

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

(If movant has a sentence to be served in the future under a federal judgment which he or she wishes to attack, the movant should file a motion in the federal court which entered the judgment.)

MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

Explanation and Instructions—Read Carefully

- (1) This motion must be legibly handwritten or typewritten, and signed by the movant under the penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt, motion will be filed if it is in proper order. No fee is required within this motion.
- (4) If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed *in forma pauperis*, in which event you must execute form AO 240 or any other form required by the court, setting forth information establishing your inability to pay the costs. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (5) Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different judges or divisions either in the same district or in different districts, you must file separate motions as to each such judgment.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the motion you file seeking relief from any judgment of conviction.
- (7) When the motion is fully completed, the original and at least two copies must be mailed to the Clerk of the United States District Court whose address is
- (8) Motions which do not conform to these instructions will be returned with a notation as to the deficiency.

UNITED STATES DISTRICT COURT

District Northern District of Georgia
11th Circuit

Name of Movant
George W. High Sr.

Prisoner No.
43141-019

Case No.
1:92-CR-82-4

Place of Confinement Fort Dix, N.J. 08640-0902 Bldg. 5752-3 P.O. Box 2000

UNITED STATES OF AMERICA

George W. High Sr.
v. Virginia C. High
(name under which convicted)

MOTION

- Name and location of court which entered the judgment of conviction under attack UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA THE ELEVENTH CIRCUIT
- Date of judgment of conviction October 13, 1993
- Length of sentence Ct. 1 & 9 97mos. Ct. 3 & 13 60mos all concurrent
- Nature of offense involved (all counts) Ct. 1: 21 U.S.C. §§ 841 (a)(1) and 846 and 18 U.S.C. § 2) a Class A Felony Conspiracy to possesswith intent to Distribute.
Ct.3: False statement in Acquiring a Firearm (USC § 922(a)(6)
Ct. 9: Convicted Felon in Possession of a Firearm (USC §§ 2,921(3) and 922(g)(1)
Ct. 13: Conspiracy to com. Offense Against U.S. (18 USC §§ 371 and 2)
Ct. 14: Structuring transaction (31 USC § 5324(3), 18 USC § 2, and C.F.R. § 103.1
- 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 not a guilty plea to another count or indictment, give details:

- If you pleaded not guilty, what kind of trial did you have? (Check one)
(a) Jury
(b) Judge only
- Did you testify at the trial?
Yes No
- Did you appeal from the judgment of conviction?
Yes No

9. If you did appeal, answer the following:

(a) Name of court United States Court of Appeals. Eleventh Circuit

(b) Result AFFIRMEN in part; REVERSED and REMANDED in part.

(c) Date of result July 21, 1997

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 _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(5) Result N/A

(6) Date of result _____

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

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised N/A

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

(5) Result N/A

(6) Date of result _____

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(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 the same.

Caution: If you fail to set forth all grounds 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 may have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base 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.

- (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 impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

1. U.S. Cons. Amend. # 2 Unreasonable searches and seizures (Violated)

On July 27, 1992, the government executed a search warrant at the office of GEORGIA HOME IMPROVEMENT CO., INC. who also shared office space with Bal, Inc. and High-Five, Inc.. They seized about 25-30 cases of files, 3 computers, all computer disk, address books, personell files, stock certificates, checkbooks, cancelled checks, stockholders information. The warrant was in fact for High's Realty, Inc. whos office was on Covington Highway, and had never been at that location. The Georgia Real Estate commession had taken the license of George High and High's Realty, Inc. in early January 1992, and Virginia High had her license transferred to Real Estate Port Forlio at that time. The I.R.S. Arrested Virginia High at that location on June 17, 1992 and they assumed that was the office of High's Realty, Inc.. The I.R.S. and the F.B.I. never checked with on sight management co. or the utility co. to see whos office that was. They seized records from all of the above Corporations.

Also the government executed a search warrant at the residence of George & Virginia High on July 27, 1992 at about 6:00 A.M.. I was told by Agt. Silanski to open a safe in our bedroom and he seized the contents. They attempted to search the basement and I spicifically told agt. Silinski that our son and his wife (Eric and Janique High) rented the basement, and he told me that he had a warrant to search all the premises, and they were instructed to come upstairs to the family room while their apartment was being searched. They seized a number of items from the basement. The basement apartment was a totally self-contained unit e.g. 2 bedrooms, living-dining-kitchen, with cabinets, sink, ref., full bath, fireplace and a seperate entrance. They also searched my briefcase and found a firearm (legal), and seized it along with numerous other items.

