**IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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| Jason S. Kokinda, | : | Case No. 2:17-CV-217 |
| Plaintiff, | : | |
| V. | : | |
| Penn. Dep't. of Corr., et al., | : | |

**MEMORANDUM OF LAW IN SUPPORT OF**

**MOTION FOR RECONSIDERATION OF CASE-FILE THEFT CLAIMS**

I. Introduction

This Court must cause right and justice to be done by removing the obstructive *Heck* bar from its analysis of the weightiest claims in this lawsuit.[1] The theft of case-file prohibited Mr. Kokinda from raising meritorious claims regarding the flimsy mental health evaluation given to him, *inter alia*, and would have objectively demonstrated counsel's failures in preparing the defense.

II. Scope and Standard of Review

*See* Am. Canoe Ass'n v. Murphy Farms, Inc., 326 F.3d 505, 514 (4th Cir. 2003) (The Fourth Circuit has noted that Rule 54(b) motions are "not subject to the strict standards applicable to motions for reconsideration of a final judgment."); *id.* at 515-16 (The Fourth Circuit has emphasized that, in considering whether to grant reconsideration, under Rule 54, the district court must keep in mind that "[t]he ultimate responsibility of the federal courts, at all levels, is to

[1] Mr. Kokinda suffered *actual damages* of lost income that likely exceeded half a million dollars a year, ongoing, by depriving him of his single and final opportunity to make a complete record in support of overturning the life-devastating charges he was wrongfully convicted of after being forced to plead guilty in the middle of trial due to intimate knowledge of the weaknesses in counsel's strategy, only known to him and only revealed by the stolen case-file.

reach the correct judgment under law."); *see also* Carlson v. Boston Scientific Corp., 856 F.3d 320, 325 (4th Cir. 2017) (Rule 54(b) is a flexible mechanism that allows orders to be revised as "the litigation develops and new facts or arguments come to light."); *id*. (The evidence in support of the Rule 54(b) motion doesn't necessarily have to be *new*, it can merely be "potentially different evidence discovered during litigation.")

III. Discussion

A. Theft/Loss of Case-File

1. This Court nevertheless committed a **fundamental error** when it foreclosed relief of the stolen/lost case-file under *Heck v. Humphrey*, 512 U.S. 477 (1994). The controlling standard is the *Bounds* standard restated in *Casey v. Lewis*, 516 U.S. 804 (1996)[2] which makes no mention of *Heck* barring relief on such access-to-court claims.
2. The injury is *commonsensically* much graver when an attempt to attack a conviction is thwarted by active obstruction as opposed to the mere passive failure to consider the legal-resource needs of the illiterate inmates noted in *Casey*.
3. Even if the court's truncated theory was correct, that Pegram was plausibly the prime mover retaliating for a PREA complaint, Pegram and the DOC would be liable for the collateral damages that occur as a result of the natural consequences of their mutual actions in failing to prevent the unwarranted detention of individuals on the mental health blocks despite the DOJ report demonstrating this as an unconstitutional policy.[3]

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[2] (Reaffirming that prisoners have an actionable right for relief under access-to-court doctrine when they directly or collaterally challenge their confinement, and noting that all the cases in the *Bounds* line were for attacks on "the fact of conviction," with no mention of the Heck bar.)

[3] *See Cf.* *Tobey v. Jones*, 706 F.3d 379 (4th Cir. 2013) (It is well established that government officials are responsible for the natural consequences of their actions in a § 1983 action, and "[i]t is undoubtedly a natural consequence of reporting a person to the police that the person will be

*See also* on-point analog rejecting *Heck* and applying the First Amendment meritorious-claim test: *Arellano v. Blahnik*, 2017 U.S. Dist. Lexis 102370 (9th Cir. (S.D. Cal.) 2017) at Lexis 20 (finding that plaintiff was caught in an "untenable Catch-22' situation" when his access to the court was violated by the defendant destroying the very documents he required to successfully file a habeas motion and overturn conviction to overcome *Heck* bar.)

