminally prohibited.

That's the same trick bag for which Stilley is now serving the third of three consecutive five (5) year prison terms. If Stilley pays the money to the "person entitled," in compliance with Ark. R. Prof. Cond. 1.15, he is denounced as a conspirator and a tax evader. If he doesn't, he is ***in fact*** a thief, guilty of a real crime that real people recognize as a crime and an evil deed.

Stilley is hamstrung by the need to get a certificate of appealability. Absent such certificate, the government gets to do what it does best – clam up, to keep a ***known innocent person*** in custody.

How was Stilley placed on notice that paying money to a person who ***by the government's own pretrial theories*** allegedly "earned" the money, is nevertheless a crime? How was Stilley was given notice of some lawful way, not contrary to his oath of office as an Arkansas attorney at law, to avoid criminal liability? Stilley asked for this at Dkt. 701, pg. 40-41.

Stilley by his attorney's oath was bound not to refuse the ***cause of the oppressed***, for considerations personal to himself. Turner engaged in what otherwise appears to be bizarre behavior precisely because he had ***twice*** heard US Attorney Don Davis comment of defendants in criminal tax litigation that "we left them with too much money." TR 1460. Stilley alleged these facts in his 2255 motion. Dkt. 701, pg. 37.

If wrecking a target's finances preparatory to a criminal prosecution doesn't make the victim "oppressed," how should we define that word?

Turner was terrified of the lawlessness that has sent Stilley to be

sent to prison despite his innocence. Yet Charles O'Reilly assured the District Court that ***any rebuttal*** of Stilley's declaration under oath that the government had "scorched the earth" on him "*need not be said*." Dkt. 705 pg. 5.

VI. O'Reilly And the District Court Have Worked Together To Perpetrate A Fraud Upon The Court.

A. Standard of review

This Court reviews the district court's legal rulings on a § 2255 motion de novo and its findings of fact for clear error. *United States v. Pearce*, 146 F.3d 771, 774 (10th Cir. 1998).

B. Legal test for "fraud on the court."

The legal test for fraud on the court is set forth at *Weese v. Schukman*, 98 F.3d 542, 552 (10th Cir. 1996):

> Weese alleges that Dr. Schukman committed fraud on the court by allegedly concealing certain material facts during discovery and trial. When alleging a claim of fraud on the court, the plaintiff must show by clear and convincing evidence that there was fraud on the court, and all doubts must be resolved in favor of the **finality of the judgment**. We recently summarized the nature of the "fraud on the court" claim as follows:
>
> > Fraud on the court . . . is fraud which is directed to the judicial machinery itself and *is not fraud between the parties or fraudulent documents, false statements or perjury*. It has

> been held that allegations of nondisclosure in pretrial discovery will not support an action for fraud on the court . . . . It is thus fraud where the court or a member is corrupted or influenced or influence is attempted or **where the judge has not performed his judicial function**--thus where the impartial functions of the court have been directly corrupted.
>
> (Italics in original; other emphases added)

On the following page the *Weese* court explained the policy considerations behind the strict construction of "fraud on the court:"

> (emphasis added.) *See also* 7 *Moore's Federal Practice* P 60.33, at 60-360 (noting that fraud on the court should "embrace only that species of fraud which does or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication"). "**Fraud on the court" is tightly construed because the consequences are severe. It may permit a party to overturn a judgment *long after it has become final*.** Fed. R. Civ. P. 60(b) ("This rule does not limit the power of the court . . . to set aside a judgment for fraud upon the court."). Thus, it runs counter to the **strong policy of judicial finality**. *Robinson*, 56 F.3d at 1265-67; *see Moore's Federal Practice* P 60.33, at 60-357, 358, 360-61 for examples of what constitutes fraud on the court.
>
> (Emphases added.)

The principle of "fraud on the court" acts as a deterrent to the very conduct Stilley complains of in this case. All the players in this case worked together, to ensure that Stilley would be incapable of submitting a competent appellate brief. That is a quintessential fraud on the court, within the 10th Circuit's definition of the term. Stilley's

judgment therefore effectively never becomes final, unless and until Stilley gets the one direct appeal to which he is by law entitled.

