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DATE: 8-24-18

TO: Clerk of the Court  
U.S. Court of Appeals  
Sixth Circuit  
100 E. Fifth Street, Room 540  
Cincinnati, Ohio 45202-3988

RE: No. 18-5833; Hinkson v C. Gomez, Warden

Dear Sir or Ma'am:

Enclosed for filing please find my pro se appellate  
brief and appendix. If anything else is required, please let  
me know. Thank you.

Sincerely

  
\_\_\_\_\_  
David Hinkson, Pro Se

No. 18-5833

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UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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DAVID ROLAND HINKSON  
APPELLANT

VS.

CHRISTOPHER GOMEZ, ACTING WARDEN  
APPELLEE

---

Appeal From The United States District Court  
For The Eastern District of Kentucky, London  
Case No. 6:18-cv-00104-DLB

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PRO SE INITIAL BRIEF OF THE APPELLANT

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TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
REQUEST FOR ORAL ARGUMENT	ii
PARTIES TO LITIGATION	iii
ISSUE(S) PRESENTED FOR REVIEW	iv
JURISDICTIONAL STATEMENT	1
STATEMENT OF THE CASE	2
STATEMENT OF THE FACTS	5
SUMMARY OF ARGUMENT	11
ARGUMENT: Hinkson's three convictions under 18 U.S.C. § 373 for solicitation to commit murder should have merged into a single sentence because, as the government alleged in the Superseding Indictment, there was a single plot, not three, and further, where Hinkson has not had an unobstructed opportunity to present this claim in the earlier proceedings, thus entitling him to habeas corpus relief under 28 U.S.C. § 2241 from the unlawful sentences.	12
CONCLUSION	20
APPENDIX:	
A. District Court's July 19, 2018, Order denying Hinkson's 28 U.S.C. § 2241 habeas petition.	

REQUEST FOR ORAL ARGUMENT

Hinkson is a pro se appellant in this habeas corpus appeal under 28 U.S.C. § 2241. Oral argument could greatly assist the Court in deciding the issue(s) presented in this appeal. Therefore, Hinkson would respectfully request 20 minutes of oral argument, and the appointment of counsel for the purpose of argument, under the Criminal Justice Act, 18 U.S.C. § 3006A, and any other applicable legal authority.



PARTIES TO LITIGATION

All Parties to this appeal are listed on the cover page of the instant pro se appellate brief. C. Gomez is the Acting Warden at USP McCreary, and thus, the Appellant's custodian. However, this habeas corpus litigation stems from Hinkson's criminal prosecution in which the "United States of America" was named as the "Plaintiff." See United States v Hinkson, No. 1:04-cr-127-RCT-1 (D. Idaho 2004).

ISSUE(S) PRESENTED FOR REVIEW

I. Whether the district court erred in denying Hinkson habeas corpus relief under 28 U.S.C. § 2241 where Hinkson's three convictions for solicitation to murder three individuals should have merged because, as the government alleged in the superseding indictment, there was a single plot, not three, and further where Hinkson has not had an unobstructed opportunity to present this claim earlier.

JURISDICTIONAL STATEMENT

Hinkson was convicted of criminal offenses in the United States District Court for the District of Idaho in case no. 1:04-cr-127-RCT-1 (D. Idaho 2004), United States v Hinkson. He is currently incarcerated at the United States Penitentiary in Pine Knot, Kentucky. The current custodian at the prison is C. Gomez, Acting Warden. The district court had jurisdiction of the habeas petition pursuant to 28 U.S.C. § 2241. This Court also has jurisdiction of the instant appeal pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 1291, 28 U.S.C. § 2106, and 28 U.S.C. § 1651.

The district court order in which Hinkson is challenging on appeal was entered on July 19, 2018, and is contained in Appendix-A to the pro se appellate brief.

Hinkson filed a timely notice of appeal on August 6, 2018.

STATEMENT OF THE CASE

In 2002, a federal grand jury sitting in Idaho issued a multi-count indictment charging Hinkson with financial crimes relating to his business WaterOz. See *United States v Hinkson*, No. 3:02-cr-00142-BLW-RCT (D. Idaho 2002).

While awaiting trial for tax related crimes, a federal grand jury sitting in Idaho returned an eleven-count superseding indictment charging Hinkson with multiple counts of, inter alia, solicitation to commit murder including three federal officials involved with the tax case (i.e., U.S. District Court Judge presiding over the tax case, the Assistant U.S. Attonrey prosecuting the tax case, and the IRS Agent assigned to the case). See *United States v Hinkson*, No. 1:04-cr-127-RCT-1 (D. Idaho 2004).

Hinkson was convicted first in the tax trial and was then tried and convicted in the solicitation trial. Specifically, Hinkson was acquitted on several counts, the jury hung on others, and convicted Hinkson on counts 7, 8, and 9. The cases were consolidated for sentencing.

The sentencing court imposed a term of imprisonment as follows: 10, 10, and 10 years consecutive for each solicitation count, plus 1, 1, and 1 years consecutive to each other and consecutive to the solicitation sentences for receiving the solicitation charges while out on pretrial release for an aggregate sentence of 33 years. The sentencing court also imposed a consecutive sentence of 10 years in case no. 02-CR-142 for a total term of imprisonment for 43 years or 516 months.

Hinkson then moved the district court for a new trial under Fed. R. Crim. P. 33, and the district court denied the motion. *United States v Hinkson*, No. 1:04-cr-127-RCT-1 (D. Idaho 2004) (Doc.#244).

On appeal, a divided panel reversed the district court's denial of the new trial motion. *United States v Hinkson*, 526 F.3d 1262 (9th Cir. 2008). On rehearing, a divided (6 to 5) en banc panel of the Ninth Circuit vacated the three-judge panel decision and affirmed the trial court's denial of the new trial motion. *United States v Hinkson*, 585 F.3d 1247 (9th Cir. 2009) (en banc). The Supreme Court of the United States denied certiorari. *Hinkson v United States*, 131 S. Ct. 2096 (2011).

