

99-8169-JJ

UNITED STATES COURT OF APPEALS

ELEVENTH CIRCUIT

UNITED STATES OF AMERICA

v

DC DKT NO.: 92-00182-1-CR-RLV

George High & Virginia High

APPEAL OF MOTION UNDER 28 USC § 2255 TO DISMISS, VACATE, SET ASIDE, OR CORRECT SENTENCE

BRIEF OF VIRGINIA HIGH

Virginia High, Pro Se  
Federal Register #: 43083-019  
Federal Prison Camp  
P.O. Box 7006  
Marianna, Fla 32447-7006

Sign

Date

*Virginia High*  
*June 24, 1999*

U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT

RE: 98-8429-JJ

USA

VS.

HIGH

Dkt No. 92-00182 1 CR-5-RLV

11th Cir. R. 26.1 (see reverse) requires that a Certificate of Interested Persons and Corporate Disclosure Statement be included within the principal brief filed by any party, and included within any petition, answer, motion or response filed by any party. You may use this form to fulfill this requirement. In alphabetical order, with one name per line, please list the trial judge(s), and all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates and parent corporations, including any publicly held company that owns 10% or more of the party's stock, and other identifiable legal entities related to a party.

*(please type or print legibly):*

Amy Weil

George High

H. Allen Moye

UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT  
NORTHERN DISTRICT OF GEORGIA

UNITED STATES OF AMERICA

v

99-8169-JJ

George High & Virginia High

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is desired, because defendant don't have an attorney.

UNITED STATES COURT OF APPEALS  
Eleventh Circuit

UNITED STATES OF AMERICA

Case: 99-8169-JJ  
DC DKT NO.: 92-00182-1-CR-RLV

v.

George High & Virginia High

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UNITED STATES COURT OF APPEALS

ELEVENTH CIRCUIT

UNITED STATES OF AMERICA

v

99-8169-JJ

George High & Virginia High

TABLE OF CITATIONS

1. Alexander v. State of Georgia, Supt. Court No. 598A0969, 12/4/98
2. Brown v. Dugger, 831 F2d 1412 (11th Cir 1987)
3. Cunningham v. Zant 928 F2d 1006 (11th 1991)
4. Mattox v. Cash Loans of Huntsville, ILL 21 F Supp 1336 (N D ALA 1998)
5. Matire v. Wainwright 811 F2d 1430 (11th Cir 1987)
6. Ringstaff v. Howard 861 F2d 644 (11th Cir 1988)
7. U.S. v. Beale, 921 F2d 1412 (11th Cir 1987)
8. U. Supt Ct, Albright v. Oliver, 510 U s 266, 54 CRL 2079
9. U.S. v. Eason, 920 F2d 731 (11th Cir 1990)
10. U.S. v. Ellis, 917 F2d 701 (11th Cir 1992)
11. U.S. v. Patino, 991 F. Supp 1449 (M.D. FLA 1997)
12. U.S. v 408 Peyton Rd, Atlanta, Georgia 112 F3d 1167.
13. U.S. v Perez-Garcia, 904 F2d 1534 (11th Cir 1990)
14. U.S. v Hall 165 F3d 1095 (7th Cir 1999)
15. U.S. v Leon, 468 U.S. 897, 104 Supt. Ct 3405, 821. Ed 2d 677 (1984)
16. U.S. v Lanza D CT Fla, 1973, 356 F. Supp 27

TABLE OF CITATIONS

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17. U.S. v. Pentrose, 791 F2d 1477 (11th Cir 1986)
18. U.S. v. Piccionna, 885 F2d (11th Cir 1989)
19. U.S. v. Singleton, 144 F3d. 1343 (10th Cir 1998)
20. U.S. v. Torres 929 F2d 291 (7th Cir 1991)
21. U.S. v. Tokars 929 F2d 291 (7th Cir 1991)
22. U.S. v. Weinstein 762 F2d 1522 (11th Cir 1985)
23. U.S. v. West (CA. 11, 142 F3d 1408 (1998)
24. U.S. v. Strickland 466 U.S. 668, 80 L Ed 2d 674, 104 S. Ct. 2052

UNITED STATES COURT OF APPEALS  
Eleventh Circuit  
NORTHERN DISTRICT OF GEORGIA

UNITED STATES OF AMERICA

v

99-8169-JJ

George High & Virginia High

STATEMENT REGARDING ADOPTION OF BRIEFS OF OTHER PARTIES

Adoption of briefs of other parties is not desired.

