

AO 243 (Rev. 09/17)

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

United States District Court	District	Eastern District of Kentucky - Lexington
Name (under which you were convicted): Douglas William Vance		Docket or Case No.: 5:20-CR-00063-DCR-1
Place of Confinement: FCI Beckley Satellite Camp		Prisoner No.: 23266-032
UNITED STATES OF AMERICA		Movant (include name under which convicted)
V.		Douglas William Vance

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:
 United States District Court
 Eastern District of Kentucky
 Central Division Lexington
 Eastern District of Kentucky
 FILED

FEB 19 2026

(b) Criminal docket or case number (if you know): 5:20-CR-00063-DCR-1

AT LEXINGTON
 Robert R. Carr
 CLERK U.S. DISTRICT COURT

2. (a) Date of the judgment of conviction (if you know): 8/24/2023

(b) Date of sentencing: 8/21/2023

3. Length of sentence: 174 months

4. Nature of crime (all counts):

- Ct 1: Conspiracy to Commit Wire Fraud 18 U.S.C. § 1349
- Cts 2,3,4 and 5: Wire Fraud 18 U.S.C. § 1343
- Ct 7: Conspiracy to Commit Money Laundering 18 U.S.C. § 1956(h)

5. (a) What was your plea? (Check one)

- (1) Not guilty (2) Guilty (3) Nolo contendere (no contest)

6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one) Jury Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes No

AO 243 (Rev. 09/17)

8. Did you appeal from the judgment of conviction? Yes No

9. If you did appeal, answer the following:

(a) Name of court: United States Court of Appeals for the Sixth Circuit

(b) Docket or case number (if you know): 23-5766 and 23-5773

(c) Result: Affirmed

(d) Date of result (if you know): 11/22/2024

(e) Citation to the case (if you know): _____

(f) Grounds raised:

Right to a fair trial

Conviction

Sentence

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If "Yes," answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

(5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

AO 243 (Rev. 09/17)

- (4) Nature of the proceeding: _____
- (5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?
 Yes No

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?
 Yes No

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No

(2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

AO 243 (Rev. 09/17)

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Ineffective Assistance of Trial Counsel (Sixth Amendment)

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

- Trial counsel failed to authenticate and admit the November 14, 2018 letter written by Molly McKinnon stating Petitioner lacked knowledge of the alleged conduct.
- Trial Counsel failed to introduce the December 19, 2018 FBI transcript corroborating the existence of the letter prior to indictment.
- Trial Counsel failed to object to the false exculpatory statement instruction.
- Trial Counsel failed to properly use Mendie Hogan's testimony that Petitioner was not informed of the wires underlying Counts 2-4.
- Trial Counsel failed to challenge leadership, loss amount, obstruction, and hardship enhancements.

See attached Memorandum of Law for legal arguments and supporting authority; see Petitioner's Motion to Expand the Record and Exhibits A-E for supplemental materials relevant to Grounds One.

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?
 Yes No

(2) If you did not raise this issue in your direct appeal, explain why:
 Ineffective Assistance of Counsel is generally not raised on Direct Appeal.

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?
 Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

- (3) Did you receive a hearing on your motion, petition, or application?

Yes No

AO 243 (Rev. 09/17)

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO: Due Process Violations (Fifth Amendment). Petitioner's conviction and sentence were obtained through materially misleading or incomplete information

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

A. Inconsistent Loss Presentation - Sentencing argument referenced hardship figures exceeding those reflected in the PSR. This discrepancy materially affected the advisory range.

B. Sworn Declaration of Joan Faybik - Joan Faybik has sworn that: • She was a voluntary investor; • She did not rely on fraudulent representations; • She does not consider herself defrauded. This materially contradicts the Government's victim narrative.

C. False Exculpatory Instruction Combined with Omitted Corroboration - The combined effect of: • Failure to authenticate the letter; • Failure to introduce corroboration; • Government argument suggesting fabrication; • The false exculpatory instruction; produced a distorted evidentiary framework. Due process prohibits convictions resting on materially misleading inferences amplified by evidentiary omissions.

