

In the Supreme Court of the State of Nevada

NO. 61406

FRANK M. PECK,

D.C. CASE NO. CR-06-P-2580

Petitioner,

Dept No. 6

v.

Docket No.

FILED

The Second Judicial District
Court of the State of Nevada,

in and for the County of
Washoe; and the Honorable

Brent T. Adams, District
Judge. Respondents,

and

The State of Nevada,

Real Party in Interest.

AUG 02 2012
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

PETITION FOR WRIT OF MANDAMUS

Comes now, Petitioner FRANK M. PECK in proper person
hereinafter Mr. Peck respectfully moves this Honorable
Court for a writ of mandamus.

This Petition is made and based upon all papers and
pleadings on file in this case as well as the
attached points and authorities and affidavit of
Mr. Peck.

RECEIVED
DATED July 27, 2012.
AUG 02 2012
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

Frank Peck
FRANK M. PECK 57106 HDSP Box 650
Indian Springs, NV. 89070
17, 2H43D

Points and Authorities

Attorney Mary Lou Wilson was appointed by the District Court on June 28 2010 to supplement Mr. Peck's Petition for Writ of Habeas Corpus.

The District Court also approved for payment, funds for Mr. Peck's DNA expert Mehul B. Anjaria of MBA DNA consulting.

Since Ms. Wilson's appointment she has refused to provide a business telephone that her client, Mr. Peck can call collect from prison. Mr. Peck as a result has not had one single private or confidential conversation with his counsel and in fact has only spoken to her for 30-45 minutes total in over two years. SEE EX-1

Argument

Mr. Peck has however been in contact with his DNA expert and has developed information from his expert that the testimony regarding the DNA evidence was false, misleading and inaccurate. Napue v. Ill., 360 U.S. 264 269 (1959).

Mr. Peck's expert Mehul B. Anjaria has confirmed that "In the PCR process, the new copies of the DNA are made entirely from the building blocks (A, T, C, G) in the Kit used to perform the PCR."

In other words, when the Jury is told as Mr. Peck's Jury was told, that the DNA evidence sample was amplified, this is a misnomer, in reality the DNA is copied with materials foreign to the DNA evidence, then further copies are made with yet more materials foreign to the DNA evidence then once all the copies made from and built entirely from materials foreign to the evidence these foreign materials are analyzed and all the (STR'S) produced are entirely created from the building blocks (A, T, C, G) in the kit used to perform the PCR process and are completely devoid of any DNA from the original evidence sample.

In other words the DNA copies and all materials analyzed (STR'S) are all manufactured entirely from substances foreign to and added to the evidence from an outside source and therefore constitute the literal manufacture of evidence at a molecular scale.

Mr. Peck's counsel Mary Lou Wilson refuses to comply with the standards set forth by the indigent commission report and this Court's Order ADKT-411 filed Oct 16, 2008 ethical rules or professional conduct and directs all communications with her firm to assistants who are NOT LAWYERS and it appears that the assistants job is to pacify, stall and mislead her clients. see: ex-#1.

Mr. Peck has meritorious issues that must be raised, yet in a letter from Ms. Wilson^① she states that Mr. Peck will have to raise his issues orally at evidentiary hearing.

This attitude by counsel leads Mr. Peck bewildered and desperately needing NEW counsel or control over his case to bring ALL Mr. Peck's meritorious issues himself.

Mr. Peck has no other speedy remedy available to prevent Mr. Peck's due-process rights from being violated by Ms. Wilson.

NRS 34.170 Smith v. Eighth Judicial Dist Court ex rel County of Clark, 107 Nev, 674, 818 P.2d 849, (1991 Nev). Id Ms. Wilson refused mail from her client see ex-#3.

^① See attached letter from Ms. Wilson, ex-#2.

Surely, Mr. Peck should be afforded the opportunity to raise issues that do not depend on whether or not Mr. Peck is granted an evidentiary hearing as stated by Mr. Peck's Court Appointed Lawyer, Ms. Wilson in her May 7th, 2011 letter to Mr. Peck stating that Mr. Peck's issues would somehow be properly before the Court by being brought up orally at evidentiary hearing. Ex-B²

Mr. Peck has a clear right to raise meritorious issues and to NOT BE FRUSTRATED by his own counsel. State ex rel Cohn v. Mack 26 Nev 85, 63 P. 1125, 1901 Nev.; State ex rel Blake v. Dougherty 48 Nev 299, 231 P. 384 (1924)

To date, the District Court has and continues to ignore Mr. Peck's motions for substitute counsel or waiver thereof.

