

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District Eastern District of Oklahoma	
Name (under which you were convicted): Jimmy C. Chisum		Docket or Case No.: CR-05-00430-RAW	
Place of Confinement: Federal Prison Camp La Tuna		Prisoner No.: 84388-008	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted)	
v.		Jimmy C. Chisum	

FILED

SEP 18 2008

By: WILLIAM B. GUTHRIE
Clerk, U.S. District Court
Deputy Clerk

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

United States District Court
Eastern District of Oklahoma
Po Box 607
Muskogee, Oklahoma 74401

(b) Criminal docket or case number (if you know): CR-05-0043-RAW

2. (a) Date of the judgment of conviction (if you know): November 30, 2005

(b) Date of sentencing: July 6, 2006 Resentenced November 27, 2007

3. Length of sentence: 97 months Resentenced to 66 months

4. Nature of crime (all counts): 4 counts Attempted Tax Evasion; 26 USC 7201
nature unknown and undisclosed by court or prosecution

5. (a) What was your plea? (Check one) NONE; magistrate entered plea of not guilty

(1) Not guilty (2) Guilty (3) Nolo contendere (no contest)

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one) Jury Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes No
8. Did you appeal from the judgment of conviction? Yes No
9. If you did appeal, answer the following:
- (a) Name of court: Tenth Circuit Court of Appeals
- (b) Docket or case number (if you know): 06-7082
- (c) Result: Reversed in part; resentencing... upheld in part; Certiorari denied
- (d) Date of result (if you know): 9-25-2007 Resentencing 11-27-2007 EDOK
- (e) Citation to the case (if you know):
- (f) Grounds raised: Leader-Organizer Enhancement
- Anders: Validity of Conviction
- Jurisdiction of court
- Sixth Amendment validity of sentence
- Validity of process
- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes No
- If "Yes," answer the following:
- (1) Docket or case number (if you know): 07-8418
- (2) Result: Certiorari Denied; Rehearing Denied
- (3) Date of result (if you know): 2-19-2008 Rehearing Denied April 14, 2008
- (4) Citation to the case (if you know):
- (5) Grounds raised: Validity of Conviction Under PRA 1995
- Motion for Rehearing; Added Jurisdictional Question
- Due Process Challenge
- Validity of Conviction Under Sansone, 1965
- Validity of Sentence 6th Amendment
10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?
- Yes No
11. If your answer to Question 10 was "Yes," give the following information:
- (a) (1) Name of court: USDC EDOK
- (2) Docket or case number (if you know): 05-0043- RAW
- (3) Date of filing (if you know): For resentencing hearing

(4) Nature of the proceeding: UNknown REsentencing hearing

(5) Grounds raised: 6th Amendment; Stare Decisis of Supreme Court
Lack of specific Statute; Stare Decisis

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No Scope Narrowly limited by Court

(7) Result: Ignored or called frivolous

(8) Date of result (if you know): 11-27-2007

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No

(2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: Certiorari was filed with Supreme Court challenging the remainder of the 10th Circuit decision concerning the conviction and bifurcated appeals are not generally accepted by 10th Cir while Certiorari is pending (inadequate).

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Insufficiency of indictment; failure to allege essential element for the crime of attempted Tax Evasion, 26 USC 7201, **Jurisdiction and Nexus**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Indictment does not allege a specific tax deficiency, actual tax due, or Nexus to the federal jurisdiction for taxation.

There is no evidence in the record of a plaintiff with standing as a taxing or punishing authority. Plaintiff never appeared to substantiate a claim, or an injury.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