*See also* Simkins v. Bruce, 406 F.3d 1239 (10th Cir. 2005) ("Because we have held in the context of alleged interference with inmate legal mail that the "prisoner's constitutional right of access to the courts is clearly established," *Treff*, 74 F.3d at 194, the second inquiry is easily resolved. Indeed, the principle that unimpeded transmission of inmate legal mail is the "most obvious and formal manifestation" of the right of access to the courts, *Crowder v. Sinyard*, 884 F.2d 804, 811 (5th Cir. 1989), has been clearly established for some time now. *See*, *e.g.*, *Gramegna*, 846 F.2d at 677; *Jackson*, 789 F.2d at 310-11; *see also* Henrickson v. Bentley, 644 F.2d 852, 854 (10th Cir. 1981) (holding in civil rights suit based on clerk's unexplained failure to pick up inmate's legal mail after notification of its existence, that "actions which prevent an individual from communicating with a court would constitute denial of access to the court," and thereby "violate[] a recognized constitutional right")."

4. By taking judicial notice of the 5:13-cv-2202, *Kokinda v. Gilmore, et al.*, (E.D.P.A.) habeas corpus proceeding, it is plain to see that the docket is full of case-status filings from the early 2015 RHU retaliation claim through early 2016.[4]

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arrested.") By analog, it is undoubtedly a natural consequence of colluding to have someone detained in the RHU on phony charges and thereby obstructing receipt of their case-file that they will be unable to develop their habeas corpus claims.

[4] *See* ECF Docs. 95, 99, 100, 102, 105, 108, 109, 111, 112, 113, 114, 115, 116, 117, 118, 119, 122, 124, 126, 131, 141, 142.

5. In these filings, Mr. Kokinda provided exhibit evidence to rebut William Stoycos's theory that he had received trial counsel's case-file and sent it home.

   (a) Mr. Kokinda provided receipts demonstrating that he was over the legal property limits at the time of his September 2014 arrival at SCI-Greene, and he was forced to send two of his legal boxes home to meet the limit required by the rules.

   (b) *Suspiciously*, no signature was ever provided to prove that Mr. Kokinda signed for the receipt of the case-file materials as required by DOC policy.

   (c) And Mr. Kokinda testified that he had *suspiciously* observed a single blacked-out entry in the entire GC-Unit logbook (about the time it was said to have arrived at SCI-Greene, according to William Stoycos and the Fed-Ex tracking number provided by trial counsel).

6. When compounded with the retaliatory excuse to detain Mr. Kokinda for merely gathering affidavits to support his lawsuits (and help mentally ill prisoners shuffled to SCI-Greene after atrocities and murders by guards at SCI-Cresson,) the evidence of record certainly creates *plausibility* that the case-file was stolen in an orchestrated conspiracy to weaken his strong habeas corpus claims.

   (a) Mr. Kokinda had long-sought the case-file, as recorded in the Superior Court PCRA principal brief filed in the Eastern District. *See* the final claim § D.

   (b) And the courts *suspiciously* made no attempt to provide the case-file until Mr. Kokinda had filed for recusal of Eastern District Judge Jan E. DuBois in the U.S. Supreme Court, years after his single opportunity to develop his PCRA claims.

   (c) Then the transmission was *suspiciously* delayed for months until an opportunity presented itself to detain him in the RHU on retaliatory charges.

7. Because Mr. Kokinda was being obstructed from accessing the case-file throughout proceedings, he would have the opportunity to formulate new questions for his attorney and obtain *de novo* review of those claims at a hearing to restore his original right to a "full and fair" hearing on the merits of his claims.
   (a) Without *de novo* review, obtaining the highly differential AEDPA "objectively unreasonable" standard for federal habeas corpus relief on a state judgment is recognized by the U.S. Supreme Court itself as being nigh impossible.[5]
   (b) It is an illogical premise to argue that Mr. Kokinda was not likely prejudiced in presenting claims that hinged on the inadequacies of counsel's representation without a complete picture of what counsel actually did as recorded in the case-file.
8. Recent evidence further supports that the case-file likely had *flimsy* evidence of mental illness and that the role-play defense was substantially better.[6] The three most recent psych evaluations given to Mr. Kokinda concluded that he suffers from no discernable mental illness.[7] Although he may have symptoms of OCD, overall these obsessively-driven-

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[5] *See* Harrington v. Richter, 562 U.S. 86 (2011) (Establishing that a state court's application of *Strickland* was unreasonable under § 2254(d) is even more difficult, since both standards are "highly differential," … The question under § 2254(d) is not whether counsel's actions were reasonable, but whether there is any reasonable argument that counsel satisfied *Strickland*'s differential standard.")