C. The District Court remains on the case despite the loss of the previously claimed basis for his authority.

That didn't happen in this case. Stephen P. Friot is a sitting judge of the Western District of Oklahoma, (OKWD) yet presides over the case in the Northern District of Oklahoma (OKND). Friot was originally hand picked by Claire V. Eagan, a disqualified judge of the OKND, (on the very theory of her own disqualification) on the basis of a general order known as "Miscellaneous #23" (Misc. 23).

Miscellaneous 23 was at least sometimes signed by Robert H. Henry, predecessor in office to Judge Bacharach. To the knowledge of Stilley, nobody but Henry ever signed such an order. When Henry resigned April 30, 2010, that constitutional abomination known as Miscellaneous 23 was apparently allowed to die a natural death, by failure to renew. Stilley can't get the specifics out of court personnel, but 1) knows that Miscellaneous 23 is no longer effective, and 2) believes that Bacharach never signed a version of Miscellaneous 23 after ascending the 10th Circuit bench. Bacharach received his

commission to the 10th Circuit bench February 28, 2013, for the position previously held by Henry.

Miscellaneous 23 was the original authority relied upon to allow Claire V. Eagan to 1) evade random assignment, and 2) allow Judge Friot to sit on a case not in his own district.

Miscellaneous #23 used to be renewed annually. At some point in time the renewals stopped, such that Miscellaneous #23 is no longer in effect. Stilley politely asked Judge Friot to explain by what authority he sits on Stilley's new civil case under 28 USC 2255. Dkt. #702. Friot refuses to explain his authority, if any, but continues to preside over the criminal case and the related 28 USC 2255 civil case.

Judge Friot has in this case and other cases refused to issue ***any ruling at all***, when a ruling would be contrary to his ideas about who should win and who should lose. That's exactly what Judge Friot did in the prosecution of Skoshi Thedford Farr. Dkt. 699 pg. 8-10.[1]

Stilley filed docket #454 on 04/18/2011, a reply brief in an attempt to get the Department of Justice (DOJ) to stop illegally crushing his

[1] Pagination is generally cited according to the filemark headers.

ability to litigate. Judge Friot denied Stilley's motion on grounds of an alleged failure to exhaust administrative remedies. Dkt. #455 From that time until Stilley left prison to go to home confinement, Stilley filed nothing on the docket[2] of *US v. Springer & Stilley*, OKND 4:09-cr-43.

D. Stilley's fundamental goal was and still is a ruling based on a truthful record.

Stilley is supplying access to certain pertinent pleadings and papers filed after leaving prison, consisting of docket numbers 693-730 as of November 24, 2021. Stilley is also supplying a copy of his proposed preliminary order presented to Stephen P. Friot preparatory for his motion for reduction of sentence pursuant to 18 USC 3582(c).

Why a proposed order that wasn't used? Because Stilley wants this Court to know that the massive amount of time and energy devoted to preparing these documents was ***for a reason***. It was for a reason that has everything to do with the 1st Amendment right of peaceful petition, due process, and the rule of law.

From this proposed order, in particular from the bottom of page 3

[2] This is the docket from beginning through 692, the docket immediately preceding Stilley's notice of change of address when he came to home confinement.

through page 5 of this proposed order, you can plainly see the ultimate goal of all these efforts. Since his transfer to home confinement, Stilley has been asking for a court ruling ***on the basis of a truthful record***. Win, lose, or draw, Stilley wants a ruling on the basis of an honest record.

Both O'Reilly and the District Court know that the judgment and commitment order against Stilley Dkt. #338 cannot survive a truthful record. By their actions they tell the world that this is what they know and believe. Stilley is an innocent man - pure and simple.

If you read the Court's denial of the motion for reduction of sentence, you can see that both the government and the District Court conclude that no matter how corrupt, false, or perjurious a criminal judgment and commitment order may be, that is not cause for a reduction of sentence pursuant to 18 USC 3582(c).

If that is true, what is the logical reason for refusing to require the government to correct perjury and embarrassing falsehoods in the record? Based on their legal reasoning, a truthful record would not *change the result*.

There is a reason, which this Court – and the world - needs to

know. The refusal had nothing to do with the proceedings ***then*** before the court. It had ***everything*** to do with what both Judge Friot and Charles O'Reilly knew to be coming ***next***.