See attached Memorandum of Law for legal arguments and supporting authority; see Petitioner's Motion to Expand the Record and Exhibits A-E for supplemental materials relevant to Grounds Two.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

AO 243 (Rev. 09/17)

(2) If you did not raise this issue in your direct appeal, explain why:
This due process claim is based on newly discovered evidence (Joan Faybik's February 2026 declaration and the December 19, 2018 FBI transcript) that was not available at the time of direct appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

AO 243 (Rev. 09/17)

GROUND THREE: Actual Innocence – Newly Corroborated Evidence

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

New reliable evidence includes:

1. Sworn authentication of the November 14, 2018 letter;
2. Sworn declaration of Joan Faybik;
3. December 19, 2018 FBI transcript;
4. McKinnon's allocution and sworn confirmation.

When considered collectively, it is more likely than not that no reasonable juror would have found Petitioner guilty beyond a reasonable doubt had this evidence been properly authenticated and corroborated.

See attached Memorandum of Law for legal arguments and supporting authority; see Petitioner's Motion to Expand the Record and Exhibits A-E for supplemental materials relevant to Grounds Three.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

AO 243 (Rev. 09/17)

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

AO 243 (Rev. 09/17)

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

- Ground One (IAC) - Not raised on direct appeal (generally deferred).
- Ground Two (Due Process) - Based on newly discovered evidence.
- Ground Three (Actual Innocence) - Based on newly corroborated evidence.

AO 243 (Rev. 09/17)

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes No
If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:
Andrew Stephens, 117 West St. Lexington, KY. 40507

(b) At the arraignment and plea:
Andrew Stephens, 117 West St. Lexington, KY. 40507

(c) At the trial:
Jeffrey Darling, Nicholas Walter Darling Wellman, PLLC 3120 Wall St. Ste. 210 Lexington, KY. 40513

(d) At sentencing:
Jeffrey Darling, Nicholas Walter Darling Wellman, PLLC 3120 Wall St. Ste. 210 Lexington, KY. 40513

(e) On appeal:
Matthew Robinson, Robinson & Brandt 629 Main St. Ste. B Covington, KY. 41011

(f) In any post-conviction proceeding:
n/a

(g) On appeal from any ruling against you in a post-conviction proceeding:
n/a

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No

AO 243 (Rev. 09/17)

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

This motion is timely under 28 U.S.C. § 2255(f) (1) because it is filed within one year of the date the conviction became final. Alternatively, to the extent any claim is deemed based on newly discovered evidence, it is timely under §2255(f)(4). Equitable tolling is asserted in the alternative only if necessary.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

AO 243 (Rev. 09/17)

Therefore, movant asks that the Court grant the following relief:

- 1. Vacatur of conviction and sentence;
- 2. Evidentiary hearing;
- 3. Appointment of conflict-free counsel;
- 4. Retention at current facility pending resolution;
- 5. Any other relief deemed just and proper.

_____ or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 2/17/2026 (month, date, year).

Executed (signed) on 2/17/2026 (date)

Douglas W. Vann
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION
CRIMINAL ACTION NO. 5:20-CR-063-DCR
CIVIL ACTION NO.**

UNITED STATES OF AMERICA
v.
DOUGLAS WILLIAM VANCE

PLAINTIFF
DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2026, I deposited a true and correct copy of the foregoing Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (AO 243 Form), together with all attached pleadings, in the United States mail, postage prepaid, addressed to: Clerk of the United States District Court Eastern District of Kentucky Lexington Division and to:

James Chapman
United States Attorney's Office
Eastern District of Kentucky
260 W. Vine St., Suite 300
Lexington, KY 40507

Respectfully submitted,

/s/ Douglas William Vance

Douglas W. Vance
BOP Reg. No. 23266-032
FCI Beckley Satellite Camp
P.O. Box 350
Beaver, WV. 25813

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION
CRIMINAL ACTION NO. 5:20-CR-063-DCR**

UNITED STATES OF AMERICA
v.
DOUGLAS WILLIAM VANCE

PLAINTIFF

DEFENDANT

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO VACATE

PURSUANT TO 28 U.S.C. § 2255

INTRODUCTION

Petitioner seeks relief under 28 U.S.C. § 2255 because his conviction and sentence were obtained in violation of the Sixth and Fifth Amendments.

