

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES,
Plaintiff,

v.

BENJI CARR,
Defendant.

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:
:
:
:
:

CRIMINAL CASE NO.:

3:14-cr-0100 (VLB)

September 28, 2015

MEMORANDUM OF DECISION

In his motion dated September 9, 2015, Defendant Benjii Carr, pro se and incarcerated, moves for free transcripts, arguing that he needs his plea and sentencing transcripts to assert claims for ineffective assistance of counsel. As judgment was entered several months prior to the filing of this motion and no appeal was filed, the ineffective assistance claims may only be asserted in a 28 U.S.C. § 2255 motion. However, Carr has no right to transcripts until, *inter alia*, he files his Section 2255 motion and, based on that motion, the Court determines that his claims are not frivolous and that the requested transcripts are necessary to decide those claims. *United States v. Horvath*, 157 F.3d 131, 133 (2d Cir. 1998) (“We hold that a motion seeking transcripts pursuant to [28 U.S.C.] § 753(f) in relation to a contemplated § 2255 motion is not ripe until the § 2255 motion has been filed.”); see *United States v. MacCollom*, 426 U.S. 317, 320–21 (1976) (plurality opinion). Because Carr has not filed a Section 2255 motion, his motion for transcripts is DENIED.

Ordinarily, the Court would liberally construe a pro se filing to raise the strongest arguments fairly suggested. See *Hill v. Curcione*, 657 F.3d 116, 122 (2d Cir. 2011). The strongest argument here would be that the motion for transcripts constitutes a Section 2255 motion and that Carr is entitled to transcripts because he believes that the claims therein are not frivolous.¹ This construction, however, “may result in a disastrous deprivation of a future opportunity to have a well-justified grievance adjudicated.” *Adams v. United States*, 155 F.3d 582, 583 (2d Cir. 1998). This is because “AEDPA places stringent limits on a prisoner’s ability to bring a second or successive application for a writ of habeas corpus Second or successive applications may be heard only if they involve newly discovered evidence of a potentially dispositive nature, or a new and retroactive rule of constitutional law.” *Id.* What this means is that Carr should assert all of his now known claims for relief in a single § 2255 motion because he may otherwise be barred from bringing these claims in the future. See 28 U.S.C. §§ 2244, 2255(h). To avoid having any Section § 2255 motion summarily dismissed, Carr should support his claims with all allegations and evidence now available to him. See Rule 4(b) of the Rules Governing Section 2255 Motions.

¹ Although the Court considers this to be Carr’s strongest argument for obtaining transcripts, it does not determine whether such an argument would, in fact, entitle him to transcripts.

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
Plaintiff/Petitioner)	
v.)	Civil Action No.
_____)	
Defendant/Respondent)	

APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS (Short Form)

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

In support of this application, I answer the following questions under penalty of perjury:

1. *If incarcerated.* I am being held at: _____ .
If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. *If not incarcerated.* If I am employed, my employer's name and address are:

My gross pay or wages are: \$ _____ , and my take-home pay or wages are: \$ _____ per
(specify pay period) _____ .

3. *Other Income.* In the past 12 months, I have received income from the following sources (check all that apply):

- | | | |
|--|------------------------------|-----------------------------|
| (a) Business, profession, or other self-employment | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (b) Rent payments, interest, or dividends | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (d) Disability, or worker's compensation payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (e) Gifts, or inheritances | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (f) Any other sources | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

4. Amount of money that I have in cash or in a checking or savings account: \$ _____ .

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name (*describe the property and its approximate value*):

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses (*describe and provide the amount of the monthly expense*):

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:

8. Any debts or financial obligations (*describe the amounts owed and to whom they are payable*):

Declaration: I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date: _____

Applicant's signature

Printed name

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

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

_____, Petitioner,
Full Name and Prisoner Number

Case No. _____
(To be supplied by the Court)

Complete Prison Address (Place of Confinement)

v.

United States of America _____

CONVICTION UNDER ATTACK

(If petitioner is attacking a sentence based on a federal conviction to be served in the future, the petition should be filed in the federal court which entered the judgment.)