Writ of Mandamus is available to control arbitrary or capricious exercise of discretions.

Such as the district court ignoring Mr. Peck's motions and complaints against his counsel.

Brewery Arts Ctr v State Bd of exmrs, 108 Nev 1050 843 P2d 369 (1992 Nev); Levinson v. Eighth Jud Dist Court ex rel County of Clark, 111 Nev 1172 901 109 Nev 747, 857 P2d 18 (1993 Nev); Mays v. Eighth Jud Dist Court ex rel County of Clark

111 Nev 1172 901 P2d 639, (1995 Nev) Crutcher v. Eighth Jud Dist Court 111 Nev 1286, 903 P2d 823 (1995 Nev); SALISCOOPER v. Eighth Jud Dist Court 117 Nev, 892 34 P.3d 509, (2001 Nev).

Conclusion

Therefore, for these reasons this Honorable Court should Grant this Petition and Order the lower Court to Address Mr. Peck's Motions so that Mr. Peck's 14th Amendments rights to Due Process is NOT violated by his current Counsel Mary Lou Wilson. And that if necessary Mr. Peck be allowed to proceed pro se.

Dated this 27th day of July 2012.

Frank Peck
Frank M. Peck 57106
HDSP Box 650
Indian Springs, NV. 89070
Petitioner in pro per

STATE OF NEVADA
County of Clark § Affidavit of Frank M. Peck

I Frank M. Peck do hereby swear under penalty of perjury that:

1. I AM the Petitioner in Washoe District Court
CASE NO. CR-06-P-2580.

2. All assertions in the attached Petition for Writ of Mandamus are true based upon personal knowledge and documentary evidence and I am competent to testify to all matters contained therein.

3. I bring this Petition in good faith and for NO improper reason.

Dated this 27th day of July 2012.

Signed under penalty of perjury NRS 208.165
and 28 USC 1746.

Frank Peck

FRANK M. PECK 57106

HDSP BOX 650

Indian Springs, NV. 89070

Petitioner in pro per

Certificate of service and Affirmation

Pursuant to NRS 239 B.030 the Attached Petition for Writ of Mandamus does NOT contain social security numbers of ANY person and a true and correct copy WAS mailed this date to:

DDA Terrance Mc Carthy Esq.
75 Court Street
Reno, NV, 89501

Brent T Adams
75 Court Street
Reno NV 89501

Dated this 29th day of July 2012.

Signed under penalty of perjury NRS 208.165
and 28 USC 1746.

Frank Peck

Frank M. Peck 57106

HDSP Box 650

Indian Springs, NV 89070

Petitioner in pro per

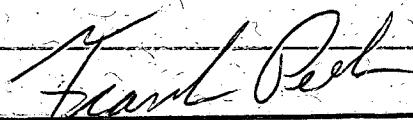
List of Exhibits

#1 letter to Mr. Peck from Jason Von Rosenberg.

#2 letter from Mary Lou Wilson Misdated AS MAY 7, "2011".

#3 Refused Certified letter from Mr. Peck.

Dated this 29th day of July 2012.



Frank M. Peck 57106

HDSIP Box 650

Indian Springs NV 89070

Petitioner in pro per.

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Jason von Rosenberg

Legal Assistant

Mary Lou Wilson, Esq.
333 Marsh Ave.
Reno, NV 89509

Frank Peck #57106
Ely State Prison
P.O. Box 1989
Ely, NV 89301

August 11, 2010

Frank Peck:

First and foremost, I would like to congratulate you for actually taking note of our Simpson stamps. We do try to retain our sense of humor and not get too wrapped up in the negative things that happen in our jobs and lives. We hope to bring smiles to those that have the same outlook.

The office phone is blocked. There are several reasons. Mostly, that we do not have a receptionist to take the calls when we could not just call you back anyways. We are often working from the field, in court, or at our home offices. There are some other ugly incidents that have happened over the years. For your protection and ours we also prefer to have all requests and directions in writing so that there is no confusion or misunderstanding.