Confessing to the truth of undeniable facts with respect to the judgment ensures that the prosecutor has an ethical duty to support Stilley's efforts to set aside the judgment. California Rule of Professional Conduct 3.8 provides in pertinent part as follows:

> (f) When a prosecutor knows*[4] of new, credible and material evidence creating a reasonable* likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:
>
> (1) promptly disclose that evidence to an appropriate court or authority, and
>
> (2) if the conviction was obtained in the prosecutor's jurisdiction,
>
> (i) promptly disclose that evidence to the defendant unless a court authorizes delay, and
>
> (ii) undertake further investigation, or make reasonable* efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.
>
> (g) When a prosecutor knows* of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

Oklahoma has a similar provision.

---

[4] The presence of an asterisk means the word is defined by the California Rules of Professional Conduct.

Thus the hostility to the idea of generating an accurate record. That's why the District Court says that the unrebutted facts, stated under oath, which absolutely annihilate the foundation of the judgment and commitment order against Stilley, don't even ***soften*** his assessment of Stilley. Dkt. 700, pg. 4. The facts, which is to say the ***objective truth,*** takes the fig leaves and the *plausible deniability* away from both of them.

E. Stilley was denied the one direct appeal to which he was by law entitled.

The District Court and O'Reilly would have this Court believe that Stilley did this work after coming to home confinement, but simply refused to do it while he was locked up in prison, in pursuance of the one direct appeal to which he was (and still is) entitled. This is utterly contrary to human experience. The only rational conclusion is the truth. The government stomped out Stilley's ability to litigate while he was in prison, *precisely because they* ***didn't believe he was guilty***.

O'Reilly has neither admitted nor denied Stilley's factual allegations, made under penalty of perjury. Rather, he claims that the falsity of Stilley's claims "*need not be said*." Dkt. 705 pg. 5. This is of

course antithetical to due process, and diametrically opposed to the ethical rules for attorneys. If Stilley's allegations under oath are false, such facts indeed ***need to be said***.

Stilley claims that every dollar of both the tax loss for sentencing purposes, and the amounts claimed for restitution, are based upon perjury or undeniably false evidence presented with a reckless disregard for the truth. For purposes of the attorney ethical rules of Arkansas, Colorado, Oklahoma, and California (the state of O'Reilly's bar license) whether evidence is perjurious or merely false, with or without malice, is not relevant to the question of ***whether the evidence must be corrected***.

Our legal system is heavily dependent upon referent power. In other words, judicial pronouncements should carry weight not merely because of consequences, but rather because our judicial system is fully committed to *finding the truth*, basing its power on more than brute force.

F. None of the "tax losses" attributed to Stilley were truthful, none are honestly believed by the government.

Stilley presented proof that ***not a dollar*** of the restitution order

is based upon truthful evidence. ***All*** of the alleged personal tax liabilities of both Stilley and Springer were utterly contrary to the government's own evidence at trial. Dkt. 701, pg. 25-38.

Furthermore, the math is simply wrong. The restitution order of $776,280 is $7,901 more than the amounts that can be found by adding up the claims the District Court used to arrive at a restitution figure to be placed in his order. See the table below:

Basis for alleged liability	**Page & line**	**Amount**
Springer's federal tax liability	Sent. TR 409, line 6	$299,591.00
Stilley's federal tax liability	Sent. TR 408, line 11	$377,161.00
Stilley's state tax liability	Sent. TR 408, line 12	$91,627.00
Total		$768,379.00

We can know that the math is wrong by looking at Sent. TR 409, line 12, in which the District Court calculates the total of both state and federal taxes, for both parties, in the amount of $848,565. From this number subtract the $80,186 he found at line 7 of same page as the state tax obligation of Lindsey Kent Springer. That mathematical calculation produces exactly the $768,379 shown in the table above.

An order for restitution cannot exceed the amount of the damage or loss. *United States v. Gallup*, 812 F.2d 1271, 1282 (10th Cir. 1987) We have a plainly illegal restitution order, one which won't survive a

trip to the calculator. Yet the government stubbornly refuses to confess to the slightest error, or make such errors known to the sentencing court, or to do any of the things plainly required by attorney ethical rules. They correctly divine this to be a slippery slope. Once they get started, they won't stop until they hit rock bottom, the conviction is in the garbage can where it belongs, and O'Reilly (and others too) have some explaining to do, with the proper authorities.

Three other claims were made against Stilley. Let's call them the Turner, Patterson, and Roberts claims. Every single one of these claims is based on incontrovertibly, ***laughably*** false evidence. Dkt. 701, pg. 30-38. That's the kind of thing that the ethical rules necessarily require a lawyer to confess and correct.

