IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JEFFREY A. MARTINOVICH,

Petitioner,

v.

Case No. 18-7061
(4:18-cv-00027)
(4:15-cr-00050)

UNITED STATES,

Respondent.

MOTION TO APPEAL DENIAL OF MOTION TO VACATE PURSUANT TO 28 U.S.C. § 2255, DENIAL OF CERTIFICATE OF APPEALABILITY, AND DENIAL OF COLLATERAL MOTIONS

NOW HERE COMES Jeffrey A. Martinovich, proceeding pro se, to request a Certificate of Appealability for the enclosed ten Grounds submitted in this Informal Brief, in Memorandum Format, per directions for Case No. 18-7061 / 4:18-cv-00027-AWA / 4:15-cr-00050-AWA-LRL (Motion to Vacate Pursuant to 28 U.S.C. § 2255), as well as the Collateral Motions to include Motion for Bond (Doc.76), Motion in Limine (Doc.72), Motion for Evidentiary Hearing (Doc.81), Motion to Waive Counsel (Doc.82), Motion to Proceed in Forma Pauperis (Doc.83), and Motion for Current Mediation (Doc.86).

1. Declaration of Inmate Filing: Date Notice of Appeal deposited in institution's mail system: July 12, 2018.

I am an inmate confined in an instution and deposited my notice of appeal in the institution's internal mail system. First class postage was prepaid by me. I declare under penalty of perjury that the foregoing is true and correct (See 28 U.S.C. § 1746; 18 U.S.C. § 1621).

Date: 09/12/2018

Jeffrey A. Martinovich

Jeffrey A. Martinovich

2. JURISDICTION:

Name of Court: U.S. District Court for the Eastern District of Virginia

Date of Order(s): August 10, 2018

3. The District Court did not grant a certificate of appealability.

4. INTRODUCTION

Mr. Martinovich respectfully requests this Court of Review read this instant Memorandum in support of a full certificate of appealability and full vacation based on the existing record. Mr. Martinovich, as humbly and respectfully as possible, requests this Court note the inexplicable Summary Denial (Doc.94) from the District Court, dismissing all ten Grounds without an evidentiary hearing and without even asking the UNITED STATES to Respond to the thorough, extremely-documented denials of constitutional rights. To exacerbate this manifest injustice, the District Court's "answers" sidestep, reposition, or simply ignore the actual Grounds submitted, even, ironically, repeatedly claiming "Martinovich provides no specific evidence."

The "answers" are incongruent with the Grounds. Therefore, Mr. Martinovich requests this Court actually read the claims and evidence on the record. Mr. Martinovich respectfully leaves to this Court of Review the interpretation of the intentions of the District Court.

Mr. Martinovich herein incorporates the arguments, evidence, and legal standards presented on the record in the Original Memorandum (Doc.74), Amended Memorandum (Doc.89), Amended Martinovich Affidavit (Doc.90), and Exhibits #1-43 (Doc.74) as if fully restated herein. Mr. Martinovich re-asserts his complete, factual and actual innocence for Case 4:12cr101 ("Case 1") and Case

4:15cr50 ("Case 2"). Mr. Martinovich submits, as fully documented herein, that this Case is replete with a long list of egregious ineffective assistance, judicial violations, and clear fraud on the Court by the UNITED STATES [Ground Six].

ABRIDGED STATEMENT OF THE CASE

Following the illegal closure of MICG Investment Management ["The Fall of MICG," Ash Press 2017, Amazon Books], the government indicted Mr. Martinovich in Case 1. The government alleged that Mr. Martinovich had tricked the valuation firm, the auditing firm, and his entire management team to all approve a fraudulent price for one private solar company stock which represented point-two-percent (.2%) of MICG's $1 billion assets under management. [Aff.#1-30]. The government offered plea agreements of 7-years, 5-years, then 3-years incarceration, all of which Mr. Martinovich rejected and instead elected to proceed to trial to defend his employees and himself in the belief that truth and common sense would prevail.

Instead, Mr. Martinovcih lost at trial and received a 12-year sentence in a spectacle of which this Fourth Circuit observed, "interference in this case went beyond the pale...such conduct tends to undermine the public's confidence in the integrity of the judiciary...the district court became so disruptive that it impermissibly interfered with the manner in which appellant sought to present his evidence...such conduct challenge(d) the fairness of the proceedings." [Martinovich]. Yet, the Appeals Court determined that Mr. Martinovich's defense counsel, Mr. Broccoletti, inexplicably, never once objected and preseved the long list of violations which "strayed too far." Therefore, this Fourth Circuit vacated Martinovich's sentence and removed District

Court Judge Doumar, but upheld the conviction based on plain error review.

Immediately following the vacation of Martinovich's sentence, the government unsealed a second indictment alleging that Martinovich had fraudulently invoked the hedge fund indemnification clauses to pay for his Case 1 defense and had, once again, tricked four separate law firms into fraudulently representing the individual fund shareholders, into creating six fraudulent contracts and opinion letters, and fraudulently authorizing all of the transactions. Mr. Martinovich responded that these Case 2 allegations were even more absurd than Case 1, provided court-appointed counsel, Mr. Woodward, voluminous documentation and evidence of his innocence [See Ex. #1-9, Orig. Mem. Gr.5 (Doc.74), Amen. Aff. #51-69 (Doc.90)], and demanded to proceed to trial, again [Instant Gr.5].

Amidst an 8-month process while holding Martinovich in a county jail in Virginia, Mr. Woodward refused to take Case 2 to trial and eventually convinced Martinovich and his family that he had negotiated an agreement to transfer the case to District Court Judge Allen, and together with the government, had arranged a "5-6 years" aggregate resentencing in order for Martinovich to be released and begin restoring his shareholders, all in return for Martinovich "admitting to something" and "agreeing to stop sending in appeals to include the first case." [Aff.#49-78,102,104-105,107-109,230-238 (Doc.90)]. Yet, Mr. Woodward's coercion was either outright fraud or reckless negligence, and Mr. Martinovich not only did not receive the "arrangement" but actually received an increased sentence of 14 years.

Of note, for the Case 1 § 2255 Motion submitted March 4, 2018, the District Court has yet to respond or order the Government to respond.

GROUND 1: COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO AND INTERVENE AGAINST THE VIOLATION OF MARTINOVICH'S FIFTH AMENDMENT RIGHT OF DUE PROCESS IN REGARDS TO MENTAL DISEASE OR DEFECT.

Mr. Martinovich herein this instant Ground makes a substantial showing of the denial of a constitutional right [§ 2253(c)(2)]. Mr. Martinovich was denied Sixth Amendment effective assistance of counsel, as defined by Strickland's first prong and second prong, by the failure to object to and intervene against the District Court's, and counsel's own, violations of Martinovich's Fifth Amendment Right of Due Process. [Strickland v. Washington, 466 US 668, 104 S. Ct. 2052 (1984)].

Respectfully, Mr. Martinovich points to the District Court's "answer" to Ground 1 which sidesteps and repositions Mr. Martinovich's claim in order to obfuscate the clear violations of Mr. Martinovich's due process rights, compounded by defense counsel Mr. Woodward's repeated ineffective assistance. The Court's Denial (Doc. 94) states, "Mr. Martinovich first asserts that his counsel had reasonable cause to believe that Mr. Martinovich suffered from a mental disease or defect." This is incorrect. Mr. Martinovich never claimed that counsel believed or initiated a claim, or that Martinovich himself initiated a claim, that Martinovich suffered from a mental defect, as that argument would fall into the standard argument of the defendant's actions versus the counsel's reasons to believe.

What Mr. Martinovich has claimed, and provided the substantial, incontrovertible evidence on the record of, is that the District Court emphatically, demonstrably, and repeatedly proclaimed its unambiguous assertions that the District Court, itself, had a reasonable cause to believe that Mr. Martinovich suffered from a mental disease or defect. [18 U.S.C. § 4241]. The proclamations on the record by the District Court are:

1) "It's something wrong with his brain." [Tr. p.92].

2) "There's something wrong, and I don't know what's wrong." [Tr. p.92].

3) "But there's something wrong, and we're going to get you mental health treatment under my case, because there's something wrong, and it's not been fixed." [Tr. p.92].

4) "It's breaking my heart not to be able to figure out what's wrong." [Tr. p.92].

5) "(I)t's not been fixed." [Tr. p.92].

6) "I know you're not polluting your brain with poison." [Tr. p.92].

7) "There's something wrong. I'm not a doctor, we're going to get mental health treatment, but there's something wrong." [Tr. p.102].

8) "So I don't know what's wrong. I don't. It's complex and sophisticated." [Tr. p.102].

9) "And I'm hoping you get some help to fix that, because you've got a very deep problem." [Tr. p.102].

10) "I'm going to recommend mental health treatment as well." [Tr. p.106].

The standard template arguments regarding Mr. Martinovich's education, lack of substance abuse or mental treatment, or understanding of the charges against him are irrelevant to the denial of his constitutional right of effective assistance once the District Court repeatedly violated Mr. Martinovich's right to due process. Mr. Martinovich also respectfully questions the District Court's assertion that Martinovich provided "a misrepresentation of the record" when Martinovich has recounted the exact sentencing transcripts on the record, as this Court of Appeals instructs.

