

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

UNITED STATES OF AMERICA,)
)
v.) **1:21-cr-00048**
)
SAMMIE LEE SIAS,)

**DEFENDANT’S SUPPLEMENTAL MOTION FOR JUDGMENT OF
ACQUITTAL OR, IN THE ALTERNATIVE, FOR NEW TRIAL**

COMES NOW Defendant Sammie Lee Sias, by and through his undersigned counsel, and respectfully supplements his previously filed Motion for Judgment of Acquittal or in the Alternative, for a New Trial with a claim for ineffective assistance of counsel during the pre-indictment, pretrial and trial phases of this case under Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984).

STATEMENT OF THE CASE

From October 16, 2019, until August 30, 2022 Mr. Sias was represented by Troy Clark, David Stewart and Ken Crowder of the law firm of Crowder Stewart LLP. Crowder Stewart represented Mr. Sias prior to indictment, through trial, and in post-conviction proceedings, until their request to withdraw was granted. Mr. Sias retained Crowder Stewart on October 19, 2019 to represent him in pre-indictment proceedings. (Exhibit 1, para 2) He was indicted on July 6, 2021.

(Doc. No. 1) He retained Crowder Stewart to represent him in this matter on August, 3, 2021. Under the retainer agreement he would pay Crowder a flat fee of \$100,000.00 with a \$50,000 payment made on August 3, 2021. The remainder would be paid as soon as possible. (Exhibit 1, para. 2)

On July 29, 2022 Mr. Sias was convicted of obstruction of justice and making a false statement to a federal agent. (Doc. No. 78) On August 12, 2022, Mr. Sias filed a personal memorandum with the court requesting a new trial and appointment of new counsel. (Doc. No. 87)

On August 12, 2022, Crowder Stewart filed a motion for Judgement of Acquittal or in the alternative, for a New Trial. (Doc. No. 81)

On August 25, 2022 Crowder Stewart filed a motion for an Ex Parte Hearing on the issues raised in Mr. Sias' exparte filing. (Doc. No. 82) The Court conducted an Ex Parte Hearing on August 30, 2022. (Doc. No. 85) The Court granted Ms. Sias's request for court-appointed counsel and appointed the undersigned to represent Mr. Sias in this matter. The Court stayed a ruling on the defendant's motion for a new trial (Doc. No. 88)

In response to an FBI subpoena dated September 11, 2019, requesting certain specific computer files, Mr. Sias gave a USB thumb drive containing the requested files to Troy Clark on May 6, 2020, with specific instructions to make

two copies, one for the Mr. Clark and one for Mr. Sias and to give the original to the FBI. (Exhibit 1, para. 4)

When asked about the thumb drive during an April 8, 2021 meeting the Offices of Crowder Stewart Mr. Clark replied that he did not know anyone in the Department of Justice that he could trust therefore he has not yet turned over the thumb drive. (Exhibit 1, para. 7)

When asked if the drive could be given to the Court Mr. Clark did not give a conclusive answer. (Exhibit 1, para. 7) To this day Crowder Stewart has not given the Thumb Drive to the FBI. (Exhibit 3) Furthermore they did not make any attempt to explain this until March of 2022. (Exhibit 3) See Also (Exhibit 1, para 22) The original thumbs drive; in a sealed evidence bag was included in the file transferred from Crowder Stewart to the undersigned on October 11, 2022. (Exhibit 3) At this time the undersigned was also given a copy of the thumb drive. Mr. Sias has instructed to retain the original thumb drive in its sealed evidence bag until such time as instructed by the Court to file it with the Clerk of Court or to provide it to the government. The government will be provided with a copy of the thumb drive as soon as practical after the filing of this motion.

Crowder Stewart may assert that if they had presented the thumb drive to the government, it would have resulted additional charges, against Mr. Sias. However

in May of 2020 Mr. Sias had not yet been charged by information, indictment or accusation.

