United States District Court
Middle District of Florida
Orlando Division

Frank Louis Amodeo
Movant,

Versus

Case No. 6:12-CV-641-ORL-28GJK

United States of America
Respondent,

_____/

Motion to Expand the §2255 Record to Include
The Amended Brief Filed on Direct Appeal

My motion to vacate includes various claims and several grounds, which of necessity can only be proven by reference to the appellate briefs submitted in two of the direct appeals. Accordingly, I am moving to expand the record under Rule 7 of the Rules Governing §2255 proceedings, by entry of a complete copy of the brief and appendix accepted by the court of appeals in appeals number _____.

Wherefore, I respectfully request the record be expanded to include the attached document, and such other relief as is appropriate or fair.

Submitted this 10th day of August 2012 by:

_____

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P.O. Box: 1031

A copy of this motion with attachments has been mailed to Roberta Bodnar, attorney for the United States of America, contemporaneously with this filing of the original.

_____

Frank L. Amodeo

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Frank Louis Amodeo,
Movant,

Case # 6:12-cv-00641-JA-GDK

versus

United States of America,
Respondent.
_____/

MEMORANDUM IN SUPPORT OF A MOTION FOR SUMMARY JUDGMENT ON CLAIM 1.1 OF THE MOTION TO VACATE, SET ASIDE, OR CORRECT THE SENTENCE UNDER 28 U.S.C. §2255

A §2255 movant is entitled to summary judgment, when the motion's allegations have a sufficient basis in fact to warrant plenary presentation of the evidence and prompt application of the law to the proved facts. See. **Blackledge v. Allison,** 431 U.S. 63, 80 (1977). The government has admitted Mr. Slaughter had a conflict of interest. Kenton Sands acknowledged Mr. Slaughter's conflict during sentencing. And, also but not only, I am introducing the evidence the court of appeals; thought should be presented to demonstrate the conflict. (Footnote 3 infra). Consequently, this claim is ready for summary disposition either on the original pleadings or by summary judgment on the expanded record. See **Rules Governing §2255 Procedures R.12; Fed. R. Civ. P. 56; Fed. R. Civ. P. 12.** The parties and the court have already recognized Mr. Slaughter's conflict and vacatur is a direct consequence of that conflict.

In August 2006, Harrison Slaughter, Esq., attended a townhall-like meeting that now serves as part of, or in one instance all of, the factual basis for my conviction.

From the commencement of the criminal proceedings my attorney, Harrison Slaughter, had an unwaivable conflict of interest. That is Mr. Slaughter witnessed the conduct, which served as the sole factual basis for one of the counts of conviction and was material to the other four.[1] At sentencing the

1. On August 31, 2006 I conducted, at the request of Chad Walters, Esq., one of my staff attorneys, a townhall meeting to explain the Presidion Story and the tax-deferment stragegy to the newcomers to Mirabilis Ventures, Inc and to Mirabilis' external shareholders.

government admitted existence of the conflict. More accurately, on the eve of sentencing the government raised the conflict in an attempt to disqualify Mr. Slaughter. Moreover, while affirming the conviction, the Eleventh Circuit Court of Appeals expressed concern over Mr. Slaughter's presence at the event, which forms the basis for criminal charges going sofar to suggest that if proof of such attendance is introduced there are serious concerns about the criminal judgment's validity.[2] Consistent with the appellate court's suggestion, in the contemporaneously filed motion to expand the record, I will introduce the videotape, the official transcript of the meeting, and the sign-in sheet.[3] These items will establish Mr. Slaughter's presence at the so-called Mock Deposition, i.e., the August 2006, townhall-like meeting.

A criminal defendant is entitled to unconflicted representation at each critical stage of the prosecution. Because an attorney who witnesses an accused's purported criminal conduct becomes a material witness. He may not represent the accused in a criminal proceeding because as a witness he has an unwaivable conflict of interest.

The Constitution guarantees defendants conflict-free counsel during every critical stage of the criminal prosecution. **Wood v. Georgia**, 450 U.S. 261 (1981). Ironically, this principle was reversed in my case, that is, I only had conflicted counsel at each stage of the criminal proceeding.[4]

A conflict occurs when an attorney's duty of loyalty is compromised or his duty of zealous advocacy is affected. **United States v. Alvarez**, 580 F.2d 1251, 1254 (5th Cir. 1978). The law recognizes numerous circumstances that demonstrate an actual rather, than a potential conflict of interest:

> 1. When an attorney is a witness to the criminal conduct. **United States v. Locasio**, 6 F.3d 924, 933-34 (2nd Cir. 1993;

2. See opinion of the Eleventh Circuit in case no. 09-12937

3. I will also call witnesses to testify including Kelly Tomeo, Esq.; Richard Berman, Esq.,; Edith Curry, Esq., Hans Beyer, Esq., Sharmille Khanokar, CPA, Lourie Holtz, CPA, Mark Middleton, George Stuart, etc.... Fiftytwo witness, the transcript, the sign-in sheet, the recording, and if my memory serves me correct, during the presentence discussion, Mr. Slaughter admitted he attended.

4. That is, until this court deprived me of counsel altogether during the "post" sentencing motions to conceal the guilty plea.