Hinkson's motion to vacate sentence pursuant to 28 U.S.C. § 2255 was denied, and so was his request for a certificate of appealability by the Ninth Circuit denied. *United States v Hinkson*, No. 1:12-cv-196-RCT (D. Idaho 2012) (Doc.#15, 20).

Hinkson's subsequent petition for a writ of habeas corpus under 28 U.S.C. § 2241, filed in the United States District Court for the Eastern District of California, was also denied, and so was his request for a COA. *Hinkson v Copenhaver*, No. 1:13-cv-157-AWI-JLT (E.D. Cal. 2013).

On June 14, 2018, Hinkson filed an application in the Ninth Circuit for authorization to file a second § 2255 motion in light of the Supreme Court's decision in *Sessions v Dimaya*,

138 S. Ct. 1204 (2018). *Hinkson v United States*, No. 18-71748 (9th Cir. 2018). The application is still pending in the Ninth Circuit.

On April 5, 2018, Hinkson filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 in the Eastern District of Kentucky, London division, asserting three grounds for relief: (1) Hinkson's three convictions and/or sentences for solicitation to commit murder should merge into one conviction and/or sentence because the government only alleged and proved [one] plot, not three; (2) his convictions for solicitation to commit murder not "crimes of violence," and (3) his 30 year sentence for solicitation to commit murder should be reduced to 10 years, and should run concurrently with his 10 year sentence in the tax case because, inter alia, solicitation to commit murder is not a crime of violence.

In an order dated July 19, 2018, the district court denied Hinkson's § 2241 petition in its entirety. Hinkson now appeals raising one issue for review: Whether his convictions and/or sentences for solicitation to commit murder should merge into one 10-year sentence because the government only alleged and proved [one plot], not three.

## STATEMENT OF THE FACTS

### The Unit of Prosecution

On June 22, 2004, a federal grand jury sitting in the district of Idaho returned an eleven count indictment against Hinkson for, inter alia, solicitation to commit a "crime of violence," (i.e., murder for hire), in violation of Title 18 U.S.C. § 1114 and 18 U.S.C. § 373.

The introduction to the indictment outlined the alleged plots as follows:

At all times relevant to this indictment:

1. The defendant, David Roland Hinkson, was the owner and operator of the business Water Oz in Idaho County, Idaho;
2. Edward J. Lodge was a United States District Court Judge for the district of Idaho assigned as the principal judge hearing federal civil and criminal cases in the Northern and Central Divisions of the District of Idaho, in Moscow and Coeur d'Alene;
3. Nancy D. Cook was an Assistant United States Attorney (AUSA) for the District of Idaho assigned to the Coeur d'Alene branch office and specifically assigned to the grand jury investigation of and subsequent prosecution of defendant David Roland Hinkson on federal criminal charges arising out of his operation of the business Water Oz in the case titled United States of America v David Roland Hinkson, Cr. No. 02-142-C-EJL;
4. Steven M. Hines was the Internal Revenue Service, Criminal Investigation Division, Special Agent

assigned to the criminal investigation of defendant David Roland Hinkson and his business, Water Oz;

5. Beginning in approximately the summer of 2000, the Internal Revenue Service, Criminal Investigation Division, through Special Agent Steven M. Hines, initiated a criminal investigation into whether defendant David Roland Hinkson had failed to file income tax returns and to account for, collect and pay employment taxes for his Water Oz workers. In the summer of 2000, Special Agent Hines sent defendant David Roland Hinkson a letter informing him of the criminal investigation;

6. In July Of 2001, Assistant United States Attorney Nancy D. Cook caused grand jury subpoenas to be prepared and served on certain Water Oz employees for their appearance at the grand jury in Coeur d' Alene in September of 2001 in connection with the investigation into the defendant David Roland Hinkson's tax violations. The subpoenas bore AUSA Cook's name and were served by Special Agent Hines. At least one Water Oz employee discussed the requested grand jury appearance with defendant David Roland Hinkson;

7. On April 16, 2002, defendant David Roland Hinkson filed a civil suit against Special Agent Hines, AUSA Cook, and others in the United States District Court for the District of Idaho, Case No. CV-02-171-C. The case ultimately was assigned to Judge Lodge.

8. On July 17, 2002, a federal grand jury in Coeur d' Alene returned a 43 count indictment charging defendant David Roland Hinkson with three counts of failure to file an income tax return, thirteen counts of failure to account for, collect



and pay over employment taxes, four counts of introducing and causing to be delivered for introduction into interstate commerce a misbranded drug, four counts of introducing and causing to be delivered for introduction into interstate commerce an adulterated drug, one count of introducing and causing to be delivered for introduction into interstate commerce a misbranded device, one count of introducing and causing to be delivered for introduction into interstate commerce an adulterated device, sixteen counts of structuring financial transactions and one count of criminal forfeiture.

9. On November 21, 2002, the defendant, David Roland Hinkson, was arrested by Special Agent Hines and others and made his initial appearance on the charges contained in the July 17, 2002, indictment. The criminal case also was assigned to Judge Lodge.

10. On February 11, 2003, Judge Lodge dismissed the civil case in its entirety.

See Attachment B (6/22/04 Indictment).

The indictment then went on to charge Hinkson with multiple counts of violating 18 U.S.C. § 373 (counts 1-9) and two counts of violating 18 U.S.C. § 115 (counts 10-11).

Hinkson proceeded to a jury trial on the charges after pleading not guilty. At trial, the jury acquitted Hinkson on several counts, hung on others, and convicted him on counts 7, 8, and 9. Those counts charged as follows:

Count Seven

"Paragraphs 1 through 10 of this indictment are hereby realleged in their entirety and incorporated by reference herein.