[6] Mr. Kokinda remembers that the psych eval test had very little to do with anything that ordinary people don't suffer if they are depressed or moody, as he was at that time only from medication he was unnecessarily being forced to take which did not benefit him at all. The questionnaire was a highly subjective vehicle to form any conclusion and would not have been given weight under Ake v. Oklahoma, 470 U.S. 68, 105 S. Ct. 1087, 84 L.Ed.2d 53 (1985) (recognizing that "psychiatry is not an exact science", therefore courts following Ake have noted that psych evaluations are highly subjective and that the courts should use precaution in giving weight to experts who have not observed the defendant for a lengthy period of time.)

[7] *See* 2:19-CR-33 Docket, (ECF Doc. 117 at ¶5., 120-22) U.S. District. Court, W.D.W.V., October mental health exam hearing. Mr. Kokinda is trying to obtain copies of these to provide the court if they cannot review the sealed documents in camera, but they are in New Jersey, and

perfectionist symptoms benefit him more than they impair him and are not therefore considered illnesses by qualified psychiatrists.

9. Furthermore, it is reasonable to draw the inference that trial counsel did not himself even investigate the text-based #younggirlsex chatroom to determine whether "people were advertising their desire to role-play young girls on there," which would have made Mr. Kokinda's belief that the agents were adults *reasonable* to any lay juror.

    (a) The case-file would have conclusively provided evidence of counsel's predetermined approach and his unreasonable reliance on psych experts in forming a defense.

10. It is a very odd result that someone who was deemed nigh legally insane does not have mental illness (and evidentially did not have any observable functional impairments in his career at the time or in chats,) which creates red flags about the quality of representation.[8]

    (a) The fact that another defendant had independently said the same chatroom was full of people advertising their desire to role-play young girl characters, also deflates any belief that Mr. Kokinda "imagined" the rhetorical-chat circumstances protecting his conduct under the First Amendment.[9] This protection also creates an "actual innocence" claim under *Bousley* which overcomes all AEDPA procedural bars.[10]

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he is not able to readily obtain them at this time for various reasons related collateral to this miscarriage of justice in Pennsylvania.

[8] This is particularly concerning because the medical records attached as new exhibits to the original federal habeas petition proved his complete lack of sexual desire and function from OCD anxiety symptoms permanently turning him off, correlating with statements in the chats, new evidence that also was entitled to *de novo* review with new case-file-based claims.

[9] *See* Cote Exhibit (ECF Doc. 159-2) filed in No. 5:13-CV-2202, Kokinda v. Gilmore, et al., U.S. Dist. Ct., E.D.P.A.

[10] *See* Bousley v. United States, 523 U.S. 614, 620, 118 S. Ct. 1604, 140 L.Ed.2d 828 (1998) (Recognizing that the habeas corpus "miscarriage of justice" and "actual innocence" standards are exceptions to AEDPA deference and are met when a statute is misinterpreted to cover conduct that is not proscribed by the law, (e.g. rhetorical age-oriented role-play as applied to the instant case.))

(b) The methods used by the agents were plainly unlawful. Many popular authors and directors create movies and stories that use adult characters in the roles of teenagers engaged in graphic sex scenes and nudity. Surely, millions of people cannot all be predisposed to statutory rape simply because they have viewed or read such media.

(1) The premise that it somehow became unlawful when Mr. Kokinda stepped out of cybersex fantasy into reality creates a logical disconnect.