The trial record reflects multiple constitutional errors that, individually and cumulatively, undermined confidence in the verdict and materially increased the advisory sentencing range.

The Supreme Court has held that the Sixth Amendment guarantees not merely the presence of counsel, but the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984).

Where counsel's failures distort the evidentiary framework presented to the jury, relief is required.

JURISDICTION AND TIMELINESS

This Court has jurisdiction under 28 U.S.C. § 2255(a) because Petitioner was sentenced by this Court in Criminal No. 5:20-cr-00063-DCR.

This is Petitioner's initial motion under § 2255 and is timely filed within one year of the date on which the judgment of conviction became final pursuant to 28 U.S.C. § 2255(f)(1).

No prior § 2255 motion has been filed.

LEGAL STANDARD

Under §2255, relief is warranted where:

1. The sentence was imposed in violation of the Constitution or laws of the United States;
2. The Court lacked jurisdiction;

3. The sentence exceeded the maximum authorized; or
4. The conviction is otherwise subject to collateral attack.

Ineffective Assistance Standard

Judicial scrutiny of counsel's performance must be deferential; however, deference does not excuse the failure to present readily available, material exculpatory evidence that directly negates an essential element of the charged offense. Where omitted evidence strikes at the core issue of intent, prejudice is established if there exists a reasonable probability that at least one juror would have harbored reasonable doubt.

Under Strickland, a petitioner must show:

1. Deficient performance; and
2. Prejudice — a reasonable probability that, but for counsel's errors, the result would have been different.

A "reasonable probability" is one sufficient to undermine confidence in the outcome. 466 U.S. at 694.

The Sixth Circuit recognizes that cumulative attorney error may satisfy Strickland prejudice. See *Williams v. Anderson*, 460 F.3d 789 (6th Cir. 2006).**

ARGUMENT

I. GROUND ONE TRIAL COUNSEL WAS CONSTITUTIONALLY INEFFECTIVE (Sixth Amendment)

A. Failure to Authenticate the November 14, 2018 Exoneration Letter

The letter authored by co-defendant Molly McKinnon in November 2018 stated that:

- She acted at the direction of others;
- Petitioner lacked knowledge of the charged financial conduct;
- Petitioner was not responsible.

This statement predated indictment by approximately two years.

Under Federal Rule of Evidence 901, authentication requires only evidence sufficient to support a finding that the item is what the proponent claims it is.

Counsel failed to:

- Establish authorship through McKinnon;

- Introduce corroborating documentation;
- Utilize the FBI transcript to prove existence.

This omission deprived the jury of contemporaneous exculpatory evidence directly negating mens rea.

The Sixth Circuit has repeatedly held that failure to present available exculpatory evidence may constitute deficient performance. See *Clinkscale v. Carter*, 375 F.3d 430 (6th Cir. 2004).**

Where counsel fails to investigate and present readily available exculpatory evidence, prejudice is established if that evidence could have affected the jury's assessment of intent.

Because intent was the central issue at trial, contemporaneous written exculpation predating indictment would have significantly altered the jury's assessment of credibility. The omission permitted the Government to argue fabrication, thereby converting exculpatory evidence into inculpatory inference. There is at least a reasonable probability that proper authentication would have produced a different verdict.

B. Failure to Introduce the December 19, 2018 FBI Interview

On December 19, 2018, Petitioner informed Special Agent Christopher Hubbuch of:

- The existence of the November 14 letter;
- Its location;
- Its contents.

This interview was recorded and in Government possession.

The transcript independently corroborated that the letter existed pre-indictment.