Mr. Sias asked Crowder Stewart many times if the thumb drive had been given to the government. Each time Crowder Stewart replied no. Mr. Sias was not afforded the opportunity to acknowledge in writing that the thumb drive would be presented to the government against the advice of counsel; rather the thumb drive was simply not presented to the government. (Exhibit 1, para 5-26) See Also (Exhibit 3) However; Crowder Stewart did present Mr. Sias with two separate memorandums outlining their concerns regarding his decision to exercise his Fifth Amendment right to testify during his trial. (Exhibit 1 para 33)

When Mr. Sias was indicted on July 6, 2021; the thumb drive; which may have prevented the indictment had not been presented to the government. (Exhibit 3)

Shortly after the indictment was issued Mr. Clark informed Mr. Sias that he could no longer represent Mr. Sias in this matter because he may be called as a witness to testify regarding the thumb drive. (Exhibit 1, para 15)

Initially Mr. Clark told Mr. Sias that the entire Crowder Stewart firm would be disqualified and that they would assist him in finding new counsel. Later Crowder Stewart informed Mr. Sias that the other members of the firm could

represent him, but that would remain disqualified from the case. (Exhibit 1, para 16)

On August 3, 2021 Mr. Sias agreed to pay Crowder Stewart an additional one hundred thousand dollar (\$100,000.00) attorney fee for continued representation in this matter. (Exhibit 1, para 16-17)

During his initial meeting with David Stewart, Mr. Sias asked him if Mr. Clark would be in trouble because he had not delivered the thumb drive to the government. Mr. Stewart sharply replied in a raised tone, “You might be the one in trouble.” Mr. Sias was shocked by this response and therefore did not further pursue the issue. At a later meeting Mr. Sias asked Kenneth Crowder the same question. Mr. Crowder replied, “Troy Clark is a good attorney.” When pressed on the issue Mr. Crowder became angry and sharply replied, “I wasn’t there.” (Exhibit 1, para 19)

Frustrated by his attorneys’ failure to follow his instructions Mr. Sias began seeking outside counsel for advice on this issue. He consulted with other attorneys on the issue both before and after his trial. (Exhibit 1, para 19)

As early as September 2021 Mr. Sias had lost confidence in Crowder Stewart and no longer trusted his attorneys. He would have fired them at the time, but was not financially able to do so. (Exhibit 1, para 19)

On July 16, 2021; without informing Mr. Sias; Mr. Clark sent the thumb drive to Tec Inquiries, In, located in Indian Rocks Beach, Florida for a forensic evaluation. (Exhibit 3) See Also (Exhibit 1, para 20) The thumb drive was returned to Crowder Stewart on March 3, 2022. (Exhibit 3) Crowder Stewart discussed the forensic report received with the return of the original thumb drive with Mr. Sias, but did not share a copy of the report with him. However he was never given a copy of the forensic report. (Exhibit 1, para 22)

At one point Crowder Stewart told Mr. Sias that they planned to leave the thumb drive in Florida with the forensic examiner for the duration of the case. Mr. Sias disagreed with this decision and requested that Crowder Stewart return the original thumb drive to him; so that he could present it to the government and or use it at trial as part of his defense. (Exhibit 1, para 22) Additionally Mr. Sias no longer trusted his attorneys he believed that he would be better off with custody of the thumb drive. (Exhibit 1, para 23-24) Crowder Stewart may contend that Mr. Sias agreed with their decision, but this is simply not true. (Exhibit 1, para 20-27)

Mr. Sias contends that his attorneys were not adequately prepared for trial. Shortly after Mr. Sias was indicted Mr. Crowder spent a great deal of time discussing his admiration of Agent McKee with Mr. Sias. As the case got closer to trial Mr. Crowder began excessively reminding Mr. Sias the government wins

approximately 95% of their trials. Mr. Sias does not recall Mr. Crowder mentioning these before his firm received the majority of the \$100,000.00 retainer. (Exhibit 1 para 28)

When Mr. Sias questioned Mr. Crowder about how he intended to defend the case Mr. Crowder would simply reply implied that the primary defense would be presented in his opening statement and closing argument. (Exhibit 1 para 28)