(2) When the only logical object is to meet the anonymous actor behind the role-play game, there is no reliable method to prove *paradoxical belief* that the role-play game was never a role-play game at all, and it was all the while an actual minor.[11]

(3) The fantasy-becomes-planning premise as extended to the instant case would unconstitutionally shift the burden of proof to Mr. Kokinda that he must show how all the other actors that showed up to meet him were pretty women (likely agents trying to entrap him some other way), and that he naturally assumed the same with the Pennsylvania agents.

(4) This is exactly why most countries do not allow police stings. Police stings give the Govt. *carte blanch* to control the evidence and unfairly shift the burden of proof to the defendant to fill the gaps when police covertly build an incriminating record of selective tidbits that seem inculpatory in a vacuum.

[11] It is simply **impossible** to prove *paradoxical belief* beyond a reasonable doubt at trial. What reliable evidence would someone have to *paradoxically believe* characters on such an age-oriented role-play chatroom are literal minors? Therefore, the agents lied and claimed that they were not aware it was a fantasy role-play chatroom. But the Cote Exhibit above plainly reduces the chances of Mr. Kokinda making up his story at arrest to one in trillions. Why would only a few chatrooms in all the entire nation of case-law have defendants claiming it was such a theme? And here two independently harmonize about what the same #younggirlsex chatroom hosted.

11. All Mr. Kokinda would have needed to show was that the mental health tests were flimsy to obtain relief. It is just common sense that someone who is not mentally ill should not be in prison on a "guilty but mentally ill plea (the nigh equivalent of legal insanity)."

(a) He was not even afforded the opportunity to present the records to the court before a habeas ruling was made that counsel did a good job (by jumping to the conclusion that he was severely mentally ill and therefore *imagined* he was involved in a role-play game *of all things one could imagine*, and thereby failing to even investigate the whether or not he engaged in protected conduct no different than the millions of other participants).

(b) A manageable OCD anxiety disorder is a far cry from legal insanity.[12] If depriving a defendant of his case-file and trial transcripts at the critical point he needs them to develop his claims satisfies due process and an attorney who makes up an insanity defense on such flimsy questionnaires is constitutionally effective, then the entire court system needs to be vanquished.

(c) And if Americans are making millions by directing pornographic movies that use petite, flat-chested 18-year-old models or writing graphic sex scenes about teenagers in a book, why is he public enemy number one for using sexual innuendo on a fantasy role-play chatroom where age was not to be taken literally?

(1) It really makes no sense whatsoever! Role-play-game channels are not reliable methods for proving criminal capacity to commit serious crimes against actual minors.

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[12] At sentencing, Mr. Kokinda's mother only testified about him washing his OCD symptoms of compulsive handwashing and cleaning things, nothing indicative of psychosis.

(2) And the fact that Mr. Kokinda rejected the decoys and did not talk to them removes all doubt that he was just a naïve man curious about who people were who eventually let down his guard because pretty decoy women kept showing up.

**THEREFORE**, for each of the foregoing reasons, the Court is requested to grant reconsideration of the case-file theft claims and recognize the fundamental errors of its previous *Heck*-based analysis disposing of the claims in a reckless manner. Otherwise, there is no chance of reaching a settlement in this case, and it will proceed to trial and appeal to preserve the major damages of this obstructed opportunity to obtain relief on a life-devastating accusation.

/s/ Jason S. Kokinda, UCC 1-308

Jason Steven Kokinda, All Rights Reserved
420 13th Street
Hammonton, NJ 08037
(609)-942-9012

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## CERTIFICATE OF SERVICE

I, Jason S. Kokinda, hereby certify that the defendants have criminalized my legal filings and characterized information filings as personal letters. Therefore, I am this day e-serving a true and correct copy of the foregoing documents via notice by the ECF system and pursuant to the Federal Rules of Civil Procedure upon the following parties:

Michael P. Gaetani
Pennsylvania Office of the Attorney General, Litigation Section
1251 Waterfront Pl Mezzanine
Pittsburgh, PA 15222

Executed: September 9, 2024 /s/ Jason S. Kokinda UCC 1-308

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