2. When an attorney may himself be subject to the same charges or even just a suspect in the same investigation. See **United States v. Williams**, 372 F.3d 96 (2nd Cir. 1992);

3. When the attorney's actions violate an ethical duty. **Nix v. Whitehead**, 475 U.S. 157, 165 (1986); and

4. When an attorney's personal interests influence the choice of tactics or strategy selected. Cf. **Hill v. Lockhart**, 474 U.S. 52 (1985).

Although all of these circumstances arose during my prosecution, this memorandum addresses only one of those claims, i.e., claim 1.1. That claim is particularly suitable to summary judgment because of the government's admissions at sentencing, the Eleventh Circuit's footnote, and this court's prior holdings. See. **Allen v. United States**, 2004 U.S. Dist. 29911 (M.D. Fla.).

In **Allen**, this court concluded that even a brief conversation between Mr. Allen's alleged co-conspirator and Mr. Slaughter created an unwaivable conflict of interest. There, like here, the government moved this court to disqualify Mr. Slaughter, but there unlike here, Mr. Allen sought to waive the conflict, thereby keeping Mr. Slaughter as counsel. This court refused to allow the waiver, stating this type of conflict may not be waived, and thus Mr. Slaughter is disqualified from representing the defendant. Merely applying that precedent - or rationale - to the facts already within this motion's record requires vacatur. Based on this court's own precedent, not to mention the circuit's precedent, any alternative or counter allegations are irrelevant; Mr. Slaughter was conflicted throughout the criminal presecution, thus the Sixth Amendment has been violated.[5] Nothing can controvert either premise, relief is required.

In order to meet the minimum requirement of Rule 56, let me articulate what the court should already know from or be able to infer, from the established

5. It is noteworthy that Mr. Slaughter was conflicted during the preindictment plea negotiations. And I have recently argued elsewhere this to is likely a Sixth Amendment violation; because the recent Supreme Court holding in **Lafler v. Cooper**, ___ U.S. ___ (March 21, 2012) and **Frye v. Missouri**, ___ U.S. ___(March 21, 2012) seem to extend the Sixth Amendment right to counsel backward in the process, to before arrest or indictment.

record. Only on the eve of sentencing, was I informed of the conflict, and I expressly refused to waive the conflict. Moreover, Kenton Sands, Mr. Slaughter's limited-purpose co-counsel at sentencing, even at the court's request, refused to discuss Mr. Slaughter's conflict with me, because Mr. Sands believed that his awareness of the Slaughter-conflict generated a separate conflict for himself. An event that is only important for this motion, because Mr. Sands's statements, (1) demonstrate the conflict existed, (2) that the government admitted the conflicted, and (3) the conflict's existence is already part of the record. [6] Thereby, making the issue ripe for summary judgment.

- An actual conflict of interest that permeates the proceedings requires reversal without proof of prejudice. **United States v. Cronic**, 466 U.S. 648, 659-60 (1984)

- Mr. Slaughter had a continuing conflict of interest from the commencement of the grand jury investigation through sentencing.

- Therefore, the representation does not meet the requirements of the Sixth Amendment. See **Freund v. Butterworth**, 165 F.3d 789 (11th Cir. 1999); (en banc) see also **Rubin v. Gee**, 292 F.3d 396, 405 (4th Cir. 2002)

The syllogism is self contained and not subject to challenge as the law is established and the government has admitted the facts.

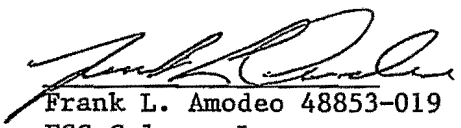
In sum, since the conflict arises directly from the offense conduct, and because the Supreme Court, the Eleventh Circuit and this court all recognize this type of circumstance as a conflict and an unwaivable conflict at that: there remains no valid legal challenge either to the conflict's existence or to its effect. Thus, this court is left without any discretion about the

6. Just so the court does not get to hopeful that the claim may be subject to the defense of default or law of the case. The Eleventh Circuit stated the record was incomplete to allow direct review; and that defect for any of those reasons occured either because the record did not exist or Mr. Dole failed to get it transmitted. Therefore, presenting the claim now is appropriate. (6')

6'. I note here, as I have in a number of other cases, it is disturbing that I find myself more in a contest with the "neutral" judges than the government.

appropriate course of action to take. The summary judgment motion must be granted, and the criminal judgment vacated. [7]

Respectfully submitted this 28th day of July 2012 by:



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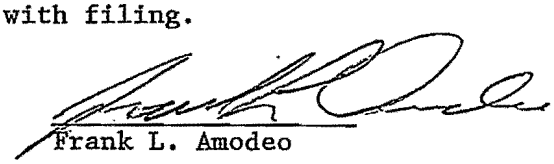
7. A district court abuses its discretion if it applies an incorrect legal standard, follows improper procedures in making the determination, or making findings of fact that are clearly erroneous. **Unites States v. Jordan**, 582 F.3d 1239, 1249 (11th Cir. 2009); **Arce v. Garcia**, 434 F.3d 1254, 1260 (11th Cir. 2006); **Klay v. United Healthgrey Inc.** 376 F.3d 1092, 1096 (11th Cir. 2004)

CERTIFICATE OF SERVICE

A copy of this memorandum has been served upon the United States's attorney of record by first class mail contemporaneously with filing.



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