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WEST. DIST. OF PENNSYLVANIA

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

JEREMIAH LYLE VAN TASSEL	)	
	)	Case No. 1:21-cv-172
Petitioner,	)	
v.	)	SUSAN PARADISE BAXTER
	)	United States District Judge
MICHAEL CLARK, ATTORNEY	)	
GENERAL JOSH SHAPIRO, and	)	RICHARD A. LANZILLO
DISTRICT ATTORNEY OF ERIE	)	Chief United States Magistrate Judge
COUNTY,	)	
	)	
Respondents.	)	

**PETITIONER'S RESPONSE TO SHOW CAUSE ORDER**

Comes the Petitioner in the above-entitled action, Jeremiah Van Tassel, and would show this Court the following:

1. Petitioner faced extraordinary circumstances that stood in the way of timely filing.
2. Petitioner exercised reasonable diligence.
3. Petitioner was a victim of fraud upon the court, which his 2254 petition reflects, which in turn demands equitable estoppel until the fraud is dealt with.

**ARGUMENT**

4. The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") provides that "[a] 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court."

560 U.S. at 653; Ross, 712 F.3d at 799. A petitioner's exercise of reasonable diligence is a subjective determination based on the facts and circumstances of each individual case. Ross, 712 F.3d at 799. The extraordinary circumstances prong is similarly assessed subjectively. *Id.* at 802-03. However, it is also clearly established that "the exercise of a court's equity powers . . . must be made on a case-by-case basis," see Holland, 560 U.S. at 649-50 (alteration in original) (internal quotation marks omitted) (quoting *Baggett v. Bullitt*, 377 U.S. 360, 375 (1964)), and that "[t]he flexibility inherent in equitable procedure enables courts to meet new situations [that] demand equitable intervention, and to accord all the relief necessary to correct . . . particular injustices," see *id.* at 650 (second and third alteration in original) (internal quotation marks omitted) (quoting *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 248 (1944)).

### FRAUD UPON THE COURT

6. Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court." In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. . . . It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function — thus where the impartial functions

of the court have been directly corrupted.”

7. “Fraud upon the court” has been defined by the 7th Circuit Court of Appeals to “embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.” *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 *Moore’s Federal Practice*, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated “a decision produced by fraud upon the court is not in essence a decision at all, **and never becomes final.**”

8. United States Courts of Appeals expressly require that fraud upon the court must involve an officer of the court. See *Geo. P. Reintjes Co. v. Riley Stoker Corp.*, 71 F.3d 44, 48 (1st Cir.1995); *Demjanjuk*, 10 F.3d at 348. The Ninth Circuit noted that “one species of fraud upon the court occurs when an ‘officer of the court’ perpetrates fraud affecting the ability of the court or jury to impartially judge a case.” *Pumphrey v. Thompson Tool Co.*, 62 F.3d 1128, 1130 (9th Cir.1995); see also *Weese v. Schukman*, 98 F.3d 542, 553 (10th Cir.1996) (noting that “fraud on the court should embrace only that species of fraud which does or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court”) (citation omitted); *Kerwit Med. Prods., Inc. v. N. & H. Instruments, Inc.*, 616 F.2d 833, 837 (11th Cir.1980) (same).

9. That fraud upon the court is also attested to by Petitioner's Private Criminal Complaint, attached hereto as Exhibit A.

WHEREFORE, Petitioner moves this Court to grant him the relief he requests.

Respectfully Submitted,

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Jeremiah L. Van Tassel  
NL 0329  
SCI Albion  
10745 Route 18  
Albion, PA. 16475

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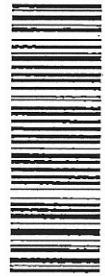
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Jeremiah L. Van Tassel

Myron L. Van Tassel  
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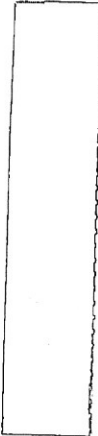
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