Virginia High, Pro se  
Register # 43083-019  
Federal Prison Camp  
P.O. Box 7006  
Marianna, Fla 32447-7006

UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA

v

Re: 98-8429-JJ

George High & Virginia High

STATEMENT OF JURISDICTION

This Court has jurisdiction over this case.



UNITED STATES COURT OF APPEALS

ELEVENTH CIRCUIT

UNITED STATES OF AMERICA

v

Re: 98-8429-JJ

George High & Virginia High

STATEMENT OF THE ISSUES

Following are issues raised for appeal: (Issue 1); denial of effective assistance of Counsel wrongfully arrested upon superseding indictments, selectively prosecuted as a license real estate agent (Ground 2); denied bond and a reasonable appellate bond (Ground 3); the subject of an illegal search and seizure (Ground 4); and her prosecution violated Double jeopardy (Ground 5); defendants trial was not speedy.

UNITED STATES COURT OF APPEALS

ELEVENTH CIRCUIT

UNITED STATES OF AMERICA

v.

D.C. Dkt. No.: 92-00182 1-CR-RLV

George High & Virginia High

STATEMENT OF THE CASE

Defendant, George High was C.E.O. of Georgia Home Improvement, Co., from 1979, a licensed Real Estate Agent from 1984-1986, when he became the Broker for High's Realty, Inc., and in 1990 a Partner in High-Five, Inc.

Defendant, Virginia High was Office Manager for Georgia Home Improvement, Co., a licensed Real Estate Agent at High's Realty, Inc., since 1986 and a Partner in High-Five, Inc.

On October 17, 1991, IRS Agent, Bill Silinski, and another man, \_\_\_\_\_, came **ARMED** to the defendants home at 4791 Thompson Mill Road, Dekalb County, Georgia, **without giving prior notice**, with the originals of the defendant's 1988-1990 Personal Income Tax Return, filed earlier. They questioned the defendants for sometime, during which time the defendants cooperated fully.

On June 17, 1992, defendant, Virginia High, was arrested at Georgia Home Improvement Co., handcuffed in public view, and taken to jail for the alleged violation of U.S.C.A. 31 § 5324 (Structuring currency transactions with financial institutions in regard to the purchase of certain real properties). Defendant retained Attorney C. Michael Abbott, who came to the Richard B. Russell Federal Building, where the defendant

*ENTERED A plea of NOT Guilty.*  
10

Defendant, Virginia High's Bail was set at \$100,000.00 and \$100,000.00 Property Bond was posted with conditions: to report to Pre-Trial Officers weekly, and not to leave the jurisdiction without notice/approval, defendant was released later on June 17, 1992.

Defendant, George High was indicted on July 17, 1992, Attorney William "Bill" Morrison was appointed, they went before the Magistrate Judge, where he entered a plea of NOT GUILTY, a \$100,000.00 Pre-Trial Bail Bond was set, a \$100,000.00 Property Bond was posted with condition: to report to Pre-Trial Officers weekly, and not to leave the jurisdiction without notice/approval, he was allowed to remain on this Bail until trial.

In September of 1993 Defendants and Co-defendants, had a Jury Trial.

On October 13, 1993, the Jury returned guilty verdicts on several counts, stemming from a 3rd Superceding indictment, where defendants names had been added to Count 1, when their names were not listed in Count 1, of the original indictment, dated July 9, 1992, (copy attached).

Notices of Appeals were filed.

On October 9, 1996, Oral Arguments on Count 1 (Conspiracy to Possess with intent to Distribute and to Distribute Cocaine and Cocaine Base, 21 USC § 841 (a)(1) and 846), and Count 13, (Conspiracy to commit an Offense Against the United States, Laundering of Monetary Instruments, Aiding and Abetting, 18 USC 2, 371, 1956(a)(1)(B)(i) & 1956(a)(B)(ii)) was heard on Direct Appeal.

On July 21, 1997, this Court issued an Opinion: Reversing in part, Affirming in Part and Remanded case (U.S. v HIGH, 117 F.3d 464 ) back to the District Court. Defendants have not received any sentencing relief, on Reversed Count.

On August 2, 1997, defendant, Virginia High, Motion the District Court to appoint Counsel (copy attached), that was denied, February 24, 1998.

On August 5, 1997, defendant, Virginia High, Motion the Court for a New Trial, and a Motion Under 28 § 2255 To Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody was stamped filed by Deputy Clerk, on same date, and Motions were denied on February 24, 1998.

