

Superior Court Clay County

State of Indiana) 11D01-2205-F6-000346
)
)

State of Indiana
Plaintiff

vs

Herschell E Burris
Defendant

AFFIDAVIT

I, Herschell E. Burris, of Brazil, in Clay County, Indiana MAKE AN OATH AND SAY THAT:

STATEMENT OF FACTS

The judge has a personal bias and/or prejudice against Herschell E. Burris, the Defendant. This affidavit will show the reasons for the belief that such bias or prejudice exists..

#1

Judge Pell noted on 2-13-2023 after a supposed pretrial hearing that I, Herschell Burris, filed An agreement of parties/ /Guilty Plea & Sentencing Recommendation. ***I never filed anything & I had an attorney appointed by Judge Pell if anything would have been filed on my behalf **I never wanted to plea agreement. I wanted to take it to trial if I had to to prove my innocence (I never had a pretrial conference to because it was rescheduled as shown as the CCS as (02/13/2023 1:30 PM, Rescheduled). This notation was made on 5/1/2023 same as the notations for the change of plea hearing & sentencing). *Since December 2022 the Prosecutor's plea agreement had always been one year probation with 20 hours community service. When I walked in for the change of plea hearing (this hearing wasn't supposed to happen because I approached my attorney about never filing or wanting to change my plea. He said he would take care of it but never did. I also was told by the appointed attorney May 2023 before the plea

change and sentencing hearing: 1. The judge & prosecutor doesn't show up for pretrial hearings because that's the way they do things in Clay county 2. He already talked to the judge who said he would not deem the search as illegal so there was no reason to file for an evidentiary hearing 3. If this case was in any other County he would prepare for a trial but not in Clay County 4. If I didn't take the plea agreement the prosecutor would file charges for habitual driving offender.

I was coerced & intimidated into taking this plea!

THE ATTORNEY NEVER TOOK CARE OF CANCELING THE CHANGE OF PLEA HEARING)

**I was handed a plea agreement from the prosecutor.

**I didn't even finish reading except for the part that read A SENTENCE OF 545 DAYS & 20 COMMUNITY SERVICE HOURS WHICH WAS TOTALLY DIFFERENT WITH ENHANCED TIME.

I never got the chance to say anything about this plea agreement because the judge came in & started sentencing right away. I NEVER I WAS ASKED IF THIS THE AGREEMENT WAS VOLUNTARY & NEVER HAD A CHANCE TO SAY ANYTHING IN THE HEARING.. The judge dismissed the court appointed attorney's services at sentencing & ordered me to pay \$100 for the attorney even though when he appointed him AT THE FIRST HEARING as an indigent attorney, he stated it would be at the counties expense!!

***. JUDGE PELL SENTENCED ME THE 543 DAYS SUSPENDED SENTENCE & PUT ME ON FORMAL PROBATION FOR \$543 DAYS WITH THE SAME COMMUNITY CORRECTIONS PEOPLE TO TALK TO THE PROSECUTOR & PERFORMED AN ILLEGAL SEARCH ON MY HOME TO START THIS CRIMINAL CASE & PROSECUTION OF ME. THAT HE IN THE PROSECUTOR SAT ON THE BOARD FOR! Impartiality & abuse of power of sentencing & sentencing recommendation by the prosecutor.

* A court's findings are clearly erroneous if substantial credible evidence does not support it. The judge continuously relied on his own personal knowledge rather than the facts which showed his unfairness. Implicit bias/Confirmation bias/ Conformity bias & Name Bias all play the role in this case.

**ANOTHER REASON WHY I'M REQUESTING A CHANGE OF JUDGE!

The court appointed attorney NEVER said anything at the hearing about the enhanced time of the sentence & NEVER put in a withdrawal.

#2

I was picked up on the warrant on 7-14-2022 & charged with: 11D01-2205-F6-000346 - Possession of methamphetamine basic offense for any amount below 5 / F6 - Possession of paraphernalia / MC 1101-2207-CM-000530 - Driving while suspended / CM. This was obtained by presenting false & inadmissible evidence. I was never notified of other charges until the initial hearing where the judge & prosecutor decided to incorporate this driving while suspended with my other charges but NOWHERE does the CCS reflect that or that I was picked up on a warrant by this Brazil IN. City Police. The probable cause as showing in my discovery that was used for obtaining a warrant & criminal charges shows that the only thing used was a report showing inconsistencies about what led up to an illegal search- against the defendants rights- misconduct & evidence supposedly found & mishandled with no chain of custody by Deputy Adam Richmond. Using this information by the prosecutor was misconduct & only this evidence as admissible as misconduct by the judge who both sit on the Community

Corrections Board which led to abuse of power- bias & impartiality where this case should have been thrown out from start. *Judge Pell Improperly aligned himself with the Prosecution letting this case go on after the prosecutor didn't recuse herself for helping the Community Corrections who had no reason to search the defendants home give them cause to get an illegal consent to search / warrant & criminal charges filed which wasn't based on law or evidence, but on bias an/or prejudice depriving me of my basic protections. This bias demonstrated impartiality in violation of the state and federal constitutions.

