

**Motion to Vacate, Set Aside, or Correct a Sentence
By a Person in Federal Custody**

(Motion Under 28 U.S.C. § 2255)

Instructions

1. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or the sentence. This form is your motion for relief.
2. You must file the form in the United States district court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file the motion in the federal court that entered that judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit any legal arguments, you must submit them in a separate memorandum. Be aware that any such memorandum may be subject to page limits set forth in the local rules of the court where you file this motion.
6. If you cannot pay for the costs of this motion (such as costs for an attorney or transcripts), you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you.
7. In this motion, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different judge or division (either in the same district or in a different district), you must file a separate motion.
8. When you have completed the form, send the original and 2 copies to the Clerk of the United States District Court at this address:

**Clerk, United States District Court
for the Middle District of North Carolina
324 W. Market Street, Greensboro, NC 27401-2544**

If you want a file-stamped copy of the petition, you must enclose an additional copy of the petition and ask the court to file-stamp it and return it to you.

9. **CAUTION: You must include in this motion all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.**
10. **CAPITAL CASES: If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.**

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District	Middle District of North Carolina
Name <i>(under which you were convicted)</i> : Brian David Hill		Docket or Case No.: 1:13-cr-435-1	
Place of Confinement: Supervised Release; conditional liberty by U.S. Probation Office		Prisoner No.: 29947-057 (USM number)	
UNITED STATES OF AMERICA		Movant <i>(include name under which convicted)</i> V. Brian David Hill	

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

United States District Court for the Middle District of North Carolina
Clerk's Office Address: 324 W. Market Street, Greensboro, NC 27401-2544
Court Address which convicted Brian David Hill: 251 N. Main Street, Winston-Salem, NC 27101

(b) Criminal docket or case number (if you know): 1:13-cr-435-1, Document #200, #186 Minute Entry

2. (a) Date of the judgment of conviction (if you know): 10/7/2019

(b) Date of sentencing: 9/12/2019

3. Length of sentence: Nine (9) months imprisonment. Nine (9) years supervised release is re-imposed

4. Nature of crime (all counts):

Defendant Brian David Hill was charged with violating a condition of Supervised Release by being charged with violating Virginia State Code § 18.2-387. Indecent exposure. Documents #156, #157, and #158. The charge by the U.S. Probation Office had come forth whenever the charge(s) were pending and had not been in a disposition at the time. The charge was filed in the Martinsville General District Court on September 21, 2018. Probation Violation charge was filed November 13, 2018. Trial was held on December 21, 2018 in not a Court of Record. Found Guilty in General District Court. Timely appealed by Trial De Novo to the Circuit Court of Martinsville on December 26, 2018. More information will be provided in Brief / memorandum of law.

5. (a) What was your plea? (Check one)

(1) Not guilty (2) Guilty (3) Nolo contendere (no contest)

6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

Did not plead guilty at all to only one count charge of Violation of Supervised Release.

6. If you went to trial, what kind of trial did you have? (Check one)

Jury Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes No

8. Did you appeal from the judgment of conviction? Yes No

9. If you did appeal, answer the following:

(a) Name of court: U.S. Court of Appeals for the Fourth Circuit

(b) Docket or case number (if you know): 19-4758

(c) Result: Affirmed the judgment of the U.S. District Court

(d) Date of result (if you know): 10/16/2020

(e) Citation to the case (if you know): United States v. Hill, No. 19-4758 (4th Cir. Oct. 16, 2020)

(f) Grounds raised:

(1) The district court erred as a matter of law in conducting the revocation hearing without a jury and by making findings of guilt by preponderance of the evidence, rather than beyond a reasonable doubt.

(2) The district court erred in finding that the evidence before it was sufficient to find that Appellant violated his supervised release by violating Virginia Code § 18.2-387 because the evidence fails to show that Appellant acted intentionally to make an obscene display or exposure of his person.

(3) This Court should extend and/or modify existing law to hold that the district court abused its discretion when it denied Appellant’s motion to continue the revocation hearing until after the underlying criminal appeal was completed.

