

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

November 4, 2008

Thomas W. Spindle
04439-000B Unit R
FCI, Fairton, P.O. Box 420
Fairton, NJ 08320

RE: Thomas Spindle
No: 03-5375

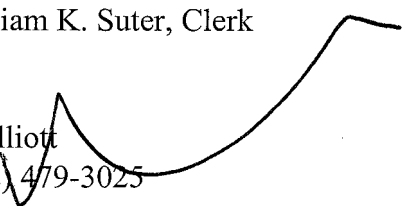
Dear Mr. Spindle:

The notice of appeal received November 3, 2008 is herewith returned.

You may seek review of a decision only by filing a timely petition for a writ of certiorari. The filing of a notice of appeal is not a prerequisite for filing a petition for writ of certiorari and does not preserve the time for filing a petition for writ of certiorari. You must submit a petition for writ of certiorari within the 90 day time limit pursuant to Rule 13. A copy of the Rules of this Court and a sample petition are enclosed.

Sincerely,
William K. Suter, Clerk
By:

S. Elliott
(202) 479-3025



Enclosures

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

November 26, 2008


Thomas W. Spindle
04439-000B Unit R
FCI, Fairton, P.O. Box 420
Fairton, NJ 08320

RE: Thomas Spindle
Application for Stay

Dear Mr. Spindle:

For the reasons stated in the enclosed letter dated November 5, 2008, your application for stay is again returned.

Please note that you may seek review of a decision of a lower court only by filing a timely petition for a writ of certiorari. The papers you submitted are not construed to be a petition for a writ of certiorari. Should you choose to file a petition for a writ of certiorari, you must submit the petition within the 90 day time limit allowed under Rule 13 of the Rules of this Court.

Sincerely,
William K. Suter, Clerk
By: 
Danny Bickell
(202) 479-3024

Enclosures

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

November 5, 2008

Thomas W. Spindle
04439-000B Unit R
FCI, Fairton, P.O. Box 420
Fairton, NJ 08320

RE: Thomas Spindle
Application for Stay

Dear Mr. Spindle:

Your application for Stay received November 3, 2008 is herewith returned for the following reason(s):

You failed to comply with Rule 23.3 of the Rules of this Court which requires that you first seek the same relief in the appropriate lower courts and attach copies of the orders from the lower courts to your application filed in this Court.

In accordance with Rule 23.3 of this Court's Rules you must set forth with particularity why relief is not available from any other court and why a stay is justified.

Sincerely,
William K. Suter, Clerk
By:

Danny Bickell
(202) 479-3024

Enclosures

IN THE SUPREME COURT OF THE UNITED STATES

In Re

(REVISED)

THOMAS W. SPINDLE,
PETITIONER.

APPLICATION FOR STAY
TO INDIVIDUAL JUSTICE

CASE NUMBER _____

(THIRD CIRCUIT: 08-2497)

(D.C. CIVIL CASE NO: 07-CV-4491 RBK)

TO THE HONORABLE SAMUEL ALITO, JUSTICE
APPOINTED OVER THE THIRD CIRCUIT COURT
OF APPEALS AND ALL DISTRICT COURTS THEREIN:

Comes now Thomas W. Spindle, pro se litigant
of the above-titled Application for Stay originally
submitted under Supreme Court Rules 22 and 23
in tandem with 28 U.S.C. § 1254 (2) and 28 U.S.C. § 2101 (f).
Petitioner's request for stay and grant to review
the lower courts' denial of § 2241 relief [see
attached opinions and judgments] is based upon
his Oath of Actual Innocence and no other
court has the power to remove this injustice.

JUSTIFICATION OF STAY

PETITIONER found the PARTIALLY-CLAD body of A FOURTEEN-YEAR-OLD MURDER-VICTIM, DEREK Y. KUSUMOTO, ON 6 FEBRUARY 1982 while off-duty AND PASSING through the 'Old Warehouse District' located on Schofield BARRACKS, Hawaii. U.S. Army CRIMINAL INVESTIGATION'S DETACHMENT / COMMAND (CID/CIC) Agents had successfully lifted A SINGLE SET OF READABLE fingerprints from the victim's CORPSE that SAME EVENING two (2) Adult-sized human BITEMARKS were detected by the COUNTY MEDICAL EXAMINER. Numerous fingerprints were also found upon the HANDRAILS, CONCRETE WALLS AND COMPARTMENT WALLS where PETITIONER'S OWN fingerprints were NEVER found. CID Agents failed to disclose fingerprints from the body AND military prosecutors misled COURT-MEMBERS to believe ALL fingerprints were "too SMEARED OR smudged". The two matching bitemarks were DEEP AND SALIVA tests indicated O-Type blood. See www.iippi.org/inmates/armedforces/thomasspindle.html

Petitioner's blood-type is A-positive.