Between about December 2002 and February 2003, the precise date being unknown to the grand jury, in the district of Idaho, the defendant, David Roland Hinkson, with the intent that EJS (Elven Joe Swisher) engage in conduct constituting a felony that has as an element the use of physical force against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, did solicit, command, induce and endeavor to persuade EJS to engage in such conduct, that is to murder United States District Court Judge Edward J. Lodge, an officer of the United States, in violation of Title 18 U.S.C. § 1114; in violation of Title 18 U.S.C. § 373." Attachment-B, P. 6.

Count Eight

Paragrahps 1 through 10 of this indictment are hereby realleged in their entirety and incorporated by reference herein.

Between about December 2002 and February 2003, the precise date being unknown to the grand jury, in

the District of Idaho, the defendant, David Roland Hinkson, with the intent that EJS engage in conduct constituting a felony that has as an element the use of physical force against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, did solicit, command, induce and endeavor to persuade EJS to engage in such conduct, that is to murder Assistant United States Attorney Nancy D. Cook, an officer of the United States in violation of Title 18, U.S.C. § 1114; in violation of Title 18, U.S.C. § 373. Attachment-B, P. 7.

Count Nine

Paragraphs 1 through 10 of this indictment are hereby realleged in their entirety and incorporated by reference herein.

Between about December 2002 and February 2003, the precise date being unknown to the grand jury, in the District of Idaho, the defendant, David Roland Hinkson, with the intent that EJS engage in conduct constituting a felony that has as an element the use of physical force against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that

intent, did solicit, command, induce and endeavor to persuade EJS to engage in such conduct, that is to murder Internal Revenue Service Special Agent Steven M. Hines, an officer of the United States, in violation of Title 18 U.S.C. § 1114; in violation of Title 18 U.S.C. § 373.

After the jury trial, Hinkson was conviction only on the three Elven Joe Swisher counts (i.e., counts 7, 8, and 9).<sup>1</sup> And while the government alleged in the indictment, and proved only [one plot], Hinkson was convicted of three separate offenses and received three consecutive sentences for the solicitation offense.

Only two federal circuits (the Sixth Circuit [1993] and the First Circuit [2017]) have published legal authority on the issue presented in Hinkson's habeas corpus petition.

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1. During Hinkson's solicitation trial, including proceedings before the grand jury, Elven Joe Swisher repeatedly committed perjury and other crimes, some of which resulted in Swisher's criminal prosecution and conviction in case no. CR-07-182-S-BLW (D. Idaho & Montana 2007).

## SUMMARY OF ARGUMENT

Should this Court remand the case to the district court with instructions to grant the writ of habeas corpus, merge Hinkson's three convictions and/or sentences for solicitation to commit a crime of violence under 18 U.S.C. § 373, and his three 1-year sentences for being charged with the solicitation offense while on pretrial release.

While Hinkson was convicted and sentenced for three counts of solicitation to commit murder under § 373, the government alleged only [one plot], and proved only one plot. Thus, the indictment was multiplicitious and therefore the three solicitation charges and/or sentences should have merged into a single sentence, not three. The three consecutive 10 year sentences violate the double jeopardy clause of the Fifth Amendment to the United States Constitution, as does the three 1-year sentences for committing the solicitation offense while on pretrial release. Thus, this case presents a miscarriage of justice and fundamental defect in the proceedings that is correctable on habeas corpus under 28 U.S.C. § 2241.

Hinkson has not had a reasonable and unobstructed opportunity to present this issue earlier as only two federal circuit courts (the Sixth Circuit [1993], and the First Circuit [2017]), have published legal authority on the issue presented in this habeas corpus proceeding.

ARGUMENT

28 U.S.C. § 2241 articulated:

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdiction. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had

18 U.S.C. § 1651 articulates:

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law

Over three quarters of a century ago, the Supreme Court recognized that the right of access to the courts is founded in the Due Process Clause and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights. See *Ex Parte Hull*, 312 U.S. 546 (1941).

Article I, § 9, cl. 2, of the Constitution of the United States articulates:

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

U.S. Const. Amend. V. articulates:

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, [nor be deprived of life, liberty, or property, without due process of law], nor shall private property be taken for public use, without just compensation. Id. See also U.S. Const. Amend. XIV.

In *United States v Morgan*, 346 U.S. 502 (1954) the Supreme Court held, inter alia, that 28 U.S.C. § 2255 does not provide the sole remedy of habeas corpus relief and thus did not abolish common law writs in criminal proceedings.

As outlined in the case at bar, this case presents a miscarriage of justice and fundamental defect that is correctable in this § 2241 proceeding.

More specifically, Hinkson was convicted of three counts of solicitation to commit a crime of violence (i.e., murder for hire), in violation of 18 U.S.C. § 373. While the murder for hire statute is 18 U.S.C. § 1958, the government alleged 18 U.S.C. § 1114 instead because the alleged targets of the plot were federal officials.

18 U.S.C. § 373 articulates:

(a) Whoever, with intent that another person engage in conduct constituting a felony that has as an element the use, attempted use, or threatened use of physical force against property or against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, solicits, commands, induces, or otherwise endeavors to persuade such other person to engage in such conduct, shall be imprisoned not more than one-half the maximum term of imprisonment or (notwithstanding section 3571 [18 USCS § 3571]) fined not more than one-half of the maximum fine prescribed for the punishment of the crime solicited, or both; or if the crime solicited is punishable by life imprisonment or death, shall be imprisoned for not more than twenty years.

18 U.S.C. § 1858 articulates:

(a) Whoever travels in or causes another (including



the intended victim) to travel in interstate or foreign commerce, or uses or causes another (including the intended victim) to use the mail or any facility of interstate or foreign commerce, with intent that a murder be committed in violation of the laws of any State or the United States as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value, or who [conspires] to do so, shall be fined under this title or imprisoned for not more than ten years, or both; and if personal injury results, shall be fined under this title or imprisoned for not more than twenty year, or both; and if death results, shall be punished by death or life imprisonment, or shall be fined not more than \$250,000, or both.