Finally, Mr. Martinovich humbly questions the assertion that the District Court simply meant "to assist Mr. Martinovich in understanding his motives for committing his crime." This rationale is incongruent with the record and reminds this Appeals Court of its previous statement regarding abuse of discretion in Mr. Martinovich's case, "(W)e have also recognized that instructions

will not always be enough to 'undo' the effects of judicial intervention." [United States v. Martinovich, 810 F. 3d 232 (4th Cir. 2016)].

Once the District Court asserted it repeated proclamations, the Sixth Amendment, the Fifth Amendment, 18 U.S.C. § 4241, "specific intent," U.S.S.G. § 5k2.13, and F.R.C.P. 11 all demand that Mr. Woodward must have objected and intervened to protect the rights of Mr. Martinovich. Mr. Woodward failed to act. Supreme Court and Fourth Circuit precedent is crystal clear concerning the procedural and due process required once the defendant's mental state is in question, or as this District Court asserted, "It's complex and sophisticated...a very deep problem." [Tr. p.102][Broaddus; Drope; Williams; Mason: Renfroe; Walton; Song; Wynn; Brewer; Brown; Pate].

Once the District Court repeated its proclamations, effective assistance of counsel, even the minimum bar of professional conduct per Strickland's first prong, demanded that Mr. Woodward 1) move to halt the Case 2 sentencing hearing and move to vacate the immediately prior Case 1 sentencing, 2) move for a psychological or psychiatric examination and competency hearing, 3) move for the Court to consider a § 5k2.13 downward departure in both Case 1 and Case 2, and at a minimum determine on the record that the District Court understood its authority to consider a § 5k2.13 downward departure, 4) based on the extended timeframe backwards to Mr. Martinovich's trial in which the District Court proclaimed its reasonable cause to believe a mental disease or defect exists, move for Martinovich's plea agreement to be vacated as not knowingly, willingly, and voluntary as well as legal capacity to enter a contract in question, 5) move for

Case 1 and Case 2 charges containing elements of "specific intent" and "knowing to conceal or disguise" be voided, and 6) based on the Court's announced time frames, move to vacate the Case 1 trial conviction as the Court has determined that Mr. Martinovich's mental capacity and competency was in question.

Mr. Martinovich respectfully reminds this Court of Review that the "question of defendant's competency is a question of fact as opposed to mixed question of law and fact or question of law." [Williams]. "Given the inherent difficulties in retrospective competency determinations, such nunc pro tunc evaluations are not favored." [Mason; Renfroe].

Without question, "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." [Strickland]. If Mr. Martinovich had been found to be "mentally incompetent to the extent that he (was) unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense," his sentencing would have been halted, conclusions vacated, the plea acceptance and agreement voided based on the Court's professed time periods, and the results of trial voided. [Damon; McCarthy; Pate]. If Mr. Martinovich would have been found free of mental disease and defect, the previous sentencing, plea negotiations, and trial would have to be voided and renegotiated as "the defendant's due process rights cannot be adequately protected" by applying a retroactive determination. [Williams; Renfroe; Mason; Drope].

If the District Court had overruled Mr. Woodward's required objections and motions, these errors would have then been preserved to be presented to the Fourth Circuit under harmlessness standard

of review and as a constitutional violation which is outside the scope of the plea agreement waiver provision. There is a reasonable probability that Mr. Martinovich's sentences, plea, and convictions would have been vacated. If Mr. Woodward would have motioned for a U.S.S.G. § 5k2.13 downward departure as required, the Court may have reasonably provided this departure, and at a minimum had understood its authority to consider the departure.

Mr. Martinovich asks this Honorable Court of Review to not minimize or sweep away these violations. As this Fourth Circuit has already asserted in Mr. Martinovich's Case, "Here we are once again presented with a case replete with the district court's ill-advised comments and interferences...at some point, repeated injudicious conduct must be recognized by this Court." [Martinovich]. Mr. Woodward failed repeatedly to provide even the minimum professional norm of effective assistance, and Mr. Martinovich was severely prejudiced.

Mr. Martinovich points this panel of review to the complete record for this Ground provided in the Original Memorandum (Doc. 74, Gr. 1), the Amended Memorandum (Doc. 89, Gr. 1), and the Amended Martinovich Affidavit #'s 158-183 (Doc. 90, pps. 41-46).

GROUND 2: APPEAL COUNSEL WAS INEFFECTIVE FOR FAILING TO INCLUDE IN THE DIRECT APPEAL THE DISTRICT COURT'S VIOLATION OF MARTINOVICH'S FIFTH AMENDMENT RIGHT OF DUE PROCESS IN REGARDS TO MENTAL DISEASE OR DEFECT.

Mr. Martinovich herein this instant Ground makes a substantial showing of the denial of a constitutional right [§ 2253(c)(2)]. Mr. Martinovich was denied Sixth Amendment effective assistance of counsel on direct appeal, as defined by Strickland's first and second prongs, by appeals counsel Mr. Edwin Brooks, while fully noticed, failing to submit the District Court's violations of Mr. Martinovich's Fifth Amendment right to due process to the Fourth Circuit Court of Appeals.

Herein by reference Mr. Martinovich incorporates the full argument and legal standards of Ground One in this instant brief as if fully restated herein this instant Ground, as well as the inclusion of the full argument in the Original Memorandum (Doc. 74, Gr. 2), the Amended Memorandum (Doc. 89, Gr. 2), Amended Martinovich Affidavits #'s 44-48, and 184-188 (Doc. 90), and Exhibit #37 (Doc. 74).

Relevant to Strickland's first prong, 1) Mr. Brooks was fully noticed of the violations [Ex. #37, Aff. #44], 2) Mr. Brooks was noticed that the constitutional violation was outside the scope of the plea agreement appeal waiver provision [Attar] [Ex. #37, Aff. #45], 3) Mr. Brooks was noticed that the waiver provision was not applicable to constitutional violations which occurred after signing the plea contract. [Marin; Attar][Ex.#37,Aff.#46], and 4) Mr. Brooks was noticed that the Appeals court may not consider Martinovich's pro se brief including this instant argument, which they did not. [Aff. #48].

Mr. Brooks' failures caused this cognizable constitutional violation not to be considered by the Fourth Circuit, and the

Ground would have been reviewed at the standard of harmlessness review or structural error, not plain error, and vacated Mr. Martinovich's plea agreement, sentences, and conviction. 18 U.S.C. § 4241 clearly states that the Court "shall order a hearing on its own motion, if there is a reasonable cause to believe." "The defendant need not demonstrate on appeal that he was in fact incompetent, but merely that the district court should have ordered a hearing to determine the ultimate fact of competency." [Banks].

Mr. Brooks, without question, provided ineffective assistance, and Mr. Martinovich was severely prejudiced.

GROUND 3: SENTENCING COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE DISTRICT COURT'S ERRONEOUS DECISION TO IMPOSE A PARTIALLY CONSECUTIVE SENTENCE.

Mr. Martinovich herein this instant Ground makes a substantial showing of the denial of a constitutional right [§ 2253(c)(2)]. Mr. Martinovich was denied his Sixth Amendment right to effective assistance of counsel, as defined by Strickland's first prong and second prong, by the failure to object to and intervene against the District Court's erroneous application of the sentencing Guidelines resulting in a partially-consecutive sentence. This error resulted in the incorrect "starting point" and "wrong framework for the sentencing proceedings." [Molina-Martinez v. United States, 136 S. Ct. 1338 (2016)].

Case 4:15cr50 ("Case 2") alleged that Martinovich illegally implemented the hedge funds' indemnification provisions to pay for his legal representation in Case 4:12cr101 ("Case 1"). Yet, by definition of U.S.S.G. § 5G1.3 and § 3D1.2, the confirmed relevant conduct mandates that these sentences must be run concurrent, and Mr. Woodward failed to object and alert the District Court to this severe prejudice.

Respectfully, the District Court's Denial (Doc. 94) not only sidesteps the argument presented, but the brief explanation provided actually confirms and reinforces Mr. Martinovich's claim that the Guidelines demand the sentences be run concurrent (and this is not advisory, see Hill; Keiffer). The District Court's Denial stated, "Under the United States Sentencing Guidelines, this court was empowered to impose a consecutive sentence. If the instant offense (Case 2) was committed while the defendant was serving a term of imprisonment...or after sentencing for, but before commencing service of, such term of imprisonment,

the sentence for the instant offense (Case 2) shall be imposed to run consecutively."

Yet, Mr. Martinovich's offense as alleged by the government was not committed while serving a term of imprisonment, or was after sentencing for, but before commencing service of imprisonment. The alleged hedge fund payments were made to primary counsel and legal experts, and a further order even froze access to these funds before sentencing. Subsequent appeal funding was paid by Mr. Martinovich's family. By simple definition, respectfully, the District Court's own answer proves that Mr. Martinovich's sentence must have been run concurrently.

To aid this review panel further, Mr. Martinovich herein also briefly summarizes the further Sentencing Guidelines and precedent support presented on the record in the Original Memorandum (Doc. 74, Gr. 3), Amended Memorandum (Doc. 89, Gr. 3), Amended Martinovich Affidavit #'s 198-222 (Doc. 90, pps. 49-53), and Exhibits #1-43 (Doc. 74).