2. U.S. Cons. Amend. # 4 The right of the people to keep and bare arms, shall not be infringed.

My rights to possess firearms had been restored in 1972, and the the government knew or should have known when they seized my gun.

4. U.S. Cons. Amend # 5 ...Indictment of a Grand Jury...Double Jeopardy... witness against himself...nor be deprived of Life, Liberty, or property, without due process of law.

In December of 1992; almost five (5) month after the Illegal search and seizure at the residence of George & Virginia High's residence, and the Illegal search and seizure of Georgia Home Improvement Co., Inc.. The government got 3rd indictment and charged George & Virginia on Ct. # 1 , the drug conspiracy count and the two firearm counts. The

Government agents and others known and unknown, made perjured statements to the grand jury, and the prosecutor allowed perjured testimony to stand uncorrected on more than one occasion. They did not tell the grand jury that the evidence was from an illegal search and seizure. They also told the grand jury that I was a convicted felon, and I was charged with the firearm. I was later to be twice put in jeopardy. Our property was taken in violation of "Due process of law".

5. INDICTMENT WAS FATALY DEFECTIVE: indictment should have been dismissed because of lying under oath, and Illegal search and seizure and the false firearm charges.

6. U.S. Cons. Amend # 6 ...A speedy trial...an impartial Jury...Assistance of Counsel for his defense.

From first indictment to trial was 15 months, which was by no means speedy. The government presented fraudulent and perjured evidence to the grand jury, so they certainly was not impartial. If my wife and myself had some assistance from our counsels, we would not be filing this 2255 motion.

7. U.S. Cons. Amend # 8 Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The prosecutor (allen Moye) "insisted" that bail should be \$100,000 for Virginia High and \$100,000 for George High on some "trumped up charges". I would think that being in prison for 3½ years on false charges e.g. 13 years 1 month for legal firearm is "cruel and unusual punishment".

8. U.S. Cons. Art # 13 Neither slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

We were not duly convicted so we are in virtual slavery and actual involuntary servitude within the United States.

9. U.S. Cons. Art. # 14 ...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the Law.

That right was violated when the highest police power in the state of Georgia (The Georgia Bureau of Investigation), in the person of Terry Sosbee participated in the early morning raid on our home, and it was in fact he who found my briefcase and searched it and discovered the legal firearm.

10. Count 3: 18 USC § 922 (a)(6) False statement in acquiring firearm.

Question 8(b) on form 4473 states: Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? NOTE...A "yes" answer is not required if you...have had your civil rights restored. (convicted and sentenced to five years).

11. Count 9 18 usc § 922(g)(1) Convicted felon in possession of a firearm.

George High did not have a predicate crime punishable by imprisonment for a term exceeding one year, as defined by 18 USC § 921 (a)(20).

as my rights had been "restored" and my possession of firearm did not violate the law. (Convicted and sentenced to 97 months)

12. Persuant to 21 USC § 853 and 18 USC § 982,

Our properties, real and personal were Illegally forfeited after "Fraudulent" conviction to pay Kyle Henry, because the I.R.S. had made a "deal" with him to receive 10% of the net taxes and penalties collected by them, and the U.S. Attorneys office had also made a "Super Deal" with him to receive 25% of everything that they seize. The total package was 1 million+.

13. U.S. Cons., Art. 1, § 2, Cl.1 Right to vote for Representatives. .

U.S. Cons., Admt. XVII Right to vote for Senators.

28 USC § 1865 Right to serve on a Jury.

My rights to vote, serve on a jury, and hold public office was restored in 1962, and when I was wrongly convicted in 1993 my civil and Constitutional rights were violated.

14. THE COURT ERRED when it denied George & Virginia High's motion for severance.

15. THE COURT ERRED when it denied George & Virginia High's motion to suppress evidence from search and seizure.

16. THE COURT ERRED when it denied the motions of George High, Virginia C. High, and Robert Ward, for judgement of acquittal.

17. THE JURY ERRED when they found George High, Virginia C. High, and Robert Ward "GUILTY".

18. MILICIOUS PROSECUTION-ABUSE ITS DISCRETION-UNJUST CONVICTION & IMPRISONMENT

Those in positions of authority became "Overzealous" in their rush to trial and conviction because George High, Virginia C. High and Robert Ward refused to "cooperate" and exercised their right to trial under U.S. CONS. AMEND. # 5 and # 6.