Under the federal sentencing laws, "solicitation" and "conspiracy" to commit murder are treated the same.

U.S.S.G. § 2A1.5 articulates:

Conspiracy or Solicitation to Commit Murder:

- (a) Base Offense Level 28
- (b) If the offense involved the offer or the receipt of anything of pecuniary value for undertaken the murder, increase by 4 levels.
- (c) Cross references
  - (1) If the offense resulted in the death of a victim, apply § 2A1.1 (First Degree Murder).
  - (2) If the offense resulted in an attempted murder

or assault with intent to commit murder, apply § 2A2.1 (Assault with intent to Commit Murder, Attempted Murder).<sup>2</sup>

In the case at bar, the federal indictment alleged that Hinkson engaged in a single plot to murder three individuals. See supra, P. 5-7 (plot) and P. 8-10 (charges). A single plot would essentially equal [a] conspiracy, not three. Yet Hinkson was convicted [and] sentenced as if the government had charged three separate and distinct plots, when in fact it did not. Under the Supreme Court's Blockburger test [Blockburger v United States, 284 U.S. 299 (1932)] the indictment at issue here is multiplicitious, and thus, the three solicitation counts should have merged, at the least, for sentencing purposes. Otherwise there are serious double jeopardy concerns involved with this case.

Recently, the First Circuit addressed a very similar issue in the murder-for-hire [18 U.S.C. § 1958] statute. See United States v Gordon, No. 16-1896, 2017 U.S. App. Lexis 22249 (1st Cir. 2017). Specifically, in Gordon the defendant was convicted of five counts of murder-for-hire under § 1958. He was sentenced to consecutive terms of imprisonment, as was Hinkson was in the case at bar. On appeal, the Court reversed holding that the indictment containing five counts of murder

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2. We articulate the version of the Guidelines in effect at the time of the alleged offense. See U.S.S.G. § 2A1.5 (2002). Today's version of § 2A1.5 differs from the 2002 version and requires a base offense level of 33. See U.S.S.G. § 2A1.5 (2004) for example.

for hire was multiplicitious and thus the defendant was entitled to resentencing because the proper unit of prosecution under the murder-for-hire statute was a single plot. The court also held that Congress did not intent to punish separately such crimes. Id. See also United States v Charles, 626 Fed. Appx. 691, No. 13-50233, 2015 U.S. App. Lexis 16875 (9th Cir. Sept. 23, 2015)(holding that to determine whether counts are multiplicitious, a court looks to how the indictment defines the scheme and examines how many executions of the scheme are alleged, a factually intensive inquiry).

Here, the indictment set out clearly the "scheme" surrounding the charges. However, the [charges] were mere "solicitation" and there were actually no "executions" of the scheme, as no overt act is required under the § 373 statute and none occurred in this case.

In Gordon, the First Circuit Court of Appeals stated "in reaching the conclusion that the correct unit of prosecution is plot-centric, we echo the only other published circuit court decision squarely on point. The Sixth Circuit so held in United States v Wynn, 987 F.2d 354, 359 (6th Cir. 1993), ruling that the appropriate unit of prosecution under § 1958(a) is the number of [plots] to murder someone." Id.

As noted by the First Circuit, this Circuit is the only other circuit with a published opinion "squarely on point." Id. The offenses involved in Gordon and Wynn, as outlined above, are very similar to the offenses of conviction in the case at

bar. For example, the solicitation offense under § 373 is virtually identical to the conspiracy offense under § 1958(a). No overt act is necessary for a conviction of either offense. And as the case law plainly articulates, the correct unit of prosecution is [plot centric]. If this is so, then clearly Hinkson's three convictions for solicitation under § 373 should merge, because the indictment makes plain that there was a single plot, not three.

Thus, under the Supreme Court's Blockburger test and the Circuit precedent outlined above, this case presents a fundamental defect in the proceedings that is correctable in a habeas corpus proceeding under 28 U.S.C. § 2241. Moreover, where Hinkson is serving a 30-years sentence<sup>3</sup> (i.e., three consecutive 10-year sentences on each solicitation count) for these solicitation counts, failure to correct the error will result in a fundamental miscarriage of justice where Hinkson otherwise would be serving a 10-year sentence for this offense.

Further, Hinkson was a successful business man in the community with no criminal history whatsoever. He is now an elderly man over sixty years of age and would certainly die

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3. Hinkson also received three consecutive 1-year sentences relating to the three solicitation offenses, i.e., for being charged with the solicitation offenses while on pretrial release, resulting in an aggregate sentence of 33-years. If the solicitation convictions merge, then so too would the three 1-year sentences.

in prison if his sentence is not corrected.<sup>4</sup>

As noted above, until recently the Sixth Circuit was the only circuit with a published opinion addressing a similar issue as the issue presented here. Hinkson was convicted in the Ninth Circuit where there is no published legal authority on the issue presented. Thus, Hinkson had no reasonable opportunity to present the issue at an earlier time. While the indictment and facts of the case unequivocally show that the government alleged, and proved, only one plot, Hinkson was convicted and sentenced on three separate plots that simply never occurred, was never charged, and never proved and found by the jury.

Therefore, this case and issue presents a question of actual innocence that is cognizable in a habeas corpus petition under 28 U.S.C. § 2241. Moreover, it is not merely a question or issue of legal insufficiency, but rather, a question of whether the sentencing court even had jurisdiction to sentence Hinkson to three sentences for three [plots] that simply never occurred, was never charged and proved, and never found by the jury. See U.S. Const. Amend. V ("...nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb..."). But in fact, double jeopardy is exactly what has occurred here. The three 10-year consecutive sentences stem from [one plot], and [one scheme] as set forth in the indictment. Thus, the three sentences should merge.

4. Hinkson has been incarcerated since 2002. However, he was required to first serve the 10-year sentence in the tax case before beginning the 33-year sentence in the solicitation case. He barely has 6 years completed on the 33 year sentence.