The allegations of the offense and all statements, actions, and procedures of the government, the Court, and the defense demand that these sentences be run concurrently. On September 29, 2016, the District Court conducted both Case 1 and Case 2 sentencings in a joint proceeding. The applied plea agreement jointly controlled both sentencings. At no point did the District Court mention consideration of the Guidelines applications of USSG §§ 5G1.3 or 3D1.2 or the implications of the confirmed relevant conduct. Case 2 conduct was repeatedly confirmed and considered in the Case 1 sentencing by the Court. The plea agreement stated "relevant conduct may be considered in conjunction with the defendant's offense of conviction." At sentencing the

government stated "the Court could consider the second offense conduct when deciding the resentencing on the first case." The subsets and supersets of victims in the two cases are the same investors and shareholders with crossover timeframes, investment periods, liquidation requests, and distributions. The same victims and shareholders submitted victim impact letters which the District Court demonstrably considered and crossed over both sentencings. The government and the District Court verbally expressed at the joint sentencing that they are jointly considering letters and victims across both cases. The same victims and shareholders testified at the Case 1 trial and sentencing and the Case 2 sentencing and addressed the exact same conduct. All funds alleged in both offenses were held in the same financial institution, same ownership titling, same account controls and same authorizations. All fund transactions amongst both cases were documented, authorized, and reported by the same law firms, auditing firm, and tax firm. Case 2 conduct was well-known and considered by Case 1 District Court prior to the first and second sentencings, and was contained in the PSR with the superseding indictment adding no material conduct. Case 2 District Court repeatedly verbalized its interpretation of crossover relevant conduct with Case 1, and Case 2 conduct occurred after Case 1, and hence by transitive property Case 1 is relevant conduct of Case 2. Case 1 and Case 2 were joined for Appeal as well as for Petition for Writ of Certiorari.

Defense counsel Mr. Woodward's ineffective assistance failures included 1) not objecting to the Case 1 and Case 2 PSR's not including a recommendation for the sentences to run fully concurrent and with a credit adjustment pursuant to § 5G1.3(b)(1) and (2),

2) not objecting when the District Court failed to follow the Guidelines, not provide explanation, and not reduce or consider a reduction pursuant to § 5G1.3(b)(1), 3) not objecting to why the District Court upward varied from the plea agreement which underlined the word "concurrent," and 4) not moving the Court for the applicable sentencing credit pursuant to Martinovich's timelines and indictment sealing and un-sealing dates.

Respectfully, the District Court's "answer" intending to relieve Mr. Woodward of responsibility once he stated at the initiation of proceedings for the Court to "follow" the plea agreement, invokes this Court's settled law that initial competency does not relieve counsel of providing effective assistance from that point forward in an involved proceeding, especially when the Court turns left when counsel claimed it was turning right. To exacerbate the failure, Mr. Martinovich points the Court to Mr. Woodward's contemporaneously-documented proclamations prior to sentencing, "no chance Allen & Jackson go outside the Agreement," [Aff.#71f, Atch.#27] and "0 (zero) chance that Allen or Jackson do not comply with the plea agreement constraints proposed by Govt." [Aff.#71r, Atchs.10,20,29].

Without question, "there is a reasonable probability that, but for counsel's unprofessional errors, the results of the proceedings would have been different." [Strickland]. Because Mr. Woodward did not intervene, the District Court did not initiate its sentencing at the correct "starting point" resulting in an overall longer sentence than legally permitted or required amongst Case 1 and Case 2 in totality.

"The district court committed procedural error when it purported to impose a within-guideline sentence on defendant

without accounting for subsection § 5G1.3(b)." [Keiffer]. "This discretion, however, is limited by § 5G1.3 of the United States Sentencing Guidelines when the court seeks to impose a sentence upon a defendant who is subject to an undischarged term of imprisonment." [Hill]. "(A)lthough the 2009 Guidelines, including § 5G1.3, were advisory, the law required the district court to adhere to proper sentencing procedures." [Keiffer]. "Section 5G1.3(b)(1)'s language is mandatory...the district court erred in not including this adjustment in its Guideline calculation as 'the starting point' of the sentencing proceeding." [Armstead].

Mr. Woodward's failure permitted the District Court to provide a higher-than-otherwise sentence in Case 1 due to the inclusion of Case 2 Relevant Conduct, and then to, again, penalize Mr. Martinovich for this same conduct by varying from the Guidelines and running the Case 2 sentence consecutive to Case 1. "Where the record is silent as to what the District Court might have done had it considered the correct United States Sentencing Guidelines range, the court's reliance on an incorrect range in most instances will suffice to show an effect on the defendant's substantial rights," [Molina-Martinez] or even when the Court "impose(s) a within-guideline sentence on defendant." [Keiffer].

Mr. Woodward failed to provde even the minimum professional norm of effective assistance, and Mr. Martinovich was severely prejudiced with two more years of imprisonment, or substantially more.

GROUND 4: SENTENCING COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE ERRONEOUS PLACEMENT IN CRIMINAL HISTORY CATEGORY II FOR CASE 4:15CR50.

Mr. Martinovich herein this instant Ground makes a substantial showing of the denial of a constitutional right [§ 2253(c)(2)]. Mr. Martinovich was denied his Sixth Amendment right to effective assistance of counsel, as defined by Strickland's first and second prongs, by counsel's failure to object and intervene against the erroneous placement in Criminal History Category II for the District Court's sentencing calculus in Case 4:15cr50 ("Case 2").

Pursuant to U.S.S.G. §§ 4A1.1 and 4A1.2 Criminal History, as well as § 1B1.3 Relevant Conduct, the Sentencing Guidelines demand that Mr. Martinovich should have been appropriately classified in Criminal History Category I. Mr. Woodward's failure resulted in the incorrect "starting point" and "wrong framework for sentencing proceedings." [Molina-Martinez].

Respectfully, the District Court's template "answer" to Ground 4, "His 2012 conviction correctly assigned him three points under Guideline § 4A111(a). Three points correctly placed him into criminal history category II," does not properly apply the exact technical language of §§§ 4A1.1, 4A1.2, and 1B1.3, as well as the correct application of relevant conduct.

For this Panel of Review, Mr. Martinovich herein provides a succinct summary of the chronology and relative Guidelines applications previously on the record in the Original Memorandum (Doc. 74, Gr.4), Amended Memorandum (Doc. 89, Gr.4), Amended Martinovich Affidavit #'s 200-212, and #'s 223-229 (Doc. 90, pps. 49-52 & 53-55), and Exhibits #1-43 (Doc. 74).

Case 2 offense conduct occurred prior to, and during, Mr.

Martinovich's Case 4:12cr101 ("Case 1") trial. Mr. Martinovich's Case 1 sentence was vacated on January 7, 2016. The government executed an indictment for Case 2 on February 10, 2016. Mr. Martinovich was sentenced for Case 1 and Case 2 in a joint proceeding on September 29, 2016. Mr. Martinovich's offense conduct for Case 2 was completely vacated prior to a Case 2 PSR preparation or sentencing and Case 1 PSR preparation and sentencing. At the point of preparation of PSR's and on the day of September 29, 2016, Mr. Martinovich had no prior sentence due to the complete vacation, and Mr. Martinovich had not actually served a period of imprisonment on a valid Case 1 sentence. By the exact definitions which follow, Mr. Martinovich must have been categorized as Criminal History Category I.

USSG Sentencing Table Category I is applicable for 0 and 1 Criminal History Points, while Category II is applicable for 2 and 3 points. USSG § 4A1.1(a) imposes 3 points for each prior sentence of imprisonment exceeding one year and one month. USSG § 4A1.2(a)(1) defines a prior sentence as any sentence previously imposed upon adjudication of guilt...for conduct not part of the offense. USSG § 4A1.2 cmt. app. n.1 states that to qualify as a sentence of imprisonment, the defendant must have actually served a period of imprisonment on such sentence. USSG § 4A1.1 states, "Therefore §§ 4A1.1 and 4A1.2 must be read together."

"Where a court vacates a sentence, that sentence becomes void in its entirety." [Burke]. By definition, the applicable chronology and Court actions demand that Mr. Martinovich have been sentenced in Category I. "(D)efendant's motion to vacate, set aside, or correct sentence was improperly denied when criminal history category was [calculated improperly]. Defendant's sentence

should have been reopened." [Cox].

Also, the correct application of relevant conduct provides a second justification for the mandatory application of Category I Criminal History for Mr. Martinovich's Case 2. Note the discussion in United States v. Cordero:

COURT: So, now the next question that I have for Mr. Hassinger is on the three adult convictions it shows zero points.

PROBATION: That is correct, Your Honor. The reason being because the three convictions that occurred in State Court are related to this instant offense so you can't give him criminal history points for that because it is conduct which is already factored into the offense part of this.

COURT: Okay. All right.

USSG § 4A1.2 is clear that relevant conduct offsets the application of additional criminal history points and the subsequent enhancement in sentencing category. § 4A1.2 cmt. app. n.1 clarifies that it applies for sentences "other than a sentence for conduct that is part of the instant offense," and further notes, "Conduct that is part of the instant offense means conduct that is relevant conduct to the instant offense under the provisions of § 1B1.3 (Relevant Conduct)."