#3

Judge Pell violated my due process rights by enforcing the judgment against me without giving me an opportunity to be heard. The judges Ex parte communications with my court appointed attorney during this case showed when Judge Pell & the Prosecutor NEVER showed up for any pretrial hearings, the judges always marked an appearance to the hearings on the CCS/Docket along with either making a ruling or creating orders when he wasn't there that undermined the judge's impartiality which denied my fundamental constitutional right to due process of law. Violating my due process rights showed I was sentenced by an impartial judge with an appearance of bias. Further impartiality & bias was shown by NOT issuing a statement of the court's reasons for selecting the sentence that imposed.

#4

Judge Pell noted on 2-13-2023 after a supposed pretrial hearing that I, Herschell Burris, filed An agreement of parties/ /Guilty Plea & Sentencing Recommendation. ***I never filed anything & I had an attorney appointed by Judge Pell if anything would have been filed on my behalf ***I never wanted to plea agreement. I wanted to take it to trial if I had to to prove my innocence (I never had a pretrial conference to because it was rescheduled as shown as the CCS as (02/13/2023 1:30 PM, Rescheduled). This notation was made on 5/1/2023 same as the notations for the change of plea hearing & sentencing).

*Since December 2022 the Prosecutor's plea agreement had always been one year probation with 20 hours community service. When I walked in for the change of plea hearing (that wasn't supposed to happen because I approached my attorney about never wanting to change it please he said he would take care of it. I also was told by the appointed attorney that if I didn't take the agreement the prosecutor would file charges for habitual driving offender so I was into taking this plea!

THE ATTORNEY NEVER TOOK CARE OF CANCELING THE CHANGE OF PLEA HEARING)

**I was handed a plea agreement from the prosecutor.

**I didn't even finish reading except for the part that read A SENTENCE OF 545 DAYS & 20 COMMUNITY SERVICE HOURS WHICH WAS TOTALLY DIFFERENT WITH ENHANCED TIME.

I never got the chance to say anything about this plea agreement because the judge came in & started sentencing right away. I NEVER I WAS ASKED IF THIS THE AGREEMENT WAS VOLUNTARY & NEVER HAD A CHANCE TO SAY ANYTHING IN THE HEARING.. The judge dismissed the court appointed attorney's services at sentencing & ordered me to pay \$100 for the attorney even though when he appointed him AT THE FIRST HEARING as an indigent attorney, he stated it would be at the counties expense!!

***. JUDGE PELL SENTENCED ME THE 543 DAYS SUSPENDED SENTENCE & PUT ME ON FORMAL PROBATION FOR \$543 DAYS WITH THE SAME COMMUNITY CORRECTIONS PEOPLE TO TALK TO THE PROSECUTOR & PERFORMED AN ILLEGAL SEARCH ON MY HOME TO START THIS CRIMINAL CASE & PROSECUTION OF ME. THAT HE IN THE PROSECUTOR SAT ON THE BOARD FOR! Impartiality & abuse of power of sentencing & sentencing recommendation by the prosecutor.

* A court's findings are clearly erroneous if substantial credible evidence does not support it. The judge continuously relied on his own personal knowledge rather than the facts which showed his unfairness. Implicit bias/Confirmation bias/Conformity bias & Name Bias all play the role in this case.

**ANOTHER REASON WHY I'M REQUESTING A CHANGE OF JUDGE!

The court appointed attorney NEVER said anything at the hearing about the enhanced time of the sentence & NEVER put in a withdrawal

#5

3.5 weeks after being placed on formal probation with Kelsey Stearly, my probation officer to report to & Jordan Forquer, Executive Director of Community Corrections we're having a discussion in front of me when I was ordered in for a drug urine test where Jordan Forquer was telling Kelsey Stearly the test was positive (which was UNTRUE) so he was just going to walk over to the jail because it was evident that it was going to happen anyways so he was just going to walk me over to the jail and have me charged today. I REQUESTED THE DRUG TEST BE SENT TO THE LAB AND WAS WARNED BY KELSEY THAT WHEN IT CAME BACK POSITIVE SHE WOULD HAVE NO CHOICE BUT YOU HAVE ME ARRESTED THAT'S WHEN I FILED THIS PCR & WHY I'M FILING FOR A CHANGE OF JUDGE.

****After the PCR was filed I was charged \$1,250 by probation & petition to revoke filed.. BUT NOTHING HAD BEEN DONE ABOUT THE PCR.**

06/14/2023

Petition to Revoke Filed

Petition to Revoke Probation

Filed By:Clay County Probation Department

File Stamp:06/13/2023

06/14/2023

Probable Cause Affidavit Filed

Probable Cause Affidavit

Filed By:Clay County Probation Department

File Stamp:06/13/2023

*****I've been trying to do the right thing in this case that was filed against me but a continuation of my rights being violated due to bias- prejudice- judicial- prosecutorial & official misconduct (Official misconduct in Indiana is a criminal offense committed by a public servant or government official who abuses their position or authority for personal gain or to harm another person) is evident.**

*There should never have been an illegal search

*The prosecutor should have never prosecuted this case due to: conflict of interest- providing Community Corrections insight on how to gain access to Herschell's home for a warrantless/coerced involuntary/illegal search that gathered inadmissible evidence due & violated the constitutional rights and Herschell according to the US & STATE OF INDIANA 4th Amendment protections..

Under penalty of perjury, I hereby declare and affirm that the above stated facts, to the best of my knowledge, are true and correct.

Dated this. 14th day of June, 2023

Herschell Barrie 6-14-23
Signature Dated

Herschell Barrie 6-14-23
Printed Name Dated

Efiled:

6-14-2023 to the Clay County Superior Court clerk