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If “Yes,” answer the following:

(1) Docket or case number (if you know): No. 20-6864

(2) Result: Petition DENIED

(3) Date of result (if you know): 2/22/2021

(4) Citation to the case (if you know): Hill v. United States, No. 20-6864 (Feb 22 2021)

(5) Grounds raised:

Whether the United States Court of Appeals for the Fourth Circuit erred in failing to find that the district court erred in sentencing Petitioner by denying Petitioner his Sixth Amendment right to trial by jury and/or by finding Petitioner guilty by a preponderance of the evidence rather than beyond a reasonable doubt or, in the alternative, whether existing law should be extended and/or modified to find the above.

Whether the United States Court of Appeals for the Fourth Circuit erred in failing to find that the district court erred in finding that the evidence before it was sufficient to find that Petitioner violated his supervised release by violating Virginia Code § 18.2-387. Whether the United States Court of Appeals for the Fourth Circuit erred in denying Petitioner’s motion to continue the revocation hearing until after the underlying criminal appeal was completed.

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes No

11. If your answer to Question 10 was “Yes,” give the following information:

(a) (1) Name of court: U.S. District Court, Middle District of North Carolina

(2) Docket or case number (if you know): 1:13-cr-435-1

(3) Date of filing (if you know): 10/15/2019

(4) Nature of the proceeding: Motion to Vacate Fraudulent Begotten Judgment or Judgments; Doc. #206

(5) Grounds raised:

Fraud on the Court, asserting the Inherent and/or Implied Powers of a Federal Court to vacate any judgment which may have been grounded upon fraud. Document #206 and all attachments.

The claims of FRAUD against Assistant U.S. Attorney Anand Prakash Ramaswamy, the named prosecutor in this Federal case, were uncontested as "Response to Motion due by 11/5/2019." No response to that motion was timely entered in the U.S. District Court. Under Local Rule 7.3 paragraphs (f) and (k), any motion which had not been responded to within the date set by that rule by any other party would conclude that the Movant's/Petitioner's contentions were undisputed. Any motions not responded to within a set time period would be ruled as an "uncontested motion" and ordinarily would be granted without further notice.

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No

(7) Result: Motion under Document #206 denied, despite being uncontested, undisputed; Doc. #268

(8) Date of result (if you know): 11/17/2020

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: U.S. District Court, Middle District of North Carolina

(2) Docket of case number (if you know): 1:13-cr-435-1

(3) Date of filing (if you know): 11/4/2021

(4) Nature of the proceeding: Motion to Grant Four Pending uncontested Motions; Doc. #264

(5) Grounds raised:

Only one ground concerns the scope of the Document #200 judgment of conviction, with asking the U.S. District Court to grant the uncontested Motion of Document #206: "MOTION entitled "Petitioner's Second Motion for Sanctions and to Vacate Judgment that was in Plaintiff's/Respondent's Favor; Motion and Brief/Memorandum of Law in support of Requesting the Honorable Court in this case Vacate Fraudulent begotten Judgment or Judgments" filed by BRIAN DAVID HILL." It asked for all uncontested motions to being granted but only one of them applies to the judgment entered in the judgment of Document #200. It is a motion simply asking that the pending uncontested motions filed in 2019 during the pendency of the first 2255 civil case, subjecting them to Local Rule 7.3, be granted since ordinarily uncontested motions are granted without further notice. See Document #264 Motion.

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No

(7) Result: Motion under Document #264 denied, despite being uncontested, undisputed; Doc. #268