As confirmation of the relevant conduct of Case 1 and Case 2, Case 2 conduct was repeatedly confirmed and considered in the Case 1 sentencing by the Court. The plea agreement states "relevant conduct may be considered in conjunction with the defendant's offense of conviction." At sentencing the government stated "the Court could consider the second offense conduct when deciding the resentencing on the first case. The subsets and supersets of victims in the two cases are the same investors and shareholders with crossover timeframes, investment periods, liquidation requests, and distributions. The same victims and shareholders submitted victim impact letters which the District Court demonstrably

considered and crossed over both sentencings. The government and the District Court verbally expressed at the joint sentencing that they are jointly considering letters and victims across both cases. The same victims and shareholders testified at the Case 1 trial and sentencing and the Case 2 sentencing and addressed the exact same conduct. All funds alleged in both offenses were held in the same financial institution, same ownership titling, same account controls and same authorizations. All fund transactions amongst both cases were documented, authorized, and reported by the same law firms, auditing firm, and tax firm. Case 2 conduct was well-known and considered by Case 1 District Court prior to the first and second sentencings, and was contained in the PSR with the superseding indictment adding no material conduct. Case 2 District Court repeatedly verbalized its interpration of crossover relevant conduct with Case 1, and Case conduct occurred after Case 1, and hence by transitive property Case 1 is relevant conduct of Case 2. Case 1 and Case 2 were joined for Appeal as well for Petition for Writ of Certiorari.

Mr. Woodward's ineffective assistance includes 1) not objecting to the Case 2 PSR erroneously categorizing the offense as Criminal History Category II, 2) not objecting during sentencing to the District Court's consideration of Category II, 3) not objecting to the District Court's misapplication of the Guidelines, to beginning at the wrong "starting point" and setting the "wrong framework," 4) not objecting to the District Court not expressing its reasoning for departing from the Guidelines.

Mr. Martinovich submitted objections to the PSR multiple times in writing to Mr. Woodward objecting to the inclusion of Category II [Atchs. 22, 23]. Pursuant to Affidavit

#'s 84, 85, 86, and 229 (Doc. 90 pps. 21-22, 55). Mr. Woodward claimed they were submitted, and during colloquy with the District Court Mr. Martinovich believed Mr. Woodward had not lied about submitting these Objections. Mr. Martinovich's statements and acknowledgments during sentencing are not inconsistent with these assumptions and the documents provided. [See Original Memorandum (Doc. 74), Amended Affidavit (Doc. 90), and Exhibits #13, 17-23 (Doc. 74). Mr. Martinovich repeatedly provided Mr. Woodward with documentation correcting concurrency and criminal history category, as the voluminous documentation confirms, even though it is not Mr. Martinovich's burden as the District Court provided what should have been competent and effective counsel.

Without question, "there is a reasonable probability that but for counsel's unprofessional errors, the results of the proceedings would have been different." [Strickland]. Because Mr. Woodward did not intervene, 1) the District Court did not sentence Mr. Martinovich as Category I, whether by proper application of § 4A1.1 and § 4A1.2 or by the proper application of § 1B1.3 relevant conduct, resulting in a sentence of 6 months to possibly 17 months less, and 2) the District Court did not properly consider across Case 1 and Case 2 the applications of §§§§ 5G1.3, 4A1.1, 4A1.2, and 1B1.3, and subjected Martinovich to double counting and duplicity in creating a higher overall sentence in totality. "(T)he court's reliance on an incorrect range in most instances will suffice to show an effect on the defendant's substantial rights." [Molina-Martinez]. The Supreme Court has held that prejudice has resulted from one unasserted error that added six to twenty-one months to the defendant's sentence. [Lee; Glover]. Mr. Woodward provided ineffective assistance and Mr. Martinovich was prejudiced.

GROUND 5: COUNSEL WAS INEFFECTIVE FOR FAILING TO PURSUE A DEFENSE OF INNOCENCE AT TRIAL AND INSTEAD COERCED MARTINOVICH INTO ACCEPTING A DETRIMENTAL PLEA CONTRACT.

Mr. Martinovich herein this instant Ground makes a substantial showing of the denial of a constitutional right [§ 2253(c)(2)]. Mr. Martinovich was denied his Sixth Amendment right to effective assistance of counsel, as defined by Strickland's first and second prongs, by counsel's failure to pursue the defense of innocence at trial for Case 4:15cr50 ("Case 2"), and instead coerce and manipulate Mr. Martinovich into accepting a detrimental plea contract and sentencing proceeding.

Mr. Martinovich has provided the Court unprecedented contemporaneous documentation of Mr. Woodward's continous coercion to prevent Mr. Martinovich from proceeding to trial, as Martinovich had demonstrated such proclivity by previously rejecting three government plea offers to proceed to trial in Case 4:12cr101 ("Case 1"). This documentation also clearly identifies Woodward's repeated manipulation to convince Martinovich that counsel had negotiated an arrangement with the government and the District Court for Martinovich to receive no more than an aggregate "5-6 years" sentence in return for Martinovich stopping his numerous appeals and "putting an end to this." [See Original Memorandum (Doc. 74, Gr.5), Amended Memorandum (Doc. 89, Gr.5), Amended Martinovich Affidavit #'s 49-78, 102, 104-105, 107-109, and 230-238 (Doc. 90), and Exhibits #1-43].

Respectfully, the District Court's "template answer" to Ground Five asserting the standard rejections for signature and colloquy acknowledgments attempts to obfuscate for this Panel of Review the remarkable contemporaneous documentation as well as the Supreme Court's and this Fourth Circuit's precedent

protecting defendant's rights and intentions from egregious counsel manipulation and obvious ineffective assistance during the stages of negotiations. [Lee; Lafler].

As explained in this instant Brief's Abridged Statement of the Case (as well as in Original Memorandum and Amended Affidavit), Mr. Martinovich strongly believed in his innocence of the fantastic allegations of Case 2. Mr. Martinovich provided Mr. Woodward a long list of agreements, legal opinions, contracts, and tax and audit reporting which clearly identified the six separate legal and accounting firms which authorized, processed, and reported the payments in question. The accusation that Mr. Martinovich had now "tricked" these six firms and "papered over" his trail was absurd. Mr. Martinovich's insistence to proceed to trial against Mr. Woodward's coercion is repeatedly documented in the contemporaneous communications and exhibits on the record.

"Judges should look to contemporaneous evidence to substantiate a defendant's expressed preferences...(w)e cannot agree that it would be irrational for a defendant in Lee's position to reject the plea offer in favor of a trial." [Lee v. United States, 582 US, 137 S. Ct., LEXIS 4045 (2017)]. Martinovich's contemporaneous evidence demonstrates "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." [Hill v. Lockhart, 474 US 52, 106 S. Ct. 366, 88 L. Ed 2d. 203 (1985)]. A small excerpt from the contemporaneous evidence on the record includes:

1) Mr. Martinovich urged Mr. Woodward to conduct his own research for his defense. "Not accepting Govt-controlled attorney statements - conduct own interrogatories, depositions, discovery with factual chronology & documents - under oath." [Aff.#69, Atch.#5].

2) Mr. Martinovich urged Mr. Woodward to take the case to trial and tell the truth. "(Trial) Theme: The attorneys authorized all,

created all, to get their $1,000,000+ in fees & then when Feds step in they scatter like cockroaches in the light & can't seem to remember - juries don't like attorneys - Great theme for motivated attorney." [Aff.#69, Atch.#5].

3) Mr. Martinovich wanted to ensure Mr. Woodward read all the supporting documentation to show likely trial victory. "Get copy of Jeff 'Indemnification Documentation' Folder - Broc & Ash have. [Aff.#54,#69, Atchs.#1,5].

4) Mr. Martinovich's temper boiled over as he begged Mr. Woodward to take his case to trial. "Wouldn't an attorney be able to show a jury of at least 8th grade education how with 4 law firms and accountants so intimately involved in handling every step - how would or could Horrible Martinovich take cash out of hedge fund accounts (Ridiculous), take expense reimbursements unauthorized (Ridiculous), and trick and manipulate 4 law firms in a magic act to not let them know where the money was coming from (Ridiculous!) - Just as Martinovich secretly manipulated in a wild conspiracy his Mgt. Team, the Valuation Expert, and the Auditors...Again, commits violence against common sense." [Aff.#69, Atch.#7].

In his efforts to thwart Mr. Martinovich's insistence to proceed to trial, Mr. Woodward then moved to an aggressive, repeated campaign to manipulate Martinovich to believe that Woodward had negotiated an arrangement to 1) switch both cases to the Honorable Judge Allen with whom he had a close relationship ["going 'to play hardball' to get the sentencing for both in front of Judge Allen...known her 25 years, she assisted him on cases." (Aff.#71, Atch.#27,29)], 2) have the government move for concessions below any written agreements ["though stipulating 33 that the Govt. will have to ask for 30-31 as starting point due to all acceptance (30 = 97-121)...they will ask for lower because of the win and acceptance." (Aff.#71, Atchs.#12,25,27,28)], along with the Case 2 sentence being less and concurrent as the contract stated ["Don't overanalyze Govt. on why erasing 2nd Indictment." (Aff.#71, Atch.#25)], and finally 3) have Judge Allen provide downward variance to the final aggregate sentence of "5-6 years" which permitted Martinovich to be released immediately or shortly thereafter ["5-6 years is target...the win on Appeal

adds to the acceptance in lowering...4 years too Aggressive... think 6 years is doable good deal...they will propose a sentence below it since won appeal & cooperated...All they want you to do is admit to something, and then you're looking at 4-6 years... that means you go home now or very soon." [Aff.#71,#74, Atchs. #24,25,27-29]. Tragically, Mr. Woodward even called Mr. Martinovich's fiance, Ms. Ashleigh Amburn, and told her that Mr. Martinovich would be home soon if he went along with the plan so, "don't let him do anything crazy." [Amburn Aff.#9, Ex. 40]. [See Original Memorandum and Amended Affidavit for complete list of Sentencing Guidelines calculations asserted by Mr. Woodward].