However, team member John does have a contact phone 775-379-5854. He is typically able to take calls between 10am and 4pm Monday – Friday. He and I have your case. He will be doing the legal research and preparing the Supplemental Petition, I will be do the field research and finding people and files.

We will want to do the conference call when we are all present and in the office so that we really have a clear understanding of what we are going to do for you and your case. We will be taking detailed notes and have the file out and available for reference.

.....

EX-A

Thank you for the information you passed along. I will get on it right away.
We will always copy and return any original documents as requested.

A few follow up questions.

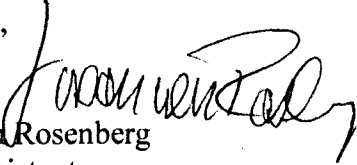
Did your parents both pass in Los Angeles County? I would like to submit records
as proof in the petition.

Do you have any idea what the Judges name was?

(The FRIEND OF YOUR FATHERS)

We are looking forward to talking to you soon, hang in there.

Sincerely,


Jason von Rosenberg
Legal Assistant
Mary Lou Wilson, Esq.

.....

Mary Lou Wilson, Esq.

333 Marsh Ave.
Reno, NV 89509

Frank Peck #57106
S.D.C.C.
P.O. Box 208
Cold Creek Road
Indian Springs, Nevada 89070

May 7, 2011

Mr. Peck:

I received your letters dated April 15, 2012 and May 3, 2012. In the April letter, you asked for a detailed summary of the SPD file. You also included a copy of the docket sheet from May 22, 2009.

I can have John make a copy of it when he gets the chance. However, I have him on other matters for the time being. I understand that he has not accepted your calls and it is because I have him writing two federal petitions, which are murder cases. Also, it is not personal that he has not accepted your calls. If he does not get you a detailed summary in the very near future, it is because of these two murder cases.

I am still waiting for word from Anjaria for the completion of his report. Then I can proceed with your petition.

In your May letter, you expressed frustration at not having had a conversation with me that has not been recorded. You also accuse me of lying to the district court in my motion for a conference call because my phone is blocked. If the motion had been granted, I would have had the conference through the caseworker's phone, not through the collect call pay phone system. Therefore, I did not misrepresent my intentions or call capabilities to the court.

You also stated that you wanted me to "remove myself from [your] case so that an attorney who communicates with their clients can be appointed."

I do not plan on removing myself from your case. When Mr. Anjaria sends me his report, then I will supplement your petition.

.....
Justice for all...

EX-13

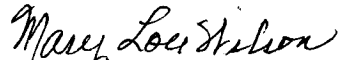
May 8, 2012

Page 2

I understand that you have had numerous phone conversations with John, and constant communication via letters but, for the time being, your communication with my office will have to be through letters. We are also having money issues with the district court and cannot afford to pay for telephone calls. Therefore, we will certainly read and respond to all of your letters.

I hope that this manner of communication can suffice for now. I am hopeful for your case and in getting an evidentiary hearing so that we can present your grounds orally to the court.

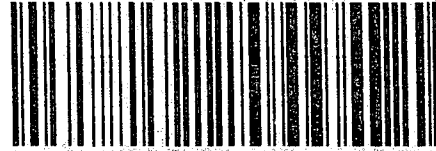
Very Sincerely Yours,


Mary Lou Wilson

cc: file

FRANK PECK 57106
HDSP Box 650
Indian Springs NV 89070

CERTIFIED MAIL™



7011 0470 0000 8581 9580

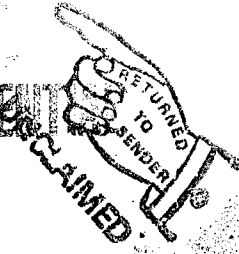
Hasler
05/23/2012

US POSTAGE
37 68



FIRST-CLASS 3762
\$055.75
ZIP 89101
011D12602491

CONFIDENTIAL



Mary Lou Wilson
333 Market Ave
Reno, NV 89509

RETURN RECEIPT
REQUESTED

MAY 25 2012

1st Notice 6/5
2nd Notice 6/15
3rd Notice 6/15

6D27

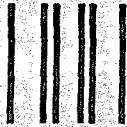
LEGAL MAIL

CF-0

0-7B

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE.

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

FRANK PECK 57106
HDSP Box 650
Indian Springs, NV, 89070

RECEIVED

MAY 22 2012

HIGH DESERT STATE PRISON
LAW LIBRARY