19. OBSTRUCTION OF JUSTICE-WITNESS TAMPERING-DOCUMENT ALTERATION-COLLUSION-
KNOWINGLY WITHHOLDING IMPACHMENT AND EXCULPATORY EVIDENCE-WILFUL
DEPRIVATION OF "CONSTITUTIONAL RIGHTS.

The prosecutor (H. Allen Moyer) brought a witness from Colorado who was employed by the state prison. The witness was suppose to testify that I had served time in the Colorado state prison and was a convicted felon who had not had his rights restored. When Allen Moyer interview the witness (outside Judge Vining's court room), the witness informed him that a persons rights are restored when they walk out of prison in Colorado, and their rights to possess firearms are restored also. He in formed Allen Moyer that if a persons crime was one of violance then that person is barred for 10 years from owning a firearm. Allen Moyer tried to get the man to commit perjury but he refused and Allen Moyer told the witness to return to the witness room. The prosecutor refused to let a "FEDERAL WITNESS" testify. Allen Moyer knew that if he allowed the witness testify then there would have been a mistrial, acquittal, or dismissal of indictment which would have barred retrial because of double jeopardy under the 5th amendment. Allen Moyer "hatched" a plan and told Bill Morrison (My Lawyer) to get George High to stipulate that he was a convicted felon and the witness could "take a hike".

Bill Morrison "Hoodwinked" me into signing a statement prepared by the Assistant United States Attorney, H. Allen Moye which said: ["The defendant, George High, is a convicted felon as alleged in counts three and nine of the indictment"]. that was on or about September 23, 1993, and I asked Bill Morrison for a copy immediately, but he said that it had to be signed by The U.S. Attorney, Joe D. Whitney, but assured me that he would get me a copy. On October 5, 1993 Allen Moye states the following in "open Court": I have a stipulation that has been signed between The United States and Mr. George High regarding government exhibit no. 34. It is hereby stipulated by and between the United States, By Joe D. Whitney, United States Attorney, Northern District of Georgia, and H. Allen Moye, Assistant United States Attorney, and the Defendant, George W. High, and his counsel, William Morrison, as followed: The defendant, George High, is a convicted felon as alleged in count three and nine of the indictment. The defendant, George W. High has not been pardoned or received and executive clemency from the conviction aforesaid. the part of the statement in bold print was the document alteration. I never till this day got a copy of the statement. The procutor (H. Allen Moye) continued through trial and until this day to maintain that the trial was fair and the verdict was true.

20. INEFFECTIVE ASSISTANCE OF COUNSEL: To bring such charge against Bill Morrison (Att: for George High), and C. Michael Abbott (X-Att: for Virginia High) would be tantamount to giving them the "Nobel Prize", because I have sent most of this information to Bill Morrison in mid 1996. He (Bill Morrison) made Allen Moye aware of the invalid firearm charges on 2/26/97, (as if he didn't already know). I have documentation stating in part that: Allen Moye had recommended that his supervisors allow him to petition the 11th Circuit to vacate my conviction for possession of a firearm by a convicted felon.

In closing let me say that: George and Virginia High earnestly and humbly implore this court to invoke its supervisory power and dismiss the indictment, with prejudice, based on Gross govermental Misconduct, and particular "Serious prosecutorial misconduct". The Constitutional rights of the defendants were violated on numerous occassions. NOW we are well aware of the fact that the dismissal of an indictment is an extreme sanction which should be "infrequently utilized"; however we think that this court will note the seriousness of the aforementioned charges in the case at bar, and that the defendant George High has in fact substantiated those charges "beyond a resonable doubt". We feel that after the court consider the "Gross Miscarriage of Justice" perpetrated on the defendants that they will agree that:"This is a situation in which the conduct of law enforcement agents and the prosecutor was so outrageous that due process principles should have barred the government from envoking judicial process to obtain a conviction". Last but by no means least, let me bring to the courts remembranc how in September and October of 1993, the government mislead this court to such an extent as to "Perpetrate a fraud upon the court".

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: _____

N/A

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 judgment attacked herein:

(a) At preliminary hearing C. Michael Abbott One Peachtree Center, 1201 West Peachtree Street, suite 3410 Atlanta, Ga. 30309-3400

(b) At arraignment and plea William A. Morrison 1250 Peachtree Center Tower, 230 Peachtree St. N.W. Atlanta, Ga. 30030

(c) At trial William A. Morrison

(d) At sentencing William A. Morrison

(e) On appeal William A. Morrison

(f) In any post-conviction proceeding William A. Morrison

(g) On appeal from any adverse ruling in a post-conviction proceeding William A. Morrison

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: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

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

September 15, 1997

(Date)

Signature of Movant