This helps us understand why Friot struck Stilley's motion for new trial/judgment as a matter of law, and also refused to allow Stilley to get the transcript for sentencing. He knew that his planned judgment and commitment order could not possibly survive a ***competent*** attack on appeal. Judge Friot and Charles O'Reilly tag-teamed to deny Stilley the ability to prosecute the one direct appeal to which he was entitled, precisely because any other approach would

ensure the complete exoneration of Stilley.

Perhaps more important, Stilley just suffered the dismissal of Dkt. 701, his motion under 28 USC 2255. Stilley in Docket #713, his response to the government's motion to dismiss his motion under 28 USC 2255, at pages 3-9, cited and discussed *Robinson v. Ledezma*, 399 Fed. Appx. 329, 329-330 (10th Circuit 2010). This case indicates that the government had a choice whether or not to raise statute of limitations, in a motion under 28 USC 2255. Judge Friot dismissed the entire 2255 motion on the basis of limitations, the day after the government's time for reply expired - without a reply, of course. O'Reilly knows that a stubborn silence, in the face of a duty to speak, is the only practical option for him, so long as he insists on completely abandoning legal ethics and the rule of law.

Ethics considerations loom large at every stage. The question arises. Can the mighty United States Department of Justice collect on a judgment that it knows to be founded upon false and perjurious testimony, as well as glaring math errors? Can it collect upon a judgment when it knows of a certainty that the government failed to produce testimony sufficient to support a guilty verdict? Can it proceed

in a manner that violates ethical rules, and achieves a result impossible for a litigant who chooses to obey attorney ethical rules?

If this is the position of this Court, Stilley needs to know. Courts are constituted to 1) say what the law is, and 2) to enforce the law. If an utterly fraudulent and corrupt judgment can be saved, preserved, and ***later enforced*** by the simple expedient of destroying the victim's appellate capabilities during the customary time for appeal, ***the world*** needs to know. Stilley intends to cut off all plausible deniability concerning whether or not the US government arrogates to itself the raw power to commit a string of frauds to save the crown jewel *fraud first perpetrated*.

VII. The Government Obtained Its Judgment By The Knowing And Willful Use Of Perjury.

Consider the tax loss claims from the following chart:

Tax year	08-19-09	During trial	At sentencing	Sentencing minus trial
1999	$0.00	$0.00	$22,340.40	$22,340.40
2000	$33,777.11	$32,979.00	$35,400.00	$2,421.00
2001	$500.00	$0.00	$15,000.00	$15,000.00
2002	$0.00	$0.00	$12,367.20	$12,367.20
2003	$89,349.61	$97,223.00	$82,134.20	$(15,088.80)

2004	$0.00	$3,854.00	$26,010.00	$22,156.00
2005	$33,463.00	$41,189.00	$59,300.00	$18,111.00
2006	$0.00	$0.00	$39,630.00	$39,630.00
2007	$0.00	$0.00	$30,680.00	$30,680.00
	$157,089.72	$175,245.00	$322,861.80	$147,616.80

For the source of the numbers for 08-19-09[1]see Dkt. 130, pg. 32 and 37. Defendant Stilley asked about the government's conspiracy theories at page 32. At page 37 of the document, we can see that Special Agent Brian Shern essentially considers the tax evasion charges the substantive offenses that correlate to the conspiracy charges. This is in accord with the indictment. At trial the government introduced Exhibit 683 into evidence. The numbers at sentencing are derived from Sentencing Exhibits 1178 (Springer) and 1179 (Stilley).

On both Springer and Stilley, the government used "tax liability" numbers that they ***knew and believed*** to be a pure unadulterated fraud, to "run up the score." Their "experts" had already calculated the ***actual*** tax losses, according to their (admittedly bogus) theories. The government then switched to "estimates" which by their own tacit (or

[1] Other versions of this table may have the wrong number for this column, apparently due to including the top row of that column when creating the sum formula.

open) admissions may be used only when more accurate numbers are not available. Sent. TR 10, 189, 299, 323-324

Then they tagged each Defendant with the known fraudulent claims against the other. This is quintessential *perjury*. O'Reilly knew that he could not effectively present the 20% theory to the jury. The government had already stated that they had accurate numbers. They had already admitted that Springer had answered all their questions and provided all the information the government cared to get. They knew that Springer had already offered to let the government assess, whereupon Springer would challenge their assessments. In short, they knew that their own admissions foreclosed their own evidence and arguments - to any fact finder with the slightest interest in the truth.