As Mr. Martinovich thoroughly details in the Memorandums and Affidavit on the record, the written agreement or colloquies with the Court were not incongruent with, and certainly not mutually exclusive with, the negotiated agreement Mr. Woodward had claimed to have attained in order to stop Mr. Martinovich from proceeding to trial. The template acknowledgments to standard court colloquies in no way created a barrier for the government to propose their concessions and for the Court to provide its downward variances to "put an end to this."

Whether by malicious intent, or through extreme recklessness, without question Mr. Woodward provided ineffective assistance which severely prejudiced Mr. Martinovich. "When a defendant alleges his counsel's deficient performance led him to accept a guilty plea rather than go to trial, courts do not ask whether, had he gone to trial, the result of that trial would have been different than the result of the plea bargain. That is because, while courts ordinarily apply a strong presumption of reliability to judicial proceedings, they cannot accord any such presumption to judicial proceedings that never took place." [Lee].

GROUND 6: COUNSEL WAS INEFFECTIVE FOR FAILING TO CHALLENGE TAINTED INDICTMENT AND COUNT EXCEEDING STATUTE OF LIMITATIONS.

Mr. Martinovich herein this instant Ground makes a substantial showing of the denial of a constitutional right [§ 2253(c)(2)]. Mr. Martinovich was denied Sixth Amendment effective assistance of counsel, as defined by Strickland's first and second prongs, by defense counsel Mr. Woodward failing to object to and to challenge the Case 4:15cr50 ("Case 2") Indictment which was illegally sealed, illegally re-sealed as presented before four Magistrate Judges after having expired, and that included Count One which expired past the applicable statute of limitations submitted by the government.

Based on the belief that Mr. Martinovich would likely have his conviction and sentence vacated on Appeal in Case 4:12cr101 ("Case 1"), the government attained a second indictment to keep Mr. Martinovich from being released or, at a minimum, to use as leverage to coerce Martinovich into finally accepting a plea offer instead of, again, pursuing trial. The government attained the second indictment on July 15, 2015, and immediately moved for it to be sealed, stating, "The government has brought the instant indictment to toll the statute of limitation on a violation of 18 U.S.C. § 1341 (Mail Fraud), that would have run on July 30, 2015. See 18 U.S.C. § 3282." [Doc. 2, 7/15/2015]. 18 U.S.C. § 1341 was Count One which is the reason the government states they brought the indictment pursuant to 18 U.S.C. § 3282, which is the 5-Year statute of limitations, which would have expired on July 30, 2015, because the Indictment claimed this Mail Fraud Count One occurred "On or about July 30, 2010." [Doc. 1, 7/15/2015].

The government was not sure that the Indictment leverage would be necessary, as Mr. Martinovich's Appeal had not yet been decided, therefore they moved for it to be illegally sealed, as Mr. Martinovich

will prove. Next, the government forgot to motion the Court to extend the seal before it expired-unsealed six months later on January 15, 2016. On January 25, 2016, the government realized their error and attempted to illegally re-seal the Indictment before Judge Douglas E. Miller, then before Judge Robert J. Krask, then before Judge Lawrence R. Leonard, and then finally on January 26, 2016, was illegally re-sealed with a signature by Judge Douglas E. Miller, not signed nunc pro tunc (now for then).

As respectfully as possible, Mr. Martinovich asserts that the District Court's "answer" [Doc. 94] to Ground Six's allegations of repeated fraud by the government, first chooses to, again, sidestep and not address the entire argument and incontrovertible evidence of illegal sealing, illegal re-sealings, and judge shopping to effect the government's scheme and artifice, and second, in regards to the specific Count One, chooses to now substitute a separate code of statute of limitations, § 3293. Mr. Martinovich must respectfully defer to this Panel of Review to label the implication of this post-hoc substitution of a statute, § 3282, which was clearly recorded in the courts as the catalyst to attain an indictment, and then the necessary statute to influence a Federal Magistrate Judge to seal an indictment, and then the noted statute to again influence four Magistrate Judges to re-seal an indictment which was already unsealed and expired. To paraphrase trial counsel Mr. Broccoletti's cross examination of investment banker Mr. Bruce Glasser who completely reversed his previous sworn testimony, "Were we prevaricating then or are we prevaricating now?"

Herein by reference Mr. Martinovich submits the full argument and legal standards presented in the Original Memorandum (Doc.74, Gr.6), the Amended Memorandum (Doc. 89, Gr.6), Amended Martinovich

Affidavit #'s 78A-82, 239-250 (Doc. 90), and Exhibits #1-43.

INITIAL ILLEGAL SEAL: Initially on July 15, 2015, the government based its Motion to seal, as noted, on the coming expiration of Count One pursuant to the 5-Years § 3282 statute, citing as precedent U.S. v. Ramey, yet the government misquoted and misapplied this 30-year old case, while Ramey, itself, misquoted FRCP 6(e)(4). Ramey states, "Under Fed. R. Crim. P. 6(e)(4) an indictment could be sealed for any prosecutorial need and not simply for taking a defendant into custody." Except, Rule 6(e)(4) does not say this. Rule 6(e)(4) explicitly states "may direct that the indictment be kept secret until a defendant is in custody or has been released pending trial." That is all. This misquote and misapplication of Rule 6(e)(4) finds its genesis in a 1949 collateral comment by Third Circuit Judge Maris in Michael, "(W)e see nothing unlawful in the court imposing secrecy in other circumstances which in the exercise of sound discretion it finds call for such action." This 70-year old overreach of the Rule, and the misquote in Ramey are rarely cited in the Fourth Circuit, as conscientious prosecutors are aware of the failings. Similarly, the government's Motion to Seal incorrectly asserts that the indictment may be sealed "solely to toll the statute of limitation on a certain charge" quoting Mitchell. Again, this citation does not say this. As many cases cite, tolling of a statute of limitations has been accepted as a collateral benefit for the government when a "rules-based" decision to seal has been approved. As in Mitchell, the Court actually states, "and can toll the statute."

The correct application of Rule 6(e)(4) is for, and has been narrowly interpreted by the Courts, apprehending dangerous defendaants, stopping defendants from fleeing, protecting cooperating witnesses,

and for rare, explicit prosecutorial steps. Mr. Martinovich was securely incarcerated at Fort Dix FCI on July 15, 2015. The government had initiated grand jury investigations in 2013, after thoroughly investigating Martinovich for even three years prior. In Ramey, the indictment was truly "sealed to protect persons cooperating" in the government's case. The sealing protected "endangered witnesses" because the government was "securing admission to the Witness Security Program" and the unsealing "might cause Ross and Ramey to flee." This, of course, is inapplicable to Martinovich's case. In Mitchell, the Court actually dismissed the Indictment Counts "because the government failed to make any meaningful effort to find the defendants." [Mitchell].

Without question, the only "prosecutorial need" for sealing the Case 2 Indictment was to wait and see if Martinovich won his Appeal for Case 1 and was potentially walking out the door. And, the prosecutors executed their scheme perfectly. "Delay in unsealing an indictment is unreasonable if there is no legitimate prosecutorial need for it...(and) an improperly sealed indictment does not toll the statute of limitations. There is no tolling of the statute of limitations where there was no factual basis for sealing the indictment." [Upton].

ILLEGAL SEAL EXTENSION: On January 15, 2016, the government's seal of Mr. Martinovich's indictment expired. The authority to re-seal the indictment expired. Count One, Mail Fraud, for which the original statue of limitation ended July 30, 2015, had been, although illegally, tolling under a sealed indictment, but now was by law unsealed and expired. As the government stated that tolling this Count, pursuant to § 3282, was its sole purpose for bringing and sealing this indictment, the government was now

certainly aware that this charge was expired. "Where the government is required to take certain steps for the statute of limitations to be tolled, tolling may be disallowed if those requirements are not strictly fulfilled. The fact that the delay in unsealing the indictment was unintentional does not, however, affect this Court's ruling. In Spector, the First Circuit did not overlook the government's mistake even though it was 'likely the result of some unintended clerical error.'" [Upton].

On January 25, 2016, once the seal of this indictment was no longer in effect, and the statute of limitations was no longer tolled, the government appeared to have great difficulty in gaining a judge's signature on another extension. AUSA Brian Samuels also signed this Motion "For AUSA Kathleen Dougherty" even though the innumerable other Motions submitted by the government in this case always included Ms. Dougherty's own signature. Case 2 docket identifies this Motion in front of Judge Miller, then switched to Judge Krask, and then "REFERRED" to Judge Leonard, and then, eventually, on January 26th, this invalid extension was signed by Magistrate Judge Douglas E. Miller, and not signed as nunc pro tunc. Mr. Martinovich will, again, respectfully allow this panel to discern why the attempt to gain signatures and authorizations was such an imbroglio.