1) Name and location of the court which entered the judgment of conviction under attack: _____

2) Date judgment of conviction was entered _____

3) Case number _____

4) Length and term of sentence _____

5) Are you presently serving a sentence imposed for a conviction other than the conviction under attack in this motion? Yes ___ No ___

6) Name of judge who imposed sentence under attack in this petition _____

7) Nature of the offense involved (all counts) _____

8) What was your plea? (check one)
Not guilty ___ Guilty ___ Nolo Contendere ___

9) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

10) If you entered a plea of guilty pursuant to a plea bargain, state the terms and conditions of the agreement _____

11) Kind of trial (check one) Jury ___ Judge only ___

12) Did you testify at trial? Yes ___ No ___

DIRECT APPEAL

13) Did you appeal from the judgment of conviction? Yes ___ No ___

14) If you did appeal, answer the following questions:
(a) Give the name and location of the court where the appeal was filed, the result, the case number and date of the court's decision (or attach a copy of the court's opinion or order): _____

(b) State the issues raised: _____

15) If you did not appeal, explain briefly why you did not: _____

POST-CONVICTION PROCEEDINGS

16) Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court? Yes ___ No ___

17) If your answer to 16 was "Yes," give the following information:

a) FIRST petition, application or motion.

1. Name of court _____

2. Nature of proceeding _____

3. Claims raised _____

4. Did you receive an evidentiary hearing on your petition, application or motion? Yes ___ No ___

5. Result _____

6. Date of result _____

7. Did you appeal the result to the federal appellate court having jurisdiction? Yes ___ No ___ If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order)

8. If you did not appeal, briefly explain why you did not _____

b) As to any SECOND petition, application or motion, give the following information:

1. Name of court _____

2. Nature of proceeding _____

3. Claims raised _____

4. Did you receive an evidentiary hearing on your petition, application or motion? Yes ___ No ___

5. Result _____

6. Date of result _____

7. Did you appeal the result to the federal appellate court having jurisdiction? Yes ___ No ___ If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order) _____

8. If you did not appeal, briefly explain why you did not _____

c) As to any THIRD petition, application or motion, give the following information:

1. Name of court _____

2. Nature of proceeding _____

3. Claims raised _____

4. Did you receive an evidentiary hearing on your petition, application or motion? Yes ___ No ___

5. Result _____

6. Date of result _____

7. Did you appeal the result to the federal appellate court having jurisdiction? Yes ___ No ___ If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order) _____

8. If you did not appeal, briefly explain why you did not _____

CLAIMS

18) State concisely every claim that you are being held unlawfully. Summarize briefly the facts supporting each claim. If necessary, you may attach extra pages stating additional claims and supporting facts. You should raise in this petition all claims for relief which relate to the conviction under attack.

Claim One: _____

(1) Supporting Facts: (Without citing legal authorities or argument state briefly the facts in support of this claim)

Claim Two: _____

(1) Supporting Facts: (Without citing legal authorities or argument state briefly the facts in support of this claim)

Claim Three: _____

(1) Supporting Facts: (Without citing legal authorities or argument state briefly the facts in support of this claim)

19) If any of the claims listed in 16 were not previously presented, state briefly what claims were not so presented, and give your reasons for not presenting them: _____

20) Do you have any petition, application, motion or appeal now pending in any court, either state or federal, regarding the conviction under attack?
Yes ___ No ___. If "Yes," state the name of the court, case file number (if known), and the nature of the proceeding: _____

SUCCESSIVE PETITIONS

21) If you have filed a prior petition and are raising in this petition a claim which you did not present in a prior petition or motion, have you obtained an order from the United States Court of Appeals for the Second Circuit authorizing this district court to consider the petition. Yes ___ No ___. Please attach a copy of the order.

LEGAL REPRESENTATION

22) Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea _____

(c) At trial _____

(d) At sentencing _____

(e) On appeal _____

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

OTHER CONVICTIONS

23) Were you sentenced on more than one count of an indictment or on more than one indictment, in the same court and at the same time? Yes ___ No ___

24) Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes ___ No ___

(a) If so, give name and location of court which imposed sentence to be served in the future _____

(b) and give date and length of service to be served in the future _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes ___ No ___

Wherefore, petitioner prays that the Court grant him such relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

Petitioner's Original Signature

Petitioner's Inmate Number

Attorney's Full Address and
Telephone Number

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the petitioner in this action, that he/she has read this petition and that the information contained in the petition is true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed at _____ on _____.
(Location) (Date)

Petitioner's Original Signature