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

UNITED STATES OF AMERICA PLAINTIFF
v.
DOUGLAS WILLIAM VANCE 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. 37–51).

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.
Q: So it was recorded after the fact?
A: Yes.
(Doc. #176, p. 42)

3. No Written Notice to Vance
Q: Certainly you never provided Mr. Vance any written notice?
A: No.
(Doc. #176, p. 42–43)

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
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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
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