UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

United States of America Plaintiff v. Thomas A. Shay Defendant	Criminal No. 92-10369-EFH

MOTION PRO SE FOR WRIT OF HABEAS CORPUS AND MOTION TO SET ASIDE 1998 CONVICTION ACHIEVED THROUGH INVOLUNTARY GUILTY PLEA

1. I, Thomas Arthur Shay, request the court to set aside my guilty plea, and conviction and sentence in this court, before the Honorable Judge Edward Harrington on October 29, 1998 for the reasons stated below.

2. My guilty plea was involuntary and coerced.

3. I advised my attorneys, Kathy B. Weinman and William H. Kettlewell, that I was innocent of all the charges in the indictment and that my co-defendant, Alfred W. Trenkler, was innocent as well, and that both of our 1993 convictions were wrongful convictions.

4. My attorneys provided me ineffective counsel and coerced me into pleading guilty by:

a. Not seeking and obtaining a psychological determination that I was competent to make such a plea. I had informed my attorneys that I was hearing voices and needed mental health care.

b. Advising me that if I sought a retrial in my case that I could be sentenced to a longer term following the 1993 conviction than the 188 month original sentence, up to life in prison. I was even afraid of a death sentence. This advice violated the Constitutional Prohibition against such an increased sentence upon a retrial as determined by the U.S. Supreme Court in North Carolina v. Pierce 395 U.S. 711 (1969).

c. Advising me that instead of the high risk of an increased sentence if I went to trial, a guilty plea would produce a lesser sentence, which would lead to freedom in only a few more years.

d. Giving me money for my canteen fund at the Plymouth County House of Correction so as to cause me to be beholden to their recommendations.

e. Advising me that by pleading guilty, I would in no way implicate Alfred Trenkler, who is innocent. I subsequently learned that my written plea agreement included, against my wishes and request, a statement to the contrary.

f. Advising me that the law firm of Dwyer & Collura would not present a strong defense for me in a second trial as it had done with Attorney, now Judge, Nancy Gertner, because it would cost too much money, and the firm would not be able to pay Dr. Robert T. Phillips to testify about my lying disorder, which was the basis for my successful appeal of the 1993 conviction.

g. Failing to advise me of my rights, or lack of rights, to appeal the 1998 conviction through my guilty plea.

5. I am currently incarcerated for a violation of the period of probation from the 1998 sentence, which violation would not have occurred if the involuntary plea had not been coerced.

6. As I am indigent, I request appointment of counsel to represent me in this Motion and all other matters pertaining to my wrongful conviction.

10 September 2007

Thomas A. Shay #19193-038, *pro se*
Donald Wyatt Detention Center, Pod D
950 High Street
Central Falls, RI 02863

Linda Rugo - notary
exp 9/27/08 9/10/07