8:06-CV-00851-T-24EAJ

AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	District: Middle District of Florida	
Name of Movant: Albert Terrill Jones	Prisoner No.: 40308-018	Case No.: 8:02-CR-122-T-24EAJ
Place of Confinement: Federal Correctional Complex - Medium, P.O. Box 1032, Coleman, Florida 33521		

UNITED STATES OF AMERICA V. ALBERT TERRILL JONES (name under which convicted)

MOTION

1. Name and location of court which entered the judgment of conviction under attack: Middle District of Florida, Tampa Division, 801 North Florida Ave , Tampa, Fl 33602-3800.

2. Date of judgment of conviction: June 24. 2003

3. Length of sentence: 300 months

4. Nature of offense involved (all counts): Count One - Conspiracy with Intent to Distribute 5 Kilograms of Cocaine, 50 grams of Cocaine base, 100 kilograms of Marijuana - 21 U.S.C. §841(b)(1)(A), §841(b)(1)(B), §846.

5. What was your plea? (Check one)
   (a) Not guilty ☒
   (b) Guilty ☐
   (c) Nolo contendere ☐

   If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:
   N/A

6. If you pleaded not guilty, what kind of trial did you have? (Check one)
   (a) Jury ☒
   (b) Judge only ☐

7. Did you testify at the trial?
   Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?
   Yes ☒ No ☐

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9. If you did appeal, answer the following:

(a) Name of court Eleventh Circuit Court

(b) Result Affirmed

(c) Date of result September 20, 2005.

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?
Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court N/A

(2) Nature of proceeding N/A

(3) Grounds raised N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐ N/A

(5) Result N/A

(6) Date of result N/A

(b) As to any second petition, application or motion give the same information:

(1) Name of court N/A

(2) Nature of proceeding N/A

(3) Grounds raised N/A

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(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐ N/A

(5) Result N/A

(6) Date of result N/A

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion? N/A
(1) First petition, etc. Yes ☐ No ☐
(2) Second petition, etc. Yes ☐ No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all ground in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

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(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
(e) Conviction obtained by a violation of the privilege against self-incrimination.
(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
(g) Conviction obtained by a violation of the protection against double jeopardy.
(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
(i) Denial of effective assistance of counsel.
(j) Denial of right of appeal.

A. Ground one: THAT JONES LIBERTY RESTRAINTS WAS IMPOSED WITHOUT DUE PROCESS OF LAW - 18 U.S.C. §2703(a) - ELECTRONIC COMMUNICATION PRIVACY ACT

Supporting FACTS (state *briefly* without citing cases or law) Court records show that DEA agent McLaughlin accessed Electronic Communications and Records at least (9) documented times without the required warrants. The Government prosecuted and convicted Jones upon evidence seized without the antecedent warrant process as due under 18 U.S.C. §2703(a). Thereby, imposing Liberty Restraints in violation of Constitution Fifth Amendment Due Process of Law.

B. Ground two: THAT COURT ERRED IN ADMITTING EVIDENCE IN VIOLATION OF FOURTH AMENDMENT SUPPRESSION PROTECTION OF JONES'S SUBSTANTIVE RIGHTS.

Supporting FACTS (state *briefly* without citing cases or law): On January 3, 2003 the Court decided Res Adjudicata, pursuant to Rule 41 - Suppression Motion that the Government violated Jones's Fourth Amendment rights to Search and Seizure and Ordered Suppression of Skytel Text Messages sent or received in the case. At trial, 5 United States Exhibits of Skytel text messages was admitted in violation of Jones's Fourth Amendment Protective Rights.

C. Ground three: THAT GRAND JURY PROCEEDINGS WAS UNCONSTITUTIONALLY VOIDED UPON UNLAWFUL ECPA EVIDENCE ADMITTED IN VIOLATION OF FOURTH AMENDMENT

Supporting FACTS (state *briefly* without citing cases or law): That the same ECPA evidence declared inadmissible for trial was also inadmissible before the Grand Jury under 18 U.S.C. §3504 and §2515. The Grand Jury had no legal authority to act on UNLAWFUL evidence for the purpose of imposing lawful subject matter jurisdiction proceedings.

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D. Ground four: THAT JONES'S COUNSEL DEPRIVED HIM EFFCTIVE DEFENSE AGAINST EVIDENCE JUDICIALLY DECLARED UNCONSTITUTIONAL AND UNLAWFUL.

Supporting FACTS (state *briefly* without citing cases or law): The Court decided Res Adjudicata Skytel Text Messages was unlawfully seize in violation of the Fourth Amendment and was Ordered Suppressed for Trial. Counsel fail to file a Motion to Dismiss Indictment, post res adjudicata, application to Grand Jury. And also failed to take injunction action to stop admission of evidence ordered inadmissible. Counsel's ineffectiveness resulted in Jones's prosecution and conviction upon unlawful evidence.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: None of the §2255 grounds was previously presented by reason of counsel's discretion.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Dionja L. Dyer, AFPD, 400 N. Tampa St., Suite 2700

(b) At arraignment and plea Supra

(c) At trial Daniel F. Daly, P.O.Box 172446, Tampa Fl. 33672-0446

(d) At sentencing Daly, supra

(e) On appeal Christi R. Adams, 111 North Orange Ave., Suite 1800, Orlando, Fl. 32801-2386

(f) In any post-conviction proceeding N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?
Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:
N/A

(b) Give date and length of the above sentence: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? N/A
Yes ☐ No ☐

Wherefore, movant prays that the Court grant petitioner relief to which he or she may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

5-5-06
(Date)

Albert T. Jones
Signature of Movant