(8) Date of result (if you know): 11/17/2020

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No

(2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

NVA

- 12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: The district court erred as a matter of law in conducting the revocation hearing without a jury and by making findings of guilt by preponderance of the evidence, rather than beyond a reasonable doubt.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The U.S. Supreme Court had made a decision in United States v. Haymond, 139 S. Ct. 2369 (2019) regarding Supervised Release Violators having the constitutional right to a Trial by Jury based on evidence of guilt beyond a reasonable doubt instead of being forced to have a Trial by the Bench aka Trial by Judge. The decision to conduct the hearing without a Jury Trial violates the Sixth Amendment right to a Trial by Jury. The U.S. District Court did not constitutionally comply with the decision of Haymond of the Supreme Court. They unconstitutionally and illegally held the Trial by the Bench on September 12, 2019. They did not rely on all evidence submitted to the Court pro se, in fact IGNORED IT, not taken into consideration. The Court ignored the evidence filed under Documents #152, #153, #154, #155, #163, #164, #165, #178, #181: "DECLARATION entitled "Evidence Declaration of Brian David Hill Regarding Carbon Monoxide and Letgter to Martinsville Police Chief in Opposition to Government's/Respondent's Documents #[156], #[157], #[158], #[159], and #[160]" filed by BRIAN DAVID HILL.". All of the evidence submitted to the Court prior to Trial was ignored and not included as part of the Trial Exhibits. By ineffective counsel or clerical mistake or intentional; the only Exhibits that had a receipt for the Trial was Documents #188 and #189. The other documents of evidence filed by Brian David Hill concerning the Supervised Release Violation was not listed as final Bench Trial evidence for the Revocation Trial proceedings. Ignored. So they had decided to quickly, while ignoring evidence, wrongfully convicted Brian David Hill of violating a condition of Supervised Release and revoked Probation without a Trial by Jury in violation of the Law.

(b) **Direct Appeal of Ground One:**

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

- (2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) **Post-Conviction Proceedings:**

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No Because the post-conviction Motions challenged fraud.

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

- (3) Did you receive a hearing on your motion, petition, or application? N/A

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No N\A

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No N\A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

GROUND TWO: The district court erred in finding that the evidence before it was sufficient to find that Appellant violated his supervised release by violating Virginia Code § 18.2- 387 because the evidence fails to show that Appellant acted intentionally to make an obscene display or exposure of his person.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The evidence was definitely not sufficient. part of that reason was because the Federal Prosecution failed to prove intent.

The Federal Prosecution did not let the facts and evidence develop in the Circuit Court of the City of Martinsville regarding that violation charge of Virginia Code § 18.2- 387, they prosecuted the case without all the facts and so they fell short of intent.

In summary, in order to show that Petitioner violated his supervised release by committing the offense of indecent exposure under Virginia law, the government was required to prove, among other things, that Appellant had the intent to display or expose himself in a way which has, as its dominant theme or purpose, appeal to the prurient interest in sex, without any justification, excuse, or other defense. The government failed to do so. Rather, the government's evidence, presented through its own witnesses, showed Appellant as someone who was running around naked between midnight and 2:00 a.m. and taking pictures of himself because he believed that someone was going to hurt his family if he did not do so.

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No issues were raised on Appeal after Petitioner's Motions for Sanctions.

(2) If you answer to Question (c)(1) is "Yes," state: Those motions focused on fraud on the court.

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND THREE: The District Court abused its discretion when it denied Appellant’s motion to continue the revocation hearing until after the underlying criminal appeal was completed.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

An abuse of discretion occurs when the district court demonstrates “an unreasoning and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay.” *Morris v. Slappy*, 461 U.S. 1, 11-12 (1983).

However, if the district court had not wanted to empanel a jury, it could have still protected Appellant’s constitutional rights by simply granting Appellant’s motion to continue the hearing in order to allow Appellant’s pending state court appeal to reach a final decision. Had the district court done so, it could have used the final conviction from the Virginia state court, if the appeal were unsuccessful, as a factual basis for a revocation because Appellant would have, at that point, been determined to be guilty of said underlying offense beyond a reasonable doubt by a jury of his peers.

Conversely, if said appeal were successful, then the district court could have dismissed the revocation petition. Therefore, the district court demonstrated an unreasoning and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay by insisting that the hearing proceed that day.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No Issue was brought up by Attorney, after Motions for Sanctions months prior.