CONCLUSION

Stilley has shown entitlement to a certificate of appealability. This Court should enter a scheduling order setting forth the deadline for the government to file a response brief addressing all issues raised in this opening brief.

After full briefing, this Court should reverse and remand for the

following relief:

1) That the District Court state on the record the legal basis for its claim of right to sit in judgment in the action under 28 USC 2255, with opportunity for Stilley to challenge;
2) That the government be ordered to respond to Docket 701, paragraph by paragraph; and
3) That a properly selected and constitutionally authorized district court conduct all proper proceedings and issue a ruling on the merits of Stilley's motion under 28 USC 2255.

Respectfully submitted,

By: /s/ Oscar Stilley
Oscar Stilley
10600 N Highway 59
Cedarville, AR 72932-9246
479.384.2303 mobile
479.401.2615 fax
oscarstilley@gmail.com

CERTIFICATE OF SERVICE

I, Oscar Stilley, by my signature above as well as the signature set forth below certify that I have this April 15, 2022 by CM/ECF served all parties entitled to service in this case; furthermore, I certify that the parties to this case (or their counsel) have each, in writing, mutually waived the service of hard copy of briefs and record excerpts.

By: /s/ Oscar Stilley

CERTIFICATE OF COMPLIANCE WITH LENGTH LIMITATIONS

I, Oscar Stilley, by virtue of my signature below as well as the two foregoing signatures, certify that I produced this brief in the current version of Word, that I have performed a word count, and that the brief in chief herein has 12,986 words, which is less than 13,000 words. This count was obtained by starting with the jurisdictional statement and continuing until just before the words "Respectfully submitted" at the end of the brief.

By: /s/ Oscar Stilley

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-respondent,	)	
	)	
-vs-	)	Case No. 09-cr-0043-2-SPF
	)	
OSCAR AMOS STILLEY,	)	
	)	
Defendant-movant.	)	

ORDER

(ruling on motions at doc. nos. 701, 702, 705, 707)

Defendant Oscar Stilley moves the court to vacate his sentence pursuant to 28 U.S.C. § 2255. Doc. no. 701. In response, the government moves to dismiss Stilley's motion. Doc. no. 705. Stilley filed a response to the government's motion to dismiss. Doc. no. 713. The government did not file a reply brief.

Stilley's second motion seeks a stay of these proceedings pending disclosure of his co-defendant's (Lindsey Springer's) contact information, which Stilley asks the government to provide. Doc. no. 702. This motion asks for an order allowing Stilley and Springer to collaborate. It also asks the court to specify by what legal authority it continues to preside over this case. This motion seeks other relief as well. In response, the government moves to dismiss Stilley's second motion. Doc. no. 707. Stilley filed a response to the government's motion to dismiss. Doc. no. 714. The government did not file a reply brief.

Doc. nos. 701, 705

Stilley and co-defendant Springer appealed their convictions and sentences. Their convictions and sentences were affirmed in United States v. Springer et al., 444 Fed. Appx. 256 (10th Cir. 2011). As to Stilley, mandate issued on December 20, 2011. Doc. no. 463. Stilley did not petition for a writ of certiorari. Accordingly, Stilley's judgment of conviction became final on December 20, 2011. Stilley's motion to vacate his sentence was not filed until September 1, 2021.

Section 2255 includes a one-year statute of limitations. 28 U.S.C. § 2255(f). Stilley devotes ten pages of his motion (doc. no. 701, pp. 70-80) to arguments intended to show the one-year limitations period should not bar his request for relief under § 2255.[1]

Stilley argues the Department of Justice has participated in a years' long scorched earth campaign against him, ruining his ability to defend the criminal charges against him. He argues the court kept him from filing an appeal by delaying the production of trial transcripts. He argues the clerk of the court of appeals never called anything he filed an opening appellate brief, and that he was required to adopt his co-defendant's appellate brief to avoid waiver. In support of arguments that he has been denied "the keys to the courthouse" all these years, Stilley relies on matters pertinent to Stilley v. Garland, et al., Case No. 21-60022, pending in the Fifth Circuit Court of Appeals. These and other arguments appear to be aimed at showing that Stilley has not yet had an adequate opportunity to file a proper appeal and that the conduct of the government, as well as the court, entitles him to a tolling of the

[1] All of Stilley's arguments related to timeliness have been considered, including those not addressed in this order.

limitations period. In addition, Stilley asserts actual innocence. He argues the government never believed he was guilty of the crimes of conviction and that he is innocent of all counts of conviction. Stilley also argues that § 2255's one-year limitations period is a scam intended to cheat innocent people out of due process and that he should not be bound by it.