CONCLUSION

For the foregoing reasons, this Court should vacate the district court's July 19, 2018, Order denying Hinkson's § 2241 petition, and remand the case to the district court with instructions to grant the writ, merge the three consecutive 10 years sentences into a single 10 year sentence, as well as the three 1-year sentences, and for any other relief in which Hinkson may be entitled.

Respectfully submitted

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APPENDIX-A

A. District Court's July 19, 2018, denial of § 2241 Petition.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
SOUTHERN DIVISION  
AT LONDON

CIVIL ACTION NO. 18-104-DLB

DAVID ROLAND HINKSON

PETITIONER

VS.

JUDGMENT

C. GOMEZ, Acting Warden

RESPONDENT

\*\*\* \*\*

Consistent with the Memorandum Opinion and Order entered this date, and pursuant to Rule 58 of the Federal Rules of Civil Procedure, it is hereby **ORDERED** and **ADJUDGED** as follows:

- (1) Petitioner David Roland Hinkson's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 (Doc. #1) is **DENIED**.
- (2) Judgment is entered in favor of the Respondent with respect to all issues raised in this proceeding.
- (3) This action is **DISMISSED** and **STRICKEN** from the Court's active docket.
- (4) This is a **FINAL** and **APPEALABLE** Judgment and there is no just cause for delay.

This 19th day of July, 2018.



Signed By:

David L. Bunning *DB*  
United States District Judge



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
SOUTHERN DIVISION  
AT LONDON

CIVIL ACTION NO. 18-104-DLB

DAVID ROLAND HINKSON

PETITIONER

VS.

MEMORANDUM OPINION AND ORDER

C. GOMEZ, Acting Warden

RESPONDENT

\*\*\* \*\*

Petitioner David Roland Hinkson is an inmate at the United States Penitentiary (“USP”)—McCreary in Pine Knot, Kentucky. Proceeding without a lawyer, Hinkson filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. # 1). This matter is before the Court to conduct an initial screening of Hinkson’s petition. 28 U.S.C. § 2243; *Alexander v. N. Bureau of Prisons*, 419 F. App’x 544, 545 (6th Cir. 2011). For the reasons set forth below, the Court must deny relief.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

In 2002, Hinkson was indicted by a federal grand jury in the United States District Court for the District of Idaho for various financial crimes, including money laundering, income tax evasion, failure to file income tax returns, and failure to collect and pay payroll taxes (his “tax case”). *United States v. Hinkson*, No. 3:02-cr-00142-BLW-RCT (D. Idaho 2002). While he was awaiting trial on his tax case, a federal grand jury in Idaho returned an eleven-count indictment against Hinkson for soliciting the murders of three federal officials involved in the tax case: the United States District Judge presiding over the case, the prosecuting Assistant United States Attorney (“AUSA”), and the IRS Special Agent

assigned to the case (his "murder-solicitation case"). *United States v. Hinkson*, No. 1:04-cv-127-RCT-1 (D. Idaho 2004). The first three counts charged Hinkson with soliciting James Harding to kill the three federal officials in violation of 18 U.S.C. § 373 in January 2003. Counts four through six charged that Hinkson made a second request to Harding in March 2003. Counts seven through nine charged Hinkson with soliciting Elven Joe Swisher to murder these same three individuals in December 2002 or January 2003. Counts ten and eleven charged Hinkson with threatening to kill the children of the AUSA and the IRS Special Agent in violation of 18 U.S.C. § 115. *Id.*

In May 2004, a jury found Hinkson guilty in his criminal tax trial. Sentencing in Hinkson's tax case was continued until the conclusion of his murder-solicitation trial. *United States v. Hinkson*, No. 3:02-cr-00142-BLW-RCT (D. Idaho 2002).

In January 2005, the jury in Hinkson's murder-solicitation trial acquitted Hinkson on counts one through three, ten, and eleven, and were unable to reach a verdict on counts four through six. However, the jury convicted Hinkson on counts seven through nine, the counts involving his solicitation of Swisher to murder the three federal officials. *United States v. Hinkson*, No. 1:04-cv-127-RCT-1 (D. Idaho 2004).

In June 2005, the court sentenced Hinkson in both cases to a total term of imprisonment of 516 months. Specifically, Hinkson's sentence breaks down as follows:

The total term in [the tax case] consists of: terms of 12 months each on counts 1-3, 17 & 26; terms of 60 months each on counts 4-16; and terms of 120 months each on counts 31, 33-38, 40-42. All such terms in [the tax case] shall be served concurrently with each other but consecutive to the imprisonment imposed in [the murder-solicitation case]. The total term in [the murder solicitation case] consists of terms of 120 months each on counts 7, 8 and 9, which shall run consecutively to one another and consecutively to criminal [tax case]. An additional 36 months shall run consecutively to counts 7, 8 and 9 pursuant to 18 U.S.C. § 3147. The total imprisonment term of 396 months imposed in [the murder-solicitation case]

shall not begin to run until the Defendant has completed service of the total imprisonment term of 120 months imposed in [the tax case].

*United States v. Hinkson*, No. 3:02-cr-00142-BLW-RCT (D. Idaho 2002) (Docs. # 370, 374 therein); *United States v. Hinkson*, No. 1:04-cv-127-RCT-1 (D. Idaho 2004) (Docs. # 266, 267 therein). Hinkson's motion for a new trial in his murder-solicitation case was denied by the trial court. *United States v. Hinkson*, No. 1:04-cv-127-RCT-1 (D. Idaho 2004) (Doc. # 244 therein). Although a divided three-judge panel of the Ninth Circuit reversed the denial of Hinkson's motion for a new trial, *United States v. Hinkson*, 526 F.3d 1262 (9th Cir. 2008), upon rehearing, an en banc panel of the Ninth Circuit vacated the three-judge panel decision and affirmed the trial court. *United States v. Hinkson*, 585 F.3d 1247, 1263–64, 1267 (9th Cir. 2009) (en banc). The United States Supreme Court denied certiorari. *Hinkson v. United States*, 131 S. Ct. 2096 (2011).