(2) If you answer to Question (c)(1) is “Yes,” state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): _____

Date of the court’s decision: _____

Result (attach a copy of the court’s opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is “Yes,” did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

GROUND FOUR: Actual Innocence - Legal Innocence

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Actual Innocence aka Legal Innocence because Petitioner never plead guilty at all in State Court regarding his charge on September 21, 2018. Petitioner's constitutional rights were interfered with by the Supervised Release Revocation judgment on Document #200, rendered at Bench Trial on September 12, 2019. That interference led to Petitioner withdrawing his appeal in the Circuit Court of Martinsville, however the Judge Hon. Giles Carter Greer had entered the guilty verdict based on withdrawing appeal but did had marked out the Clerk's notation that he/she believed Petitioner had plead guilty. That was stricken from the record of the Circuit Court. There was no guilty plea and the State Trial conviction can still be overturned somehow on "Actual Innocence". A request for a "Absolute Pardon" based on Actual Innocence was filed with the Secretary of the Commonwealth of Virginia and is still pending. The appeal was timely filed regarding the conviction and is still pending before the Supreme Court of Virginia. Writ of Actual Innocence had not yet been attempted yet in the Court of Appeals of Virginia, but Petitioner asked that the right to file such be preserved after withdrawing appeal. Actual Innocence issue still preserved.

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

The Actual Innocence and Legal Innocence is complex and couldn't be argued by the Attorney because any further evidence and facts to be developed for Actual Innocence cannot be conducted through Appeals.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: Petitioner's Second Motion for Sanctions... Document #206

Name and location of the court where the motion or petition was filed:

U.S. District Court for the Middle District of North Carolina

Docket or case number (if you know): 1:13-cr-435-1

Date of the court's decision: 11/17/2020

Result (attach a copy of the court's opinion or order, if available):

Document #268 Order, Uncontested Motion under Document #206 and other uncontested motions all denied

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No Proving fraud on the Court by Prosecutor can be same as Actual Innocence.

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

U.S. Court of Appeals for the Fourth Circuit

Docket or case number (if you know): No. 20-7737

Date of the court's decision: 4/27/2021

Result (attach a copy of the court's opinion or order, if available):

JUDGMENT of USCA. In accordance with the decision of this court, the judgment of the district court is affirmed. This judgment shall take effect upon issuance of this court's mandate in accordance..Doc. #279,#280

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

Grounds which were not raised in Appeal but will be presented in this 2255 Motion are:

(Ground 5) Fraud on the Court - Was not raised on Appeal to the Revocation Final Judgment under Document #200 but was raised in Appeal separately because the Motion for Sanctions under Document #206, which was uncontested, was denied by the Judge but that Motion was filed after the conviction of the District Court in Document #200 revoking Supervised Release. The Motion was filed after timely Notice of Appeal. Was raised in a Post-judgment motion under Doc. #206, other than that this ground was not brought on direct appeal. MORE GROUNDS ARE ASSERTED IN ATTACHED PAGES. More grounds will be asserted and explained in the attached Brief / Memraondum of Law in support of this Motion

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

MOTION was TIMELY FILED since the final appeal decision by the U.S. Supreme Court was rendered on February 22, 2021. As long as this MOTION was filed prior to one year after the judgment of conviction becoming final after the final appeals including the U.S. Supreme Court, it is timely filed under the Anti-Terrorism and Effective Death Penalty Act.

Motion was timely filed so this shall not be an issue in challenging the Judgment of Document #200, Bench Trial on September 12, 2019, since the appeal was timely filed and the issues in appeal were raised in good faith by an Attorney Edward Ryan Kennedy, from West Virginia.

Therefore the excuse of "untimely filed" cannot be used in this 2255 Motion despite the first Document #125 of challenging a different criminal conviction being denied and dismissed due to the issue of "untimely" filed. Document #125 concerned the final judgment of conviction of the original criminal case, and is not the 2255 Motion over Document #200. This is the first formal 2255 Motion to be filed in regards to criminal judgment Document #200 and #186 Minute Entry of the Trial. Using the correct form.

This 2255 Motion concerns the Supervised Release Violation final judgment of conviction under Document #200. It included a term of imprisonment and additional term of Supervised Release by extending the original sentence of Supervised Release.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

Vacate the wrongful conviction entered on Document #200 and the wrongful judgment of Guilty and revoking Supervised Release on September 12, 2019 under Documents #186 (text entry/Minute Entry).

_____ or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 1/15/2021.
(month, date, year)

Executed (signed) on 1/25/2022 (date)

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.