Stilley's arguments are rejected. Stilley pursued a direct appeal and lost, and his conviction and sentence became final almost ten years ago. (December 20, 2011, when conviction became final, to September 1, 2021, when motion to vacate filed = almost ten years.) A petitioner must diligently pursue his federal habeas claims; furthermore, a claim of insufficient access to relevant law or legal materials (such as the transcripts Stilley argues were delayed) is not enough to support equitable tolling of the limitations period. *See* Gibson v. Klinger, 232 F.3d 799, 808 (10th Cir. 2000) (one-year period is subject to equitable tolling only in rare and exceptional circumstances; claim of insufficient access to the law is not enough to support tolling); Porter v. Allbaugh, 672 Fed. Appx. 851, 857 (10th Cir. 2016) (difficulty in obtaining trial transcripts is insufficient to constitute extraordinary circumstances, describing holding in United States v. Williams, 219 Fed. Appx. 778, 779 (10th Cir. 2007).[2] Stilley has not shown extraordinary circumstances as a basis for tolling. As for Stilley's claim of actual innocence, this type of claim is only a basis for tolling if founded on new evidence. Foust v. Jones, 261 Fed. Appx. 131, 133 (10th Cir. 2008),[3] citing Sellers v. Ward, 135 F.3d 1333, 1338-39 (10th Cir. 1998). Stilley identifies no new evidence to support an actual innocence claim. Accordingly, this

[2] Porter and Williams are unpublished. These and other unpublished decisions are cited for their persuasive value only.

[3] Foust is unpublished.

argument is rejected. The court also rejects Stilley's argument that § 2255's one-year limitations period is a scam and should not apply to him.

Stilley's conviction and sentence became final on December 20, 2011, when the mandate issued on the court of appeals' decision affirming Stilley's conviction and sentence. That triggered the one-year limitations period, which expired on December 20, 2012. Stilley's § 2255 motion was not filed until September 1, 2021, almost nine years late. (December 20, 2012, when one-year limitations period expired, to September 1, 2021, when motion to vacate filed = almost nine years.) No basis for tolling the limitations period has been shown. Accordingly, the court will grant the government's motion to dismiss Stilley's § 2255 motion as untimely.

Doc. Nos. 702, 707

Stilley's second motion seeks a stay in order to obtain Springer's contact information, so that the two of them may collaborate regarding the prosecution of Stilley's § 2255 motion. The court has now determined that Stilley's § 2255 motion is untimely and should be dismissed. Consequently, § 2255 cannot provide even an arguable premise for obtaining Springer's contact information or for staying this matter to permit these co-defendants to collaborate. Other than this motion's connection to Stilley's § 2255 motion, no statutory basis for this post-judgment motion has been identified. The court concludes it has no jurisdiction over Stilley's second motion and that the government's motion to dismiss it should be granted. *See generally*, United States v. Patterson, 253 Fed. Appx. 748, 750 (10th Cir. 2007) (district court does not have inherent authority to modify a previously imposed sentence and may do so only pursuant to statutory authorization; where motion was

not a motion to vacate under § 2255, district court lacked jurisdiction to hear the motion).[4]

Conclusion

After careful consideration, the government's motions to dismiss are **GRANTED** (doc. nos. 705, 707), and Stilley's motions are **DISMISSED** (doc. nos. 701, 702). A certificate of appealability is **DENIED**.

IT IS SO ORDERED this 4th day of November, 2021.

STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

09-0043p170 (Stilley).docx

[4] Patterson is unpublished.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-respondent,	)	
	)	
-vs-	)	Case No. 09-cr-0043-2-SPF
	)	
OSCAR AMOS STILLEY,	)	
	)	
Defendant-movant.	)	

JUDGMENT

Judgment is entered in accordance with the court's order of today's date dismissing as untimely defendant Oscar Amos Stilley's motion seeking to vacate his sentence pursuant to 28 U.S.C. § 2255.

Dated this 4th day of November, 2021.

STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

09-0043p171 (Stilley).docx