His U.S. Army general court-martial was based upon "reconstructed eye-witness testimony" from an unreliable "witness", Private Joseph Courtney, Junior, whom clearly had self-serving motives to lie. Courtney's best friend was found to have placed a "coincidental" palmprint upon the wall above the victim's body. Two CID Agents had also claimed petitioner made self-incriminatory statements after he first raised complaints over his abusive "interview."

≡ THE ISSUES OF LAW ≡

Civil Courts have habeas corpus jurisdiction where military courts failed to consider questions concerning constitutional guarantees. Easley v. Hunter, 209 F.2d 483 (1953 CA 10 Kan.). The federal writ of habeas overrides all [such] considerations, essential as they are to the rule of law, when a petitioner raises meritorious claim in a proper manner. McCleskey v. Zant, 499 U.S. 467, 492-93 n. 31, 111 S.Ct. 1454, 113 L.Ed.2d (1991). Potentially exculpatory evidence cannot be withheld or casually dismissed without mockery or egregious oversight

by the lower courts. U.S. v. Agurs, 475 U.S. 97, 107-111 (1976), Giglio v. U.S., 405 U.S. 150, 154 (1972), McCleskey, 499 at 495, Stone v. Powell, 428 U.S. 465, 491-92 n.31 (1976), Schlup v. Delo, 513 U.S. 298 (1995).

This honorable Court holds that... RELEVANT MATERIAL EVIDENCE... CANNOT be UNFAIRLY AND LAWFULLY EXCLUDED. Brady v. Maryland, 373 U.S. 39 (1987), Arizona v. Youngblood, 488 U.S. 39 (1987), House v. Bell, 115 L.Ed. 2d 1, 19, 21 (2006). PETITIONER had EVERY right to DISCOVERY AND, UNDER the NEW INNOCENCE PROTECTION Act of 2004, 18 U.S.C.A. § 228(a), PETITIONER must be ENTITLED to PURSUE DNA testing AS WELL AS FBI EXAMINATION of the REAL KILLER'S fingerprints without further EXCUSE OR delay. DEREK Y. KUSUMOTO deserves that, too.

ABUSE OF THE WRIT?

The most outstanding ERROR of blockage WAS UNFAIRLY CAUSED by the PRISONERS Litigation AND Reform Act of 1995, specifically 28 U.S.C.A. § 1915(e)(2) AND Third Circuit L.A.R. 27.4 plus I.O.P. 10.6,

which had resulted in petitioner's most recent dismissal. Section 2241s ARE NOT subject to the PLRA. WALKER V. O'BRIEN, (2000 CAM WIS) 216 F.3d 626, cert. den., motion gr. (2000) 513 U.S. 1029, 148 L.Ed 2d 518, 121 S.Ct. 606. The PLRA was intended to curtail 'frivolous' § 1983 law suits AND federal tort claims... NOT to BAR WRONGFULLY CONVICTED [military] INNOCENTS with NO § 2255 applicability AS REQUIRED UNDER 28 U.S.C.A. § 2244 (a). See ACKERMAN V. NOVAK, 10th CIR. N° 06-1464, 3/15/07 (holding that 2244 (a) does not apply).

IN CLOSING VIEW

The true test of actual innocence here is whether petitioner could have been falsely accused AND "CIRCUMSTANTIALLY" INCARCERATED for the rest of his life IF he did not honestly discover AND REPORT the victim's body... NOT whether A **MOCKERY OF JUSTICE** CAN BE IGNORED. That is why this Application must go forth.

Respectfully Submitted,
1st Thomas W. Spindle

THOMAS W. SPINDLE
04439-0007B-UNIT-1B
FCI FAIRTON, P.O. BOX 420
FAIRTON, N.J. 08320

SENT 11 NOV 08
RECEIVED 26 NOV 08
RETURNED 28 NOV 08