

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA)
) 4:04CR00127 TCK
 v.)
)
 BOBBY WAYNE HALEY)
)

RESPONSE TO PETITION FOR RELIEF UNDER 28 U.S.C. § 2255

Comes now the United States of America, by and through Special Attorney Jane W. Duke, and submits this response to defendant Bobby Wayne Hayley's petition for relief under Title 28, United States Code, Section 2255. As set forth below, the United States concedes that the requested relief is appropriate. The United States respectfully submits that the petitioner's conviction should be vacated; the indictment against him dismissed; and his immediate release from custody ordered.

1. In early 2009, the Special Attorney was appointed to oversee an investigation in the Northern District of Oklahoma concerning possible law enforcement corruption. As a part of that investigation, the Special Attorney discovered credible evidence that Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Special Agent Brandon Jay McFadden and Tulsa Police Department Officer Jeff Henderson committed perjury in April 2008 when they testified before a jury in the case of *United States v. Larry Barnes and Larita Barnes*, Case No. 07-CR-135-CVE. After obtaining this information, the United States petitioned the Tenth Circuit Court of Appeals to dismiss the Barneses' then-pending appeals and remand the matter to the District Court so that appropriate action could be taken. In July, 2009, Chief United States District Judge Claire V. Eagan entered an order dismissing the case against the Barneses and directing their immediate release from custody.

2. As part of the continuing corruption investigation, the United States recently discovered credible evidence that Tulsa Police Officer Jeff Henderson also committed perjury in a pretrial hearing in the instant case. Officer Henderson's perjury was committed on April 7, 2005, in an *ex parte* sealed hearing regarding the existence and identity of Henderson's purported confidential informant upon whom he relied in obtaining search warrants for the petitioner's properties. The hearing was conducted by United States Magistrate Judge Paul Cleary. The transcript of that hearing (Doc. Num. 145) has recently been unsealed.

3. A review of the transcript from the April 7, 2005, hearing demonstrates that Officer Jeff Henderson and Rochelle Martin were the only two individuals to testify and that neither defendant nor his counsel were allowed to be present. Henderson and Martin both testified that Martin provided information to Henderson that allowed Henderson to obtain the search warrants for Mr. Haley's properties. Specifically, Martin testified that she told Henderson that she had seen Bobby Wayne Haley trafficking in drugs from his properties within 72 hours prior to May 27, 2004, when the search warrants were issued.

4. Attached as Exhibit 1 to this response is the May 6, 2010, affidavit of Rochelle Martin. As demonstrated by that affidavit, Martin states that the testimony she provided to Judge Cleary was absolutely false and that her false testimony was solicited and coached by Henderson and Tulsa Police Department Officer Bill Yelton.

5. The United States believes that the information contained in Ms. Martin's affidavit is accurate. During this investigation, other information provided by Ms. Martin has been corroborated by the United States. Further, the circumstances surrounding Ms. Martin's disclosure of the Haley information (which the United States would be willing to explain to the Court *ex parte* and in camera) supports the United States' conclusion.

6. Because the testimony of Officer Henderson and Ms. Martin was both false and material, it is readily apparent that the search warrants for Mr. Haley's properties were unconstitutionally obtained.

7. When this case proceeded to trial for the second time, the search warrant evidence was joined with earlier drug intelligence dating back to July, 2003. That earlier drug intelligence and the testimony of Adrian Tobie formed the basis of a two-day conspiracy charge against the petitioner in Count 1, which was added by way of superseding indictment. The conspiracy charge was only added after a jury was unable to reach an unanimous verdict on the search warrant counts. Thus, the conspiracy count was only added to strengthen the search warrant case.

8. Undersigned counsel was recently appointed to handle this case by the Attorney General of the United States. Having reviewed the matter fully and being well-familiar with the issues and participants, the United States asserts that the conviction of Bobby Wayne Haley of all counts should be set aside and no further charges pursued against Bobby Wayne Haley in this case.

WHEREFORE, the United States of America respectfully requests that this Court enter an order granting petitioner's request for relief to include vacating the conviction and sentence as to all counts for Bobby Wayne Haley and ordering his immediate release from custody.

Respectfully submitted,

ERIC H. HOLDER, JR.
Attorney General of the United States

/s/ JANE W. DUKE

JANE W. DUKE
Special Attorney
Bar # 96190
P.O. Box 1229
Little Rock, AR 72203
(501) 340-2600
Jane.Duke@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of May, 2010, a copy of the foregoing was mailed to the defendant at his correctional institution and to the last attorney of record for the defendant:

Bobby Wayne Haley, Sr.
Inmate Number 9558-062
P.O. Box 1010
Bastrop, TX 78602

and

Wesley Johnson
Johnson & Romero, Attorneys at Law
110 West 7th Street
Suite 115
Tulsa, OK 74119

and

Beverly A. Atteberry
P.O. Box 420
Tulsa, OK 74101-0420

/s/ JANE W. DUKE
JANE W. DUKE

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,	}	
	}	
Plaintiff,	}	
	}	
vs.	}	Case No. 04-CR-127-TCK
	}	
BOBBY WAYNE HALEY,	}	
	}	
Defendant,	}	

State of Oklahoma	}	
	}	
County of Tulsa	}	ss

AFFIDAVIT

Rochelle Martin, being first duly sworn on oath states:

1. Today, I read a transcript of court proceedings relating to Bobby Wayne Haley, Sr. The transcript is marked "SEALED," and was filed in this case on April 15, 2005. My lawyer has informed me that the transcript was filed as Docket Number 145 in this case. This affidavit relates to testimony that is recorded in that transcript.
2. I am the person who is identified in the transcript as the "Confidential Informant."
3. The testimony I gave in that hearing was false.
4. I have never conducted any drug transactions with Bobby Haley, Sr. I have never been present with another person who conducted a drug transaction with Bobby Haley, Sr.
5. My false testimony was solicited by Jeff Henderson, who was at the time a Tulsa Police officer. Jeff Henderson and Bill Yelton (another Tulsa Police officer) coached me on what they wanted me to say to the judge. They drove me to the hearing together, and told me to testify that I had been to Bobby Haley's home and his salvage yard, and that I had been present during drug transactions at those places.

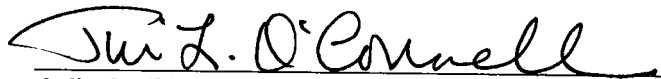
6. I did what they told me to do, although it was not truthful. My testimony was a lie, which I did because Jeff Henderson asked me to do it.
7. To the best of my memory, Jeff Henderson called me the night before the hearing and asked me to testify as a favor to him. Before that night, I had never purchased any drugs from Bobby Haley, Sr., nor had I ever witnessed Bobby Haley, Sr., selling drugs.
8. I never told Jeff Henderson that I bought drugs from Bobby Haley, Sr., or that I witnessed Bobby Haley, Sr., selling drugs. I falsely testified that I told Jeff Henderson those things, because he and Officer Yelton told me to say that.
9. I have never conducted any controlled drug purchases for Jeff Henderson or any other Tulsa Police officer.

FURTHER AFFIANT SAITH NOT.



Rochelle Martin

Witnessed:



Julia L. O'Connell
Attorney for Rochelle Martin

Subscribed and sworn to before me this 6th day of May, 2010.



Notary Public

My commission expires: 7/20/2013