Hinkson's motion to vacate, set aside or correct his sentence filed pursuant to 28 U.S.C. § 2255 was denied and his request for a certificate of appealability was denied by the United States Court of Appeals for the Ninth Circuit. *United States v. Hinkson*, No. 1:12-cv-196-RCT (D. Idaho 2012) (Docs. # 15, 20 therein). Hinkson's subsequent petition for a writ of habeas corpus under 28 U.S.C. § 2241, filed in the United States District Court for the Eastern District of California, was also denied, as was his request for a certificate of appealability. *Hinkson v. Copenhaver*, No. 1:13-cv-1571-AWI-JLT (E.D. Calif. 2013).

On June 14, 2018, Hinkson filed an Application for Permission to File a Second or Successive Habeas Corpus Petition with the United States Court of Appeals for the Ninth Circuit, seeking relief from his sentence pursuant to the United States Supreme Court's

decisions in *Johnson v. United States*, 135 S. Ct. 2551 (2015) and *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018). *Hinkson v. United States*, No. 18-71748 (9th Cir. 2018).

Hinkson's current § 2241 petition filed in this Court argues that he is entitled to relief because: (1) with respect to the solicitation of murder charges for which he was convicted, he is "actually innocent" of those convictions because they should have been brought as one charge, not three; (2) solicitation to commit murder is not a crime of violence; and (3) because solicitation is not a crime of violence, his 10-year sentences for his three solicitation convictions should run concurrently, thus his 30-year sentence in his solicitation case should be reduced to 10 years and should run concurrent with his sentence in his tax case.

## II. ANALYSIS

The Court conducts an initial review of habeas corpus petitions. 28 U.S.C. § 2243; *Alexander*, 419 F. App'x at 545. A petition will be denied "if it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief." Rule 4 of the Rules Governing § 2254 Cases in the United States District Courts (applicable to § 2241 petitions pursuant to Rule 1(b)). The Court evaluates Hinkson's petition under a more lenient standard because he is not represented by an attorney. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). At this stage of the proceedings, the Court accepts the petitioner's factual allegations as true and construes all legal claims in his favor. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007).

Hinkson's claims raised in his § 2241 petition are simply not the kind which may be pursued under § 2241. A § 2241 petition may typically only be used as a vehicle for challenges to actions taken by prison officials that affect the manner in which the prisoner's sentence is being carried out, such as computing sentence credits or

determining parole eligibility. *Terrell v. United States*, 564 F.3d 442, 447 (6th Cir. 2009). A federal prisoner who instead wishes to challenge the legality of his conviction or sentence must file a motion under § 2255. *United States v. Peterman*, 249 F.3d 458, 461 (6th Cir. 2001) (explaining the distinction between a § 2255 motion and a § 2241 petition). A § 2241 petition may not be used for this purpose because it does not function as an additional or alternative remedy to the one available under § 2255. *Hernandez v. Lamanna*, 16 F. App'x 317, 320 (6th Cir. 2001).

The “savings clause” of 28 U.S.C. § 2255(e) creates an extraordinarily narrow exception to this prohibition if the remedy afforded by § 2255 is “inadequate or ineffective” to test the legality of the prisoner’s detention. *Truss v. Davis*, 115 F. App'x 772, 773-74 (6th Cir. 2004). Establishing that the § 2255 remedy is inadequate or ineffective is a high burden for a petitioner to meet, as “[t]he circumstances in which § 2255 is inadequate and ineffective are narrow.” See *Peterman*, 249 F.3d at 461. A motion under § 2255 is not “inadequate or ineffective” simply because the prisoner’s time to file a § 2255 motion has passed; he did not file a § 2255 motion; or he did file such a motion and was denied relief. *Copeland v. Hemingway*, 36 F. App'x 793, 795 (6th Cir. 2002); *Taylor v. Gilkey*, 314 F.3d 832, 835 (7th Cir. 2002) (holding that § 2241 is available “only when a structural problem in § 2255 forecloses even one round of effective collateral review ...”). In other words, prisoners cannot use a habeas petition under § 2241 as yet another “bite at the apple.” *Hernandez*, 16 F. App'x at 360.

Rather, to properly invoke the savings clause, the petitioner must be asserting a claim that he is “actually innocent” of the underlying offense by showing that, after the petitioner’s conviction became final, the Supreme Court re-interpreted the substantive terms of the criminal statute under which he was convicted in a manner that establishes

that his conduct did not violate the statute. *Wooten v. Cauley*, 677 F.3d 303, 307-08 (6th Cir. 2012) (citing *Peterman*, 249 F.3d at 461-62); *Hayes v. Holland*, 473 F. App'x 501, 501-02 (6th Cir. 2012) ("To date, the savings clause has only been applied to claims of actual innocence based upon Supreme Court decisions announcing new rules of statutory construction unavailable for attack under section 2255."). The Supreme Court's newly announced interpretation must, of course, be retroactively applicable to cases on collateral review. *Wooten*, 677 F.3d at 308.

Hinkson's first claim is that he is "actually innocent" of his conviction of three separate counts of solicitation to commit murder because these counts should have merged into one charge of the indictment rather than three separate charges. But, Hinkson's claim does not rely on any Supreme Court decision announcing a new, retroactively applicable rule of statutory construction, but is instead a claim of ordinary trial error which could have and must have been pursued on direct appeal or in an initial motion under § 2255. *Cf. Mallard v. United States*, 82 F. App'x 151, 153 (6th Cir.2003); *Jameson v. Samuels*, 555 F. App'x 743, 746 (10th Cir. 2014).