The firm has scheduled weekly meetings with Mr. Sias. Mr. Stewart only attended the first three or four of these meetings. For at least one year Mr. Crowder would spend most of these meetings lecturing Mr. Sias and would accept very little of Mr. Sias's input. When Sias Mr. Sias requested that Mr. Crowder listen to him he would become upset. On many occasions Mr. Crowder told Mr. Sias that he was different from their usual clients, who would not question anything that they directed. Mr. Sias felt that he was required to obey Crowder Stewart without question rather than to work with them to resolve his case. Mr. Sias believe that his attorneys had power over him and would not abide by or even consider any of his wishes. (Exhibit 1, para 28)

During trial preparation Mr. Sias would recommend possible defense witnesses, but Crowder Stewart expressed no interest in any witnesses with the exception of Willa Hilton. Mr. Sias believes that Mr. Crowder became obsessed

with Ms. Hilton. Mr. Sias presented narratives of how the other witnesses could help the case. Additionally he created graphic charts and sample questions emphasizing how to develop these witnesses. Crowder Stewart rejected most of his efforts. (Exhibit 1 para 31, 34)

Crowder Stewart did not collaborate with Mr. Sias to develop a trial strategy. At times the firm would give Mr. Sias some “homework” to do, but once it was completed they did not accept it or express any interest in it. Mr. Sias believes these assignments were simply to “keep him busy.” (Exhibit 1 para 31)

During a long heated argument with Mr. Crowder about whether or not Mr. Sias should testify at trial Mr. Crowder began an intense mock cross examination of Mr. Sias. For the next three to four minutes Mr. Crowder asked Mr. Sias questions with the intent to intimidate him. It did not work. Mr. Sias remained undeterred. That one argument served as the preparation of Mr. Sias for his testimony. (Exhibit 1 para 32)

At the April 20, 2022, weekly meeting Mr. Crowder argued with Mr. Sias about the prior week’s meeting. During the next meeting Mr. Crowder said he had a memorandum for Mr. Sias. He tossed the memo on the table and said, “You can read it after you leave.” Mr. Sias felt that the memo was written in anger to serve

as a mock trial strategy. Mr. Sias believes that Crowder Stewart never developed a real trial strategy. (Exhibit 1 para 33)

On Thursday, July 29, 2022 during the trial Mr. Sias wondered why Mr. Stewart spent an entire twenty minute break, chatting with Agent McKee rather than of working on the defense. During this time the prosecutors were working together. Mr. Crowder was out of the courtroom completely. Mr. Sias sat alone at the defense table the entire break without any interaction with either of his attorneys. Mr. Sias felt that not only was he alone at the defense table during the break but also he was alone in his defense. (Exhibit 1 para 30)

ARGUMENT AND CITATION OF AUTHORITY

Ineffective assistance of counsel claims are subject to the two-part test enunciated in Strickland v. Washington, 466 U.S. 668 (1984). See Massaro v. United States, 538 U.S. 500, 505 (2003); United States v. Armstrong, 546 F. Apex 936, 940 (11th Cir. 2013) (per curiam). The Defendant must show that counsel was constitutionally ineffective under the two prongs of Strickland by proving defense counsel's performance was deficient and prejudicial.

Under the first prong, Appellant must show that counsel's representation fell below an objective standard of reasonableness. Strickland, 466 U.S. at 688. Under the prejudice prong of Strickland, an appellant must show that there is a reasonable

probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* at 694.

Representation of a criminal defendant includes certain basic duties. Counsel's is to assist the defendant and owes the client a duty of loyalty. From Counsel's function as the defendant's assistant and advocate, stems the more important duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution. *Id.* at 688. This is where Crowder Stewart failed Mr. Sias.