Counsel's failure to introduce it allowed the Government to suggest fabrication.

The Supreme Court has recognized that when omitted evidence would have significantly strengthened the defense theory, prejudice is satisfied. *Kyles v. Whitley*, 514 U.S. 419 (1995) (materiality standard).

Here, corroboration would have directly rebutted consciousness-of-guilt inferences.

C. False Exculpatory Instruction

Because trial counsel failed to authenticate and corroborate the November 14, 2018 letter, the evidentiary foundation presented to the Court permitted issuance of a false exculpatory instruction. Counsel failed to mitigate or neutralize the prejudicial impact of that instruction by presenting available corroborating evidence.

Such instructions permit jurors to infer guilt from alleged fabrication.

The Sixth Circuit cautions that such instructions must be carefully grounded in evidence. *United States v. Jackson*, 918 F.2d 236 (6th Cir. 1990).*

Counsel failed to:

- Object;
- Argue lack of evidentiary predicate;
- Present corroboration disproving fabrication.

The combined effect transformed exculpatory evidence into inculpatory inference.

This evidentiary distortion undermines confidence in the verdict under *Strickland*.

D. McKinnon Testimony

McKinnon testified at trial. Portions of her testimony regarding third-party influence and direction were limited.

Counsel failed to:

- Reinforce her testimony with documentary corroboration;
- Introduce the 2018 letter to substantiate her statements;
- Preserve objections to testimonial limitations.

Failure to bolster a key defense witness with available corroboration may constitute deficient performance. See *Bigelow v. Williams*, 367 F.3d 562 (6th Cir. 2004).**

E. Failure to Tie Hogan Testimony to the Knowledge Element (Counts Two–Four)

Counts Two, Three, and Four required proof that Petitioner knowingly participated in a scheme to defraud and caused the wire transmissions. See *United States v. Prince*, 214 F.3d 740 (6th Cir. 2000).

On cross-examination, Government witness Mendie Hogan provided testimony directly negating the knowledge element. (Trial Transcript, Day 3, Doc. #176, pp. 37–47).

Hogan admitted:

1. No Formal Votes on Loans

Q: Did you vote on each one of these loans?

A: No.

Q: Why not?

A: We didn't go through the formal process of voting.
(Doc. #176, p. 40-41)

The operating agreement required majority approval. No such approval occurred.

2. Loans Initiated by McKinnon and Recorded After the Fact

Q: Advanced loans at the request of whom?

A: It came usually from an email from Molly.
(Doc. #176, p. 41)

Q. So when you say it's in the books

A. It was recorded

Q: it's after the fact?

A: Yes.

(Doc. #176, p. 48)

3. No Written Notice to Vance

Q: But certainly you never provided Mr. Vance any written notice?

A: Not in - - no.

(Doc. #176, p. 47)

This testimony established:

- Loans were initiated by McKinnon
- Funding members advanced money informally
- No formal vote occurred
- No written notice was provided to Petitioner
- Transactions were recorded after execution

This evidence directly contradicted the Government's theory that Petitioner knowingly participated in or caused the wire transfers.

Yet counsel failed to:

- Argue that this testimony negated knowledge;
- Connect the testimony to the wire fraud elements;
- Emphasize the lack of majority approval required by the operating agreement;
- Move for Rule 29 relief on this basis.

Where counsel fails to tie favorable testimony to an essential element of the offense, prejudice exists if there is a reasonable probability that the jury would have harbored reasonable doubt as to intent.

Because knowledge was the central disputed element, the failure to marshal Hogan's admissions constitutes deficient performance under Strickland.

F. Leadership Enhancement (U.S.S.G. §3B1.1)

Government Exhibit 703 established:

- Petitioner owned 1%;
- Funding Members retained major decision authority;
- Petitioner lacked unilateral authority.

The Sixth Circuit requires evidence of control over participants, not merely status. *United States v. Washington*, 715 F.3d 975 (6th Cir. 2013).*

Counsel failed to distinguish contractual authority from operational narrative.