On March 12, 1998, defendant Virginia High, requested \$105.00 to be withdrawal from inmate account # 43083-010, for the Notice of Appeal, filed March 16, 1998, filing fee.

Defendant, Virginia High, acknowledged receipt of letter dated February 8, 1999, from Clerk's Office of U.S. Court of Appeals, by response in letter dated February 13, 1999, which an Application to Proceed without Payment of Fees and Affidavit, under 28 USC § 1915, was enclosed, that was denied on March 3, 1999, by the District Court.

Defendant, Virginia High, acknowledged receipt of letter dated March 5, 1999, from United States Court of Appeals, that case (99-8169, USA v High), (DC DKT NO.: 92-00182 1-CR-RLV) had been docketed in this Court.

Defendant, Virginia High, completed the Transcript Order Information form, signed and dated March 9, 1999.

This Appeal of Motion Under 28 USC § 2255 is being done Pro Se, by defendants, George High, who is incarcerated, at the Federal Prison Camp, Jesup, 2600 Hwy. 301 South, Jesup, Georgia 31599, and Virginia High, who is also incarcerated at the Federal Prison Camp, Florida, P.O. Box 7006, Sem-B Unit, under Federal Register Number: 43083-019 and George High is under Federal Register Number: 43114-019.

Defendants are U.S. Citizens, husband and wife with five grand-children, who were self-employed, taxpaying business people, who provided jobs in and around Metro Atlanta area, prior to this malicious prosecution, that did not demonstrate a specific fact before the jury that defendants were knowledgable part of a drug conspiracy, as they alledged, in opening statements.

Defendants acted in good faith, in their Real Estate Business with all their clientele, as the general population of Metro Atlanta, Georgia. That good faith was also afforded to those witnesses compensated or not for their testimony.

The District Court erred by allowing the paid testimony of Kyle Henry, previously, a Classic Auto Dealer. A telephone conversation between Virginia High, and Kyle Henry was recorded by Kyle Henry, without her knowledge, and was allowed to be played before the jury, in reference to property, that was listed on the market For Sale, by High's Realty, Inc.

The District Court erred by allowing the drug conviction to stand without substantial evidence of facts.

Defendant's business, Georgia Home Improvement, Co. was Illegally Search, and items, were unlawful taken. Also items: records, computers and etc. were taken from Bal-Inc, a secondary business, that shared office space at same location.

UNITED STATES COURT OF APPEALS  
Eleventh Circuit  
Northern District of Georgia

UNITED STATES OF AMERICA

v

CASE # 99-8169-JJ

GEORGE HIGH & VIRGINIA HIGH

ARGUMENT

Defendant, Virginia High's case should be reversed because: she had ineffective assistance of counsel, she was wrongfully arrested upon superceding indictments, she was selectively prosecuted as a license real estate agent, her appeal bond was excessive, she was subject to an illegal search and seizure, prosecution was in violation of Double Jeopardy, and she did not have a speedy trial.

Counsel failed to investigate Grand Jury testimonies, he failed to object to defendant Virginia High's name being added to the 3rd superceding indictment for a drug conspiracy count, when he was made well aware, that defendant was not wilful a part of, he failed to called witnesses on behalf of defendant, he failed to object to the paid testimony of Kyle Henry at trial, U.S. v Singleton, 144 F3d, 1343 (10th cir 1998), he failed to introduce defendant's polygraph evidence at trial U.S. v Piccionna, 885 F2d (11th cir 1989) U.S. v Perez-Garcia, 904 F2d 1534 (11th cir 1990, U.S. v Beale, 921 F2d 1412 (11th cir 1991), Matire v Wainwright, 811 F2d 1430 (11 cir 1987), Brown v. Dugger, 831 F2d 1547 (11 cir 1987), he failed to object to unlawful seized property U.S. v 408 Peyton Rd., Atlanta, Georgia, 112 F3d 1167, U.S. v Eason, 920 F2d 731 (11th cir 1990), U.S. v. Hall 165 F3d 1095 (7th cir 1999), he failed to object to the excessive bail defendant received U.S. v Torres 929 F2d 291 (7th cir 1991), U.S. v Pentrose, 791 F2d 1477 (11th cir 1986)

Cunningham v. Zant, 928 F2d 1006 (11th cir 1991), he failed to object to the illegal search of Georgia Home Improvement Co., he did not raise these issues on direct appeal, items were unlawful seized, U.S. v Ellis, 917 F2d 701 (11th Cir 1992), United States v. Leon, 468 U.S. 897, 104 Supt. Ct.3405, 82 L. Ed 2d 677 (1984), U. S. v. Weinstein, 762 F2d 1522 (11th cir 1985), and he failed to object to defendant not being allow to have a speedy trial while defendant suffered anxiety from being accused of criminal acts, Ringstaff v Howard, 861 F2d 644 (11 cir 1988).