"When the government failed to file a status report or to request a continuance after the 30 days had passed, the authority to seal the indictment expired, and the statute of limitations began to run, therefore the charges were time barred...thus no prejudice need be shown in this case because the seal of the indictment was no longer in effect and the statute of limitations was no longer tolled when the thirty-day period ended." [Upton].

"Finding no tolling of statute of limitations where the government made an implicit false representation in requesting sealing of indictment." [Maroun]. The Supreme Court has instructed that "evidence of bad faith on part of the Government...supports dismissal with prejudice." [Taylor].

Mr. Woodwared provided ineffective assistance by 1) failing to challenge the initial sealing on illegal grounds, 2) failing to challenge the illegal re-sealing after the expiration-unsealing, 3) failing to object to the inclusion of the illegal Count One as expired by the government's applied statute of limitations, 4) failing to challenge the inclusion of Count One in Martinovich's considered plea negotiations and decision whether to go to trial.

Without question, "there is a reasonable probability that, but for counsel's unprofessional errors, the results of the proceedings would have been different," and that Mr. Martinovich would have rejected a guilty plea. [Strickland; Lee]. As thoroughly explained in Ground Five, Mr. Martinovich supplied Mr. Woodward with Voluminous documentation proving Martinovich's innocence yet one "weakness" greatly concerned Mr. Martinovich - the previous letter sent to MICG hedge fund clients stating they will not take more management fees during the markets turmoil. Although all later legal authorizations were in place, Martinovich knew it was one of those items that "just looked bad," like how the prosecutors exploited the daily pictures of the Ferrari, Bentley, and beach house. Therefore, in the contemporaneous communications with Mr. Woodward, Martinovich wrote, "Weakness - earlier letter to not take Mgt. Fee - Don't remember any conversation addressing later - except services v. Mgt Fee Issue. Weakness - taking Mgt. Fee - Legal but 'View' (like 1st trial cars & Houses pictures for 4 weeks)" [Atch.1, Aff.78A,79].

This letter was Count One of the government's indictment, "a letter from MARTINOVICH to Partners fund investor W.C. regarding the status of the Partners fund" [Doc.1] which "(t)he government has brought the instant indictment to toll the statute of limitation on a violation of 18 U.S.C. § 1341 (Mail Fraud) that would have run on July 30, 2015. See 18 U.S.C. 3282." [Doc. 2].

To coerce Martinovich, in their first meeting Mr. Woodward pulled out a copy of Count One letter to Mr. William Carper (W.C.) and said, "But how are you going to defend that? You said right here in the letter. You think a jury cares if three attorneys later authorized everything?" [Aff.#80]. Count One controlled Martinovich's tactical and strategic decision process. [Atch.#1]. Martinovich wrote to Mr. Woodward that he felt extremely comfortable with Count Two, communications with Katherine Klocke (K.K.), the independent attorney representing MICG Partners Fund as her information had to be 100% congruent with Martinovich's documentation. Martinovich wrote that he was extremely comfortable with Count Three, transfers from FCC to Wells Fargo. And, Martinovich wrote that he was comfortable with Counts Four through Thirteen which covered the Concealment of Money Laundering, as the bank statements, tax ledgers, Harbinger PLC Ledgers, tax filings, and contract documentation fully supported the overly-compliant operations. [Aff.#81]. The government knew the one letter was the critical piece of evidence they could manipulate, and without this Count One, the facts of the case could clearly override the emotions. This is why they broke the law to repeatedly ensure Count One was included in the Superseding Indictment, and they knew that Mr. Woodward would be ineffective and not pick up on this fraud.

As Mr. Martinovich had to make these life decisions, he had

no idea that Count One was actually illegal, the indictment was void, and that fraudulent activity had occurred. Martinovich had no idea at this time just how ineffective Mr. Woodward's assistance had been and how lethal these failures would be. If Count One had been removed from the beginning of negotiations and strategic analysis, without question Mr. Martinovich would have proceeded to trial, as the contemporaneous paperwork confirms. [AFF.#71,#82]. Also, Mr. Martinovich knew by experience that if things went badly at trial, Count One added up to twenty years more sentencing exposure. By the time of Martinovich's future plea acceptance hearing and even later setencing hearing, the illegal inclusion of Count One and Woodward's failures had already severely prejudiced Martinovich not to go to trial, to negotiate on a plea, and to consider Mr. Woodward's fabricated or reckless professed arrangement. The language of the plea colloquy, sentencing colloquy, and contract language are irrelvant to Martinovich's state of mind and decision tree which he was forced to analyze much earlier. Martinovich was never asked to consider an indictment without illegal Count One, which the contemporaneous documentation confirms was the most significant factor. "But those statements were made at the hearing that concerned the plea offer that Vaughn actually accepted, not the 60-month offer that he turned down. At the hearing, Vaughn was not asked, and did not testify, about his conversation with (the attorney) about the earlier 60-month offer, which by that point was no longer relevant." [Vaughn].

Mr. Woodward provided ineffective assistance, and Mr. Martinovich was severely prejudiced, mandating the vacation of the plea contract, acceptance of guilt, Case 2 sentence, and Case 1 sentence as it was controlled by the Case 2 plea negotiations and contract.

GROUND 7: COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO MATERIALLY FALSE PRESENTENCE INFORMATION WHICH WAS DEMONSTRABLY RELIED UPON AT SENTENCING AS WELL AS NOT OBJECTING TO THE SENTENCING COURT'S OPEN REFUSAL TO CONSIDER THE POSITIVE 3553(a) FACTORS.

Mr. Martinovich herein this instant Ground makes a substantial showing of the denial of a constitutional right [§ 2253(c)(2)]. Mr. Martinovich was denied his Sixth Amendment right to effective assistance of counsel, as defined by Strickland's first and second prongs, by counsel's failure to object to and intervene against the material, innacurate information in the PSR and emphatically relied upon by the District Court, as well as the District Court's proclamation to not consider the "positive things" or conduct the sentencing-resentencing de novo.

Respectfully, the District Court attempts to, again, sidestep and reposition the argument by not addressing the explicit District Court proclamations and, inexplicably stating that "Mr. Martinovich fails to specify what specific facts he believes were erroneous."

The detailed transcripts and specifics are clearly itemized and supported in the Original Memorandum (Doc. 74, Gr.7), the Amended Memorandum (Doc. 89, Gr.7), Amended Martinovich Affidavit #'s 83-89 and #'s 251-263 (Doc. 90), and Exhibits #13,17-23,41,43 (Doc. 74). In summary, Probation met with Mr. Martinovich for the Case 4:12cr101 ("Case 1") and Case 4:15cr50 ("Case 2") PSR interviews without Mr. Woodward's assistance. Once receiving the PSR, Mr. Martinovich submitted to Mr. Woodward in writing multiple objections and inaccuracies, to specifically include material misstatements concerning Mr. Martinovich's work in the BOP as a GED tutor, law library assistance, Education assistant, and Adult Continuing Education course contributor. [Ex. #13, 17-23]. Mr. Woodward claimed to have forwarded to the Court all previous

sentencing PSR objections restated as well as the new inaccuracies. [Aff.#'s 84-86,254,258]. At sentencing the District Court demonsrated substantial theatrics to the courtroom claiming that Mr. Martinovich had lied to the Court about his conduct in the BOP, emphasizing, "You're inflating what you're doing in the BOP." Although being well-noticed on these inaccuracies, and then well-noticed by the District Court that these inaccuracies were material and extremely important to the Court's sentencing calculus, Mr. Woodward stood silent without attempting to object or correct the Court, and as learned later, did not submit Martinovich's written, delivered objections and clarifications.

As specifically contained in Mr. Martinovich's Memorandums and Affidavit, the District Court stated:

1. COURT: You said that since you've been in the BOP, the Bureau of Prisons, you said that since being incarcerated that you've been a GED tutor.

   COURT: So that's what Mr. Martinovich told the probation officer, Mr. Noll.

   COURT: But, then Mr. Noll contacts the Bureau of Prisons, because the Bureau of Prisons keeps records, obviously, on everything that happens to somebody being housed there, and the records reveal something different.

   COURT: The records reveal that he was an education orderly for two days, and that he was an education tutor since July - I mean January of 2014 versus November 2013.

   COURT: I've mentioned your BOP conduct.

   COURT: You're inflating what you're doing in the BOP. [Tr. 97-99].

2. COURT: You said that since being incarcerated that you've... also worked in the law library as an assistant.

   COURT: There were no other records pertaining to working in the law library.

   COURT: I've mentioned your BOP conduct.

   COURT: You're inflating what you're doing in the BOP. [Tr. 97-99].

3. COURT: You said that since being incarcerated that you've... been an assistant to the Director of Education...and that you also created an adult education business course for inmates reentering the job force.

COURT: The records reveal that he was an education orderly for two days...and no other records regarding the adult education course.

COURT: You're inflating what you're doing in the BOP. [Tr. 97-99].

Everything that Mr. Martinovich had stated to Probation, as well as corrected in writing to Mr. Woodward was 100% true as the Exhibits BOP Work History, Law Clerk Affidavit, and BOP Education Specialist Affidavit confirm, yet Mr. Woodward failed to intervene at any stage of the process and provide effective assistance. Not only did these errors severely harm and prejudice Mr. Martinovich, but he was even denied the positive impact these altruistic deeds should have added to the District Court's sentencing consideration. [Pepper v. United States, 179 LED 2D 196, 562 US 476 (2011)]. [Ex. #41, 43].