Mr. Sias gave the thumb drive to Crowder Stewart in May 2020, 13 months prior to the indictment by the government. He directed Crowder Stewart to turn the thumb drive evidence over to the FBI to answer their September 2019 subpoena. Crowder Stewart never followed those instructions. (Exhibit 1 para 4) See Also (Exhibit 3)

Crowder Stewart sent the thumb drive to Florida for a forensic examination without Mr. Sias' knowledge or consent. This was done: eight (8) business days after Ms. Sias was indicted; three (3) days before Mr. Sias Met with Mr. Clark regarding the conflict of interest, and Fifteen (15) days before he agreed to pay Crowder Stewart and additional \$100,000 for representation in this matter. (Exhibit 1 para 2, 4, 15, 16, 17) See Also (Exhibit 3) The thumb drive remained there for over seven months. (Exhibit 3) When it was returned to Crowder Stewart they

refused to return it to Mr. Sias. (Exhibit 1 para 22) Additionally the firm did not provide him with a copy of the forensic examination report. (Exhibit 1 para 2, 4, 15, 16, 17) Crowder Stewart had control of the thumb drive for two years and five months but never gave it to the government in defiance of their Client's instructions. (Exhibit 1 para 22) See Also (Exhibit 3)

If Crowder Stewart had given the thumb drive to the government as instructed Mr. Sias may not have been indicted in this case. Mr. Sias contends that the thumb drive contains all of the files requested by the government by way of the September 11, 2019 subpoena. (Exhibit 1 para 22) Additionally if the thumb drive had been presented to the government that would have been all of the information that was in his possession and he may not have been charged with making a false statement. Surely this is the type of deficient and prejudicial performance anticipated by Strickland. Additionally there is no doubt that if Crowder Stewart had given the thumb drive to the government that would have altered the outcome of this case. Strickland v. Washington, 466 U.S. 668, 688, 684 (1984).

Mr. Sias contends that his attorneys were not adequately prepared for trial. (Exhibit 1 para 28, 35) Crowder Stewart did not collaborate with Mr. Sias to develop a trial strategy. Although the firm scheduled weekly meetings with Mr. Sias; much of the time in these meetings was spent on attempting to convince Mr. Sias to accept the firm's recommendations rather than pursuing those of Mr. Sias.

(Exhibit 1 para 29) The firm ignored Mr. Sias recommendations of possible defense witnesses. (Exhibit 1 para 34) On more than one occasion the firm attempted to convince Mr. Sias not to testify at trial, despite his insistence on exercising this fundamental right. Consequently the firm did not adequately prepare him for his testimony. (Exhibit 1 para 32, 34) By the time the case reached trial Ms. Sias had lost confidence and faith in Crowder Stewart and had begun consulting with other counsel. (Exhibit 1 para 19) He would have fired Crowder Stewart as early as September of 2021 but was financially unable to do so. (Exhibit 1, para 19) Once again this surely this is the type of deficient and prejudicial performance anticipated by Strickland. *Id.*

Mr. Sias contends that Crowder Stewart's trial performance was counsel's performance was deficient and prejudicial. Crowder Stewart failed to prepare Mr. Sias for his trial testimony. (Exhibit 1, para 32, 37) This coupled with their hostile demeanor during his direct testimony and failure to offer any redirect questions clearly affected the outcome of the trial. Additionally the firm failed to redirect any other defense witness. (Exhibit 1, para 37) The firm did not prepare or use a trial notebook or exhibit binder and in fact borrowed the government's materials for use during the trial. (Exhibit 1, para 36) This made them look unprepared before the jury. Finally during an entire trial break Mr. Stewart chatted with an FBI Agent near the prosecution table and Mr., Crowder left the courtroom.

Consequently Mr. Sias was alone at the defense table while the prosecution continued to work on their case. (Exhibit 1, para 30)

Obviously Crowder Stewart's trial performance was deficient, prejudicial and changed the outcome of the case. This certainly satisfies the requirements of Strickland v. Washington, 466 U.S. 668, 688, 684 (1984).

CONCLUSION

As set forth above in Mr. Sias has shown that Crowder Stewart provided ineffective assistance of counsel during the pre-indictment, pretrial and trial phases of the case against Mr. Sias. Having satisfied the two prongs set forth in Strickland v. Washington, 466 U.S. 668 (1984) this Court should overturn the Mr. Sias's conviction and grant his request for a new trial.

This 9th day of March, 2023.

Respectfully submitted,

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