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ARGUMENT AND CITATIONS OF AUTHORITY

Defendants had ineffective of Counsel. Counsel errors were so serious as to deprive defendants of a fair trial. Counsel failed to do any Pre-trial investigation, failed to motion Court for a Speedy Trial, to present the Polygraph evidence doing trial. Defendants paid \$1000.00 to take the polygraph prior to trial. Defendant, Virginia High testified at trial in her own defense, and was the only witness for the defense. Counsel should have attempted to use the test as evidence or as indica of the trustworthiness of defendants. It is within the discretion of the Trial Court to refuse or admit a Polygraph test. Although, polygraph evidence is not per se inadmissible, U.S. v PICCINONNA 885 F.2d 1529 (11th Cir. 1989) it is within discretion of the trial Judge whether to receive in evidence results of Polygraph examination, U.S. v LANDZA, D.C. FLA 1973, 356 F. SUPP 27. In certain cases, Polygraph evidence may be admitted to impeach or corroborate testimony of trial witnessess, U.S. v TOKARS, 95 F.3d, 1520 (11th Cir. 1996). U.S. v PATINO 991 F. SUPP 1449 (M.D. FLA. 1997), and MADDOX v CASH LOANS OF HUNTSVILLE, ILL, 21 F. SUPP 1336 (N.D. ALA. 1998). Court may admit Polygraph evidence as corroboration evidence when: (1) proponent provides adequate notice to opposing party; (2) proponent provides opposing party with reasonable opportunity to administer polygraph test; and (3) polygraph evidence is admissible under the Federal Rules of Evidence, Rules 403, 608,



702, 28USCA, see U.S. v PICCINONNA (PICCINONNALL), 729 F. SUPP 1336-1338  
(S.D. FLA. 1990) affirmed memo 925 F.2d 1474 (11th Cir 1991).

Counsels failed to object to the **ILLEGAL SEARCH AND SEIZURE** of defendant's business: GEORGIA HOME IMPROVEMENT CO., when Search Warrant was for High's Realty, Inc., which was not in operation at the time, this could have been brought to the Courts attention, requesting that a copy of the warrant, for Court and jury to see. If there is only one plausible line of defense, the court concluded must conduct a "reasonably substantial investigation" into that line of defense, ID 466 US 680 STRICKLAND v WASHINGTON, 80 L. Ed 2nd 674, 104 S CT. 2052.

Defendants were not clearly informed of the nature and cause of accusations against them and all the legal ramifications, and expected Counsel's to render reasonably effective assistance, therefore a reasonable probability of different results . Defendants were **WRONGFULLY PROSECUTED.**

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CONCLUSION

Defendants had ineffective assistance of Counsel, their Constitutional Rights.... were violated, and an injustice has been done.

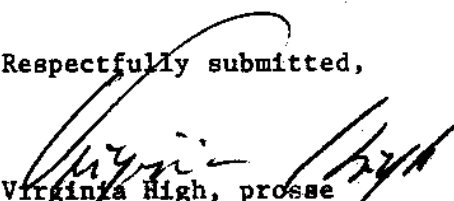
Sixth Amendment to assistance of Counsel accorded criminal defendants a right to "counsel reasonably likely to render and rendering reasonably effective assistance given the totality of the circumstances. Counsel's errors were so serious as to deprive the defendants of a fair trial. The sixth amendment right to counsel is by its terms a right that extends only to "the accused" in a "criminal prosecution".

Defendants prays this court, after reading this brief and/or allowing defendants to speak on their own behalfs, render a decision that will correct, this Miscarriage of justice.

June 24, 1999  
Date

George High  
Federal Register Number  
43141-019  
Federal Prison Camp  
2600 Hwy 301 South  
Jesup, Georgia 31599

Respectfully submitted,

  
Virginia High, pro se  
Federal Register # 43083-019  
Federal Prison Camp  
P.O. Box 7006  
Marianna, Fla 32447-7006

UNITED STATES COURT OF APPEALS  
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CERTIFICATE OF COMPLIANCE

Defendant has complied with Rule FRAP 32 (a)(7).