Due process requires that a defendant be "afforded the opportunity of rebutting derogatory information demonstrably relied upon by the sentencing judge, if such information can in fact be shown to be materially false." [Collins]. "To prevail on such a claim, the petitioner must show, at a minimum, (1) that the information before the sentencing court was materially false, and (2) that the court relied on the false information in imposing the sentence." [Tucker]. "A report is inaccurate when it is 'patently incorrect' or when it is 'misleading in such a way and to such an extent that it can be expected to [have an] adverse' effect." [Dalton; Sepulvado].

In combination with demonstrably relying on the material false information, the District Court proclaimed not to consider Mr. Martinovich's positive work, as well as proceed in the sentencing

de novo as opposed to relying on previous Judge Doumar, all again with no objection or intervention from ineffective counsel Mr. Woodward. The sentencing transcripts note:

COURT: All right. And, so, the factors for this sentencing are the same factors via Congress and the Sentencing Commission, so I'm not going to go over all that again.

COURT: I'm not considering any of the positive things you did with the community because that was all presented to Judge Doumar.

COURT: And those are all the factors that the Court is looking at under 3553(a). [Tr. p. 90,97,103].

"In determining the appropriate sentence, a court should consider...the history and characteristics of the defendant." [Kimbrough]. "In cases involving a general remand, the resentencing is de novo." [Pileggi]. To compound these errors, Mr. Martinovich's Memorandums and Affidavit further detail how original Case 1 Judge Doumar complained that the Guidelines did not give enough weight to the good that Martinovich had done in his life, therefore, ironically, Martinovich was not given proper credit for "the positive things" twice. Mr. Woodward's failures allowed errors to compound upon previous errors.

Mr. Martinovich's Memorandums and Affidavit also thoroughly describe how his colloquies were not inconsistent or mutually exclusive with his submissions and understanding from Mr. Woodward. Mr. Woodward failed to 1) object to material PSR errors of which he was provided written notice and objections by Martinovich, 2) object to material errors when emphatically verbalized by the sentencing court evidencing that they were material and the Court was relying upon the multiple errors, 3) be present for the PSR itnerviews even while noticed of the complexities and contentious nature of both cases, 4) object and challenge Judge Allen's proclamations that she was not considering Martinovich's

positive factors, and 5) object to the Court's proclamation that it was relying on the decisions of the previous judge and not conducting the sentencing de novo even though the previous sentence had been fully vacated.

Without question, "there is a reasonable probability that but for counsel's unprofessional errors, the results of the proceeding would have been different." [Strickland]. Because Mr. Woodward did not object and intervene, 1) the District Court believed that Martinovich was repeatedly deceiving the Court therefore impacting the Case 1 and Case 2 sentencing calculus, 2) the District Court did not provide a downward variance on Case 1 and significantly upward departed from the plea agreement in Case 2, 3) the District Court turned what should have been substantial positive attributes into negative variables in the sentencing calculus, 4) Mr. Martinovich was robbed of the benefit of the exemplary positive work he had done in the community as well as the "positive Pepper factors" in the BOP. "Highly relevant - if not essential - to the selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics.. A defendant's post sentencing conduct may be taken as the most accurate indicator of his present purposes and tendencies and significantly to suggest the period of restraint and the kind of discipline that ought to be imposed upon him." [Pepper].

Mr. Woodward provided ineffective assistance and Mr. Martinovich was severely prejudiced.

GROUND 8: SENTENCING COUNSEL WAS INEFFECTIVE FOR AGREEING TO THE HIGH END OF THE GUIDELINES RANGE OR FOR NOT CHALLENGING THE COURT'S RELIANCE ON MATERIALLY FALSE INFORMATION CLAIMING COUNSEL AGREED TO THE HIGH END.

Mr. Martinovich herein this instant Ground makes a substantial showing of the denial of a constitutional right [§ 2253(c)(2)]. Mr. Martinovich was denied Sixth Amendment effective assistance of counsel, as defined by Strickland's first and second prongs, by defense counsel Mr. Woodward, either secretly without Mr. Martinovich's knowledge agreeing to the top end of the plea agreement's recommended 51-63 months Guidelines range, or by failing to object and challenge the Court's open reliance on materially false information claiming he had endorsed this high-end sentence. Mr. Martinovich incorporates the legal discussion of material, false information from herein Ground 7 by reference as if fully restated herein this instant Ground Eight discussion.

Respectfully, Mr. Martinovich notes the District Court's "answer" in the Denial (Doc.94), again, attempts to defend the court-appointed counsel by claiming that at the initiation of the proceedings counsel stated a competent request to the Court. Also, the District Court, again, inexplicably states, "Mr. Martinovich provides no specific evidence regarding this allegation other than citing to fifty-five pages of handwritten notes." First, Mr. Martinovich reiterates that the law is well settled by the Supreme Court and the Fourth Circuit that competent statements at the initiation of an involved proceeding does in no way excuse ineffective assistance from that point forward. Second, respectfully, Mr. Martinovich is not sure if the District Court's law clerk, as in Ground Seven, simply did not read the multiple Memorandums and the detailed Affidavit items referenced in the Memorandums, or that the Court's strategy is to simply

obfuscate this evidence from the Appeals Court panel. Mr. Martinovich notes the detailed descriptions and transcript restatements in the Original Memorandum (Doc. 74, Gr.8), Amended Memorandum (Doc. 89, Gr.8), and Amended Martinovich Affidavit #'s 19, 271-274 (Doc. 90).

On September 29, 2016, during Mr. Martinovich's joint proceeding for the sentencing of Case 4:12cr101 ("Case 1") and Case 4:15cr50 ("Case 2"), following statements by the government and by defense counsel Mr. Woodward, the District Court declared, "(A)nd the guideline range in this instance is 51 to 63 months. And the government has asked for 63 months to run concurrent with the sentence I imposed on the 2012 case, and Mr. Woodward has agreed with that." [Sent. Tr. p.91]. Mr. Woodward, again, stood silent.

Mr. Martinovich at no time agreed to the top end of the Guidelines range, nor did he authorize Mr. Woodward to agree to the top end of the Guidelines range. Mr. Woodward at no time communicated to Mr. Martinovich that he desired to, intended to, or had agreed to the top end of the Guidelines range. [Aff.#91]. Mr. Martinovich is not sure if Mr. Woodward secretly agreed to the high end, certainly not impossible based on the bizarre Mr. Woodward fraud or ineffective assistance presented in this instant Brief's Ground Five, or that he in this instance failed to object to, or clarify, Judge Allen's materially false statement and understanding upon which she domonstrably relied in her sentencing calculus. Mr. Martinovich was sentenced to 63 months, the high end of the Guidelines. Mr. Woodward clearly failed Strickland's first prong.

Without question, "there is a reasonable probability that,

but for counsel's unprofessional errors, the results of the proceedings would have been different." [Strickland]. If Mr. Woodward had provided effective assistance, 1) the District Court would have reconsidered its automatic determination as it was obviously under the belief that all parties had agreed to 63 months, 2) he would have known this sentencing error cannot be held harmless due to its shorter duration as compared to Case 1, as Case 1 is a separate sentence which he knew would be challenged on § 2255 and outside the waiver, and very possibly have the conviction overturned, 3) he would know that he, and now this review panel, cannot understand the innerworkings of the District Court's sentencing calculus, or reconstruct its logic, but must follow the plain language with any ambiguity resolved in favor of Mr. Martinovich [Schrader], 4) he would know that the Court's eventual decision to run two years consecutive to Case 1 is also irrelevant to this error, as per #2, Case 1 sentence may likely be voided on § 2255. Mr. Martinovich restates the severe impact and legal standards of the inclusion of material, false information at sentencing as restated in this Ground from Ground Seven of this instant Brief. [Tucker; Bodkin].

Mr. Woodward failed to provide effective assistance throughout Mr. Martinovich's sentencing, and Mr. Martinovich was prejudiced. [Glover].

GROUND 9: THE GOVERNMENT BREACHED THE PLEA CONTRACT MAKING IT NULL AND VOID BY FAILING TO ADHERE TO ITS TERMS

Mr. Martinovich herein this instant Ground makes a substantial showing of the denial of a constitutional right [§ 2253(c)(2)]. Mr. Martinovich was denied his Fifth Amendment right to due process by the government's unilateral breach of contract.

The government promised in the plea contract in plain language, "The parties agree that restitution will be determined by the Court at sentencing." This significant inducement, the bargain, was later breached by the government's motion to unilaterally modify the restitution contract, against the objections of Mr. Martinovich. "(A)utomatic reversal is warranted when objection to the Government's breach of plea agreement has been preserved," as it has in Martinovich's case. [Santobello].

The District Court's "answer" claims that Mr. Martinovich did not allege a "miscarriage of justice," that Martinovich participated in the modification as "Mr. Martinovich responded," and that the government's "conduct does not amount to a breach of the plea agreement."