Even if this were not so, his argument that he is entitled to relief based on the United States Court of Appeals for the First Circuit's decision in *United States v. Gordon*, 875 F.3d 26 (1st Cir. 2017) fails on the merits. In *Gordon*, the First Circuit analyzed 18 U.S.C. § 1958(a), the federal statute prohibiting the use of interstate commerce facilities in the commission of murder-for-hire, which is not the same statute that Hinkson was convicted of violating. Regardless, in *Gordon*, the court held that "the appropriate unit of prosecution under 18 U.S.C. § 1958(a) is a single plot to murder a single individual, not the number of times that the facilities of interstate commerce were used." *Gordon*, 875 F.3d at 28. Hinkson relies on *Gordon* and argues that, because there was only one "plot"



with respect to his charges of solicitation to commit murder of three federal officials, these charges should have been brought as one charge in the indictment, rather than three separate charges. Hinkson, however, overlooks that he was charged with soliciting the murder of *three* separate individuals. Thus, even if *Gordon* applied, Hinkson would not be entitled to relief.

Hinkson's next two related claims seek relief from his sentence based on his argument that solicitation to commit murder is not a "crime of violence." According to Hinkson, "[b]ecause the three counts of solicitation to commit murder were considered and labeled 'crimes of violence,' the sentencing court ran Hinkson's sentences consecutive to each other and consecutive to [the sentence in his tax case]. Because the solicitation to commit murder offenses are not crimes of violence, Hinkson is entitled to resentencing." (Doc. # 1-1 at 15). Hinkson invokes the United States Supreme Court's recent decision in *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018), as well as *Mathis v. United States*, 136 S. Ct. 2243 (2016), *Johnson v. United States*, 135 S. Ct. 2251 (2015), as well as the Fourth Circuit's decision in *United States v. McCollum*, 885 F.3d 300 (4th Cir. 2018).

A petition for a writ of habeas corpus pursuant to § 2241, however, is not the appropriate vehicle for such claims. The decidedly narrow scope of relief under § 2241 applies with particular force to challenges not to convictions, but to the sentence imposed. *Peterman*, 249 F.3d at 462; *Hayes*, 473 F. App'x at 502 ("The savings clause of section 2255(e) does not apply to sentencing claims."). In *Hill v. Masters*, 836 F.3d 591 (6th Cir. 2016), the Sixth Circuit articulated a very narrow exception to this general rule, permitting a challenge to a sentence to be asserted in a § 2241 petition, but only where (1) the petitioner's sentence was imposed when the Sentencing Guidelines were mandatory

before the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005); (2) the petitioner was foreclosed from asserting the claim in a successive petition under § 2255; and (3) after the petitioner's sentence became final, the Supreme Court issued a retroactively applicable decision establishing that—as a matter of statutory interpretation—a prior conviction used to enhance his or her federal sentence no longer qualifies as a valid predicate offense. *Hill*, 836 F.3d at 599-600.

Hinkson's petition does not satisfy any of these criteria. Hinkson was sentenced in 2006, post-*Booker*. Moreover, as he currently has an application seeking permission to file a second or successive § 2255 habeas petition raising similar claims pending in the United States Court of Appeals for the Ninth Circuit, he cannot establish that he has been foreclosed from asserting his claims in a successive petition under § 2255.

Finally, Hinkson does not present a challenge to a prior conviction used to enhance his sentence. Rather, Hinkson argues that the sentencing court improperly ran his murder-solicitation sentences consecutively because the court classified these crimes as "crimes of violence." First, Hinkson cites to no evidence in the record to support his conclusory claim that the sentencing court ran his sentences consecutively because it classified his murder-solicitation convictions as "crimes of violence." Regardless, the cases relied upon by Hinkson—*Dimaya*, *Mathis*, *Johnson*, and *McCollum*—all address the classification of a prior conviction used to enhance a sentence. Because Hinkson does not argue that his sentence was improperly enhanced based on a prior conviction for a "crime of violence," these cases are inapplicable. Instead, Hinkson challenges the trial court's decision to run his multiple sentences consecutively rather than concurrently, a decision that is well within the trial court's discretion. See 18 U.S.C. § 3584(a). To the extent that Hinkson argues that the trial court abused its discretion, this is a claim of



ordinary trial error which, as previously explained, must have been pursued on direct appeal or in an initial motion under § 2255.

For all of these reasons, the limited exception in *Hill* that permits a challenge to a sentence in a § 2241 petition does not apply to Hinkson. Because Hinkson may not rely on the “savings clause” of § 2255(e) to authorize his § 2241 petition, his petition must be denied.

### III. CONCLUSION

Accordingly, for the reasons stated herein,

**IT IS ORDERED** as follows:

- (1) Petitioner David Roland Hinkson’s petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 (Doc. # 1) is **DENIED**;
- (2) Hinkson’s motion to bring new Supreme Court precedent to the attention of the Court (Doc. # 4) is **DENIED AS MOOT**;
- (3) This action is **DISMISSED** and **STRICKEN** from the Court’s active docket; and
- (4) A separate Judgment shall be entered contemporaneously herewith.

This 19th day of July, 2018.



Signed By:

David L. Bunning *DB*

United States District Judge

FROM: David R. Hinkson, Pro Se  
Reg. No. 08795-023  
USP McCreary  
P.O. Box 3000  
Pine Knot, KY 42635

DATE: August\_\_\_\_, 2018

TO: Clerk of the Court  
U.S. District Court  
E. D. Kentucky  
310 S. Main Street  
London, KY 40741

RE: 6:18-cv-104-DLB; Hinkson v Gomez, Warden

Dear Sir or Ma'am:

Enclosed for filing please find my motion to proceed on appeal in forma pauper, affidavit accompanying motion for permission to appeal in forma pauperis, certificate of inmate account, and 6-month certified inmate account printout. If anything else is necessary, please let me know. Thank you.

Sincerely

\_\_\_\_\_  
David Hinkson, Pro Se

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

DAVID ROLAND HINKSON

v.

Case No: 6:18-CV-104-DLB

C. GOMEZ, Acting Warden

MOTION FOR PAUPER STATUS

I move to waive the payment of the appellate filing fee under Fed. R. App. P. 24 because I am a pauper. This motion is supported by the attached financial affidavit.

The issues which I wish to raise on appeal are:

I. Whether the district court erred in denying Hinkson habeas corpus relief under 28 U.S.C. § 2241 where Hinkson's three convictions for solicitation to murder three individuals should have merged because, as the government alleged in the superseding indictment, there was a single plot, not three, and further where Hinkson has not had an unobstructed opportunity to present this claim earlier.

Signed: \_\_\_\_\_

Date: 8-24-18

Address: USP McCreary, P.O.Box 3000,

Pine Knot, KY 42635

AFFIDAVIT ACCOMPANYING MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS

United States Court of Appeals for the Sixth Circuit

DAVID ROLAND HINKSON

v.

C. GOMEZ, Acting Warden

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]
]
]
]

Case No. 6:18-CV-104-DLB

Affidavit in Support of Motion

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. §§ 1746; 18 U.S.C. §§ 1621.)

Instructions

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

My issues on appeal are:

I. Whether the district court erred in denying Hinkson habeas corpus relief under 28 U.S.C. § 2241 where Hinkson's three convictions for solicitation to murder three individuals should have merged because, as the government alleged in the superseding indictment, there was a single plot, not three, and further where Hinkson has not had an unobstructed opportunity to present this claim earlier.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	0	N/A	0	N/A
Self-employment	0		0	
Income from real property (such as rental income)	0		0	
Interest and dividends	0		0	
Gifts	\$400		\$200	
Alimony	0		0	
Child support	0		0	
Retirement (such as social security, pensions, annuities, insurance)	0		0	
Disability (such as social security, insurance payments)	0		0	
Unemployment payments	0		0	
Public-assistance (such as welfare)	0		0	
Other (specify):	0		0	
Total monthly income:	\$0.00	\$0.00	\$0.00	\$0.00

(See attached 6-month certified inmate account)

2. List your employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.) **Incarcerated**

Employer	Address	Dates of Employment	Gross monthly pay

3. List your spouse's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.) N/A

Employer	Address	Dates of Employment	Gross monthly pay

4. How much cash do you and your spouse have? \$ None

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
None	None	None	None

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account. (See attached inmate account)

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home (Value)	Other real estate (Value)	Motor Vehicle #1 (Value)
None	None	Make & year: None
		Model:
		Registration #:

Motor Vehicle #2 (Value)	Other assets (Value)	Other assets (Value)
Make & year: None	None	None
Model:		
Registration #:		

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
None		

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
None		

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (including lot rented for mobile home)	0	N/A
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	0	
Home maintenance (repairs and upkeep)	0	
Food	0	
Clothing	0	
Laundry and dry-cleaning	0	
Medical and dental expenses	0	
Transportation (not including motor vehicle expenses)	0	
Recreation, entertainment, newspapers, magazines, etc.	0	
Insurance (not deducted from wages or included in mortgage payments) Homeowner's or renter's	0	
Life	0	
Health	0	
Motor vehicle	0	
Other:	0	
Taxes (not deducted from wages or included in mortgage payments) specify: _____	0	
Installment payments	0	
Motor Vehicle	0	
Credit card (name): _____	0	
Department store (name): _____	0	
Other: _____	0	
Alimony, maintenance, and support paid to others	0	
Regular expenses for operation of business, profession, or farm (attach detail)	0	
Other (specify): _____	0	
<b>Total monthly expenses:</b>	<b>\$0.00</b>	<b>\$0.00</b>



9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes

No

If yes, describe on an attached sheet.

10. Have you paid-or will you be paying-an attorney any money for services in connection with this case, including the completion of this form?

Yes

No

If yes, how much? \$ \_\_\_\_\_

If yes, state the attorney's name, address, and telephone number:

11. Have you paid-or will you be paying-anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes

No

If yes, how much? \$ \_\_\_\_\_

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

Hinkson is incarcerated and indigent. Other than receiving gifts from family and friends, he has no income and no means of paying court fees. However, he is willing to pay in payments any court costs.

13. State the address of your legal residence.

USP McCreary, P.O. Box 3000, Pine Knot, KY 42635

Your daytime phone number: ( None ) \_\_\_\_\_

Your age: 62 Your years of schooling: some college

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
SOUTHERN DIVISION  
AT LONDON

CIVIL ACTION NO. 18-104-DLB

DAVID ROLAND HINKSON

PETITIONER

VS.

ORDER

C. GOMEZ, Acting Warden

RESPONDENT

\*\*\* \*\*

Petitioner David Roland Hinkson has filed a Notice of Appeal (Doc. # 7) but has not paid the \$505.00 appellate filing fee, nor has he filed a motion to proceed *in forma pauperis* on appeal.

Accordingly, **IT IS ORDERED** as follows:

(1) The Clerk of the Court shall send Hinkson a Sixth Circuit Form 4 and a Certificate of Inmate Account [EDKY Form 523].

(2) Hinkson must either pay the \$505.00 appellate filing fee to the Clerk of the Court or (1) have prison staff certify the Certificate of Inmate Account [EDKY Form 523], (2) complete the Sixth Circuit Form 4, and (3) file both of these documents with this Court (the District Court, not the Sixth Circuit Court of Appeals).

(3) Hinkson must take each of these steps within twenty-eight (28) days or the Sixth Circuit will dismiss the appeal for failure to prosecute.

(4) The Clerk of the Court shall forward a copy of this Order to the Clerk of the United States Court of Appeals for the Sixth Circuit.

This 7th day of August, 2018.



Signed By:

David L. Bunning *DB*

United States District Judge

K:\DATA\ORDERS\ProSe\Hinkson 18-104-DLB Order re. fee on appeal.docx