G. Loss Calculation and Offset (U.S.S.G. §2B1.1)

Loss amount materially increases offense level.

The Sixth Circuit requires reasonable estimate based on reliable evidence. *United States v. Jones*, 641 F.3d 706 (6th Cir. 2011).*

Counsel failed to demand:

- Asset valuation;
- Offset credit;
- Accurate recalculation.

This materially increased the advisory range.

H. Substantial Financial Hardship Enhancement

Application of §2B1.1(b)(2) requires factual support.

The PSR reflected lower documented loss than sentencing argument suggested.

Additionally, sworn declaration from Joan Faybik states:

- She was a voluntary investor;
- She did not consider herself defrauded.

Sentences based on materially false information violate due process. *Townsend v. Burke*, 334 U.S. 736 (1948).*

I. Obstruction Enhancement

Under *United States v. Dunnigan*, 507 U.S. 87 (1993), a court must make independent findings establishing:

- False testimony;
- Materiality;
- Willfulness.

The record lacks explicit findings distinguishing perjury from a good-faith denial of guilt.

Counsel failed to demand those findings.

II. GROUND TWO DUE PROCESS VIOLATIONS (Fifth Amendment)

Due process is implicated when sentencing or conviction rests on materially inaccurate or incomplete information. See *Townsend v. Burke*, 334 U.S. 736 (1948).

Here, the combination of:

- Failure to authenticate exculpatory evidence;
- Suggestion of fabrication;
- False exculpatory instruction;
- Inconsistent hardship presentation;

created a distorted evidentiary framework.

III. GROUND THREE ACTUAL INNOCENCE – Newly Corroborated Evidence

Although this motion is timely, newly authenticated evidence independently demonstrates actual innocence and further establishes prejudice under *Strickland*.

Under *Schlup v. Delo*, 513 U.S. 298 (1995), relief is warranted where new reliable evidence makes it more likely than not that no reasonable juror would have convicted.

The newly supported evidence includes:

- Sworn authentication of the November 14, 2018 letter;
- FBI transcript corroborating its pre-indictment existence;
- Sworn declaration of Joan Faybik;
- Sworn confirmation from McKinnon.

This evidence directly negates knowledge and fraudulent intent.

IV. CUMULATIVE PREJUDICE

Even if individual errors are deemed insufficient, their cumulative effect requires relief. See *Williams v. Anderson*, 460 F.3d 789 (6th Cir. 2006).**

The jury was deprived of corroborated exculpatory evidence and exposed to an instruction permitting inference of guilt from alleged fabrication.

Confidence in the outcome is undermined.

V. EVIDENTIARY HEARING REQUIRED

Under 28 U.S.C. § 2255(b), the Court must grant a prompt evidentiary hearing unless the motion and record conclusively show that the prisoner is entitled to no relief.

Because this motion raises matters outside the trial record — including sworn declarations and counsel's strategic omissions — a hearing is required.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests:

1. Vacatur of conviction and sentence;
2. Evidentiary hearing;
3. Appointment of counsel;
4. Such further relief as justice requires.

Respectfully submitted,

/s/ Douglas William Vance

Douglas W. Vance
BOP Reg. No. 23266-032
FCI Beckley Satellite Camp
P.O. Box 350
Beaver, WV. 25813

Defendant declares under penalty of perjury pursuant to 28 U.S.C. § 1746 that the facts stated herein are true and correct to the best of his knowledge and belief, and that this motion is filed in good faith, not for delay or harassment.

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2026, I deposited a true and correct copy of the foregoing Memorandum of Law in Support of Motion to Vacate Pursuant to 28 U.S.C. § 2255 in the United States mail, postage prepaid, addressed to: Clerk of the United States District Court Eastern District of Kentucky Lexington Division and to:

James Chapman
United States Attorney's Office
Eastern District of Kentucky
260 W. Vine St., Suite 300
Lexington, KY 40507

/s/ Douglas William Vance
Douglas W. Vance
BOP Reg. No. 23266-032