Mr. Martinovich herein provides for this panel of review, 1) his pro se submission which must be construed favorably, liberally, and with lenity in favor of pro se defendant Martinovich even if he did not supply a special code word used by attorney-esquires [Haines v. Kerner], 2) contrary to the District Court's response, a "miscarriage" is not required as "A government breach of such a promise violates due process (Fifth Amendment)." [United States v. O'Brien, US App. LEXIS (4th Cir. 1997)], 3) the government clearly, by definition and the voluminous documentation provided, breached a contract with Mr. Martinovich which results in assumed prejudice by Supreme Court and Fourth Circuit precedent [Santobello],

and 4) Mr. Martinovich did not "respond," but yet assertively objected and preserved said breach of contract. By reference herein, Mr. Martinovich submits the argument, documentation, and legal standards of the Original Memorandum (Doc. 74, Gr.9), Amended Memorandum (Doc. 89, Gr.9), Amended Martinovich Affidavit #'s 95-99, 281-282 (Doc. 90), and Exhibits #1-43, as fully restated herein.

Mr. Martinovich provided the specific, detailed procedural history for the District Court and this Panel's review. [Doc. 74, pps. 139-140][Aff.#281]. This promise to finalize restitution, the bargain presented by the government, was a significant inducement and consideration in the mind of Martinovich prompting his eventual acceptance of the contractual offer by the government. Martinovich had diligently fought for the Court to recognize, reconsider, and finalize the previously-applied restitution and its corresponding loss assumption, along with the newly-proposed restitution calculations proposed by the government. [Aff.#95]. Based on Martinovich's prior Appeal Brief and Appeal Pro Se Supplemental Brief Argument on Restitution, the Fourth Circuit had previously stated, "Because we vacate Appellant's sentence on other grounds, we need not reach these issues, but leave those for the re-sentencing court to decide in the first instance." Mr. Martinovich put great value on this bargain that, finally after his substantial input to the Appeals Court, plus the tremendous amount of restitution and loss evidence presented to court-appointed sentencing counsel Mr. Woodward, his "restitution (would) be determined by the Court at sentencing." [Atchs. 10,11,15][Aff.#98].

Prior to Martinovich signing the contract on April 27, 2016,

Mr. Woodward advised Martinovich that although agreeing to a recommended guidelines range, Judge Allen's reconsideration and final determination of restitution and loss would be significant for her downward variance calculations in Case 1 and the low, concurrent sentence for Case 2. [Atchs. 20,26][Aff.#96]. The contemporaneous records of communications between Mr. Woodward and Mr. Martinovich in the Western Tidewater Regional Jail confirm the focus on, and importance of, restitution being determined at sentencing:

1) "Restitution is determined at sentencing so we have to ensure not stupid." [Atch. 10][Aff.#98].

2) "Restitution clarification is needed." [Atch. 11][Aff.#98].

3) "Noted Govt. restitution order request $2.5 million @ 25% of all net income at back of Govt. position paper." [Atch. 31][Aff.#92].

4) "Larry says I will 'be given credit for any of the Partners hedge Fund money not spent on me/defense' ($300k-$400k on fund expenses) - How does he know?" [Atch.31][Aff.#98].

5) "$721k number incorrect and you/we need this % calculations - couple #'s look too large - Do not believe anyone owned 12% of Partners Fund (unles MICG, LLC)" [Atch.21][Aff.#98].

6) "Restitution for Case #2 - $100k to $700k = 6 points on new table." [Atch.20][Aff.#98].

7) "Larry retierated both restitution and forfeiture have hearings if I don't agree with the number - plea doesn't say that on forfeiture." [Atch.29][Aff.#98].

8) "Forfeiture $700k is crazy - Can't just blackmail a #" [Atch.14][Aff.98

9) "Maybe show plan beyond restitution # for shareholders." [Atch.30][Aff.#98].

10) "Restitution Proposed Schedule" [Chart Atch.15][Aff.#98].

"Judges should look to contemporaneous evidence to substantiate a defendant's expressed preferences." [Lee v. U.S., US LEXIS 4045, US S. Ct. (2017)]. It is well-established that the interpretation of plea agreements is rooted in contract law [Dawson]. The Government breaches a plea agreement when a promise it made to induce the plea goes unfilled. [Santobello]. When interpreting

a plea agreement, we enforce the agreement's plain language in its ordinatry sense. [Jordan]. "The appeals court found that the government's breach of the plea agreement released Gonzalez from his promise not to appeal." [Thomas]. "Although the court employs traditional principles of contract law as a guide, it nonetheless gives plea agreements greater scrutiny than it would apply to a commercial contract because a defendant's fundamental and constitutional rights are implicated." [Warner]. "A defendant's waiver of appellate rights cannot foreclose an argument that the government breached its obligations under the plea agreement." [Dawson]. "When a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." [Warner]. "(A) defendant's plea of guilty can truly be said to be voluntary only when the bargain represented by the plea agreement is not frustrated." [Holbrook]. "(T)he fact that the breach of agreement was inadvertent not being material and not lessening the impact of the breach." [Santobello].

Had the government not contractually promised to have restitution determined at sentencing, and contrarily attempted to determine themselves or be left as an open item to be unilaterally modified later, Martinovich would have never signed the contract. The actions, variables, and proceedings have irreparably frustrated the contract and Martinovich cannot be placed in the same factual and strategic position as when previously signing the contract. Implementing any remedy other than voiding the contract and the dependant sentences for Case 4:15cr50 and Case 4:12cr101 would violate Martinovich's contractual, due process, and equal protection rights.

GROUND 10: SENTENCING COUNSEL WAS INEFFECTIVE FOR ADVISING DEFENDANT TO ENTER ILLEGAL PLEA CONTRACT AND FOR NOT OBJECTING TO ILLEGAL PROCEEDINGS VOIDING CONTRACT.

Mr. Martinovich herein this instant Ground makes a substantial showing of the denial of a constitutional right [§ 2253(c)(2)]. Mr. Martinovich was denied Sixth Amendment effective assistance of counsel in plea negotiations, as defined by Strickland's first and second prongs, by counsel Mr. Woodward negotiating in the interest of Mr. Martinovich while yet inserting, and not advising of, clear conflicts of interests meant to thwart Mr. Martinovich's future efforts to receive redress for ineffective assistance. Herein by reference Mr. Martinovich incorporates the arguments and legal discussions of the Original Memorandum (Doc. 74, Gr. 10), Amended Memorandum (Doc. 89, Gr. 10), Amended Martinovich Affidavit #'s 101-103, 283-291 (Doc. 90), and Exhibits #1-43, as if fully restated herein this instant Ground.

Respectfully, again, the District Court's "answer" is irrelevant to the specific allegations submitted by Mr. Martinovich. Mr. Martinovich did not claim "the Government's alleged breach of the Plea Agreement."

By contract law, defense counsel Mr. Woodward was ineffective for, without notice, advising Mr. Martinovich, his client, to agree to a contract which also stated, "The defendant is satisfied that the defendant's attorney has rendered effective assistance." This fraudulent attempt at creating a future waiver against Martinovich bringing redress against the counsel who was simultaneously negotiating a contract on Martinovich's behalf is a conflict of interest.

A plea agreement is a contract, and all parties are held to legal contractual provisions [Santobello]. If either party commits fraud while negotiating the contract, the entire contract

is void as if never existed. [Throckmorton]. If the petitioner can show that counsel operated under a conflict of interest, he does not have to show he was prejudiced. [Cuyler]. "The Sixth Amendment right to counsel includes the right to representation that is free from conflict of interest." [Wood]. A defendant's representative negotiating a protection against the party it is simultaneously representing in a contractual negotiation against a third party, and certainly without informing the represented party of the conflict of interest, creates "a non-waivable conflict of interest between the defendant and the attorney." [Kentucky State Bar]. The plea negotiations stage is a "critical stage" in regards to Sixth Amendment effective assistance of counsel. [Missouri v. Frye].

Mr. Woodward also advised Mr. Martinvocih to enter a plea contract which further attempted to protect himself against redress by containing the language, "The defendant also hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a." [Plea p.4, par. 5].

Yet, the Washington D.C. Court of Appeals claims that banning FOIA suits makes it "more difficult for criminal defendants to uncover exculpatory information or material showing that their counsel provided ineffective assistance...FOIA plays a significant role in uncovering undisclosed Brady material and evidence of ineffective assistance of counsel, and in practice has led to uncovering records relevant to ineffective-assistance-of-counsel claims." [Price v. USDOJ].

Mr. Martinovich notes that the plea contract does not contain an Integration Clause, which in contracts is a provision stating that the remainder of the agreement should remain in force and effect should the Court find one portion of the agreement unenforceable. Martinovich's plea agreement is a contract, which in this case contains no integration clause, and with the inclusion of illegal, conflict of interest provisions, must be voided in its entirety.

Finally, to effect his manipulation to stop Martinovich from proceeding to trial, as argued thoroughly in Ground Five, Mr. Woodward ineffectively advised Mr. Martinovich to enter an ultra vires and unconscionable contract in which he knew the other party promised consideration beyond their powers by manipulating the non-attorney, layman Martinovich. Mr. Woodward, per Ground Five, coerced Martinovich into entering a contract which appeared in print as "the United States and the defendant will recommend to the Court that the sentence imposed on Count 10 run concurrent to any sentence imposed for the defendant's convictions in Criminal Case No. 4:12cr101." [Plea, p.3, para. 4)]. The contract underlined the word "concurrent" in order to contextually manipulate Martinovich, who is not an attorney-esquire, into believing and accepting the persuasive power of Mr. Woodward, an Officer of the Court. As this "concurrency" basically erased any possibility of Case 2 affecting the length of Martinovich's sentence, Mr. Woodward