Incompetent or inadequate Counsel appointed by the Court of Appeals failed and refused to raise the issue even though demanded by client. Anders/Hybrid brief argued pro government position against Appellant interest.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO: Applicability of Statute or Code to defendant; Direct tax Exceeds Congressional Authority for Taxation.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
Defendant is not a person as defined in 26 USC for application of Code;
Defendant is not a taxpayer as defined in 26 USC for Application of Code;
There is no Statute Passed by Congress to tax the labor or property of defendant;
There is no evidence in the record to support the Nexus of Taxation;
There is no evidence in the record of an injured Complaining party;
There is no citation or evidence in the record of a particular statute levying a tax on the labor and property of defendant.
There is no Constitutional provision in evidence upon the record whereby Congress has the authority to lay and collect a tax on defendant's labor, or that of Chadsey named in indictment.
Ruling by the court that defendant had failed to show how precedent and laws quoted by defendant apply to case.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: Inadequate or incompetent counsel on Appeal appointed by the 10th Circuit failed and refused to argue any of the pertinent issues of law or fact leading to conviction.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND THREE: Validity and Applicability of Supreme Court Decision Cheek v US, 498 US 192 (1991) as a complete defense that requires an order of acquittal.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
Court declaration that there is no doubt defendant's beliefs are sincere.
Continuous and unrelenting assertion of sincerely held beliefs by defendant.
A man's labor is property not subject to taxation for income.
Defendant is a sui juris man with full right to his labor, and the products of his labor as an exchange of property.
NO evidence was presented that defendant is any other than as claimed.
No evedence was presented to establish that defendants beleifs were not sincere.
No evidence appears in the record to show plaintiff right to defendant's property or labor.
Income tax on labor, or the exchange of labor is voluntary.
There is no statute, code or regualtion on the record to supplant or overrule Cheek.
There is no testimony from a competent witness to any fact to overrule or override the application of Cheek.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: Inadequacy or incompetence of the counsel appointed by the 10th Circuit; failed and refused to argue any substantive issue of fact or law concerning the conviction.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR: UnConstitutional enhancements to sentence in violation of the Sixth Amendment, and Res Judicata of the Supreme Court.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

No dollar amount of deficiency was stated in the indictment.

No dollar amount of deficiency was proven before the jury.

No dollar amount of deficiency appears in the jury verdict.

Tax estimates made up during trial do not constitute deficiency for 7201.

No dollar amount of deficiency was ever proven for a jury to be applicable to sentencing.

No witness testified to establishing a deficiency for defendant of for Chadsey.

The Chadsey "agreed" amount was negotiated and determined after trail.

No jury ever determined any of the numbers for the "essential element" of deficiency or actual tax due for enhancement.

Maximum sentence by Guidelines must be based on Zero Dollars.

No lawful money of account was used in any of the transactions and everything is denominated and transacted in Federal Reserve Notes (private Commercial debt instruments) and checks denaminated for FRN transactions.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: Inadequate or incompetent Counsel on Appeal Appointed by the 10th Circuit failed and refused to raise any substantive issue of fact or law concerning the application of the Sixth Amendment Or Res Judicata of the Supreme Court.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not

presenting them: YES. Barred by procedure or denial of access to so present by the direct conflict of interest of appointed counsel who failed and refused to present or argue any of defendant's carefully studied sincerely held beliefs as to facts needed to prove the case, jurisdiction, or any of the issues here presented. Counsel argued against client and for government in conflict of interest possibly because he was paid by government.

Trial court considered all law and precedent to support sincerely held beliefs "frivolous and foreclosed in my court".

Defense was barred from presenting rule of law and Supreme Court authority to the jury in an effort to establish doubt.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court

for the judgment you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

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

(a) At preliminary hearing: NONE

(b) At arraignment and plea: NONE

(c) At trial: NONE

(d) At sentencing: NONE

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Counsel repeatedly argued against the simple language of Supreme Court precedents claiming all to be frivolous and of no effect in EDOK, repeatedly stating that the 10th Circuit and EDOK had determined not to follow Supreme Court Authority; and that only local interpretation mattered in the case.

Defendant/ Appellant attempted to raise issues on Certiorary that Attorney had failed and refused to research, or argue in client's favor but due to timing and a tactical error on timing the certiorary was denied and rehearing was denied.

END.

(e) On appeal: Stephen J. Knorr, 7815 S. Harvard Ave., Suite 523, Tulsa, Oklahoma 74135

(f) In any post-conviction proceeding: NONE/ N/A

(g) On appeal from any ruling against you 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 the same time? Yes No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

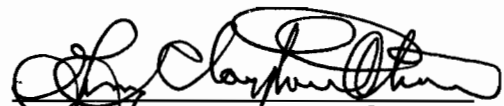
Therefore, movant asks that the Court grant the following relief: Dismiss the indictment and case; or in the alternative judgment of acquittal; or if that is denied resentence to 0-6 months as is applicable on the facts alleged in indictment and proven before the jury. Such other relief as the court deems fair.

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on
(month, date, year).

Executed (signed) on 10 September 2008 (date).


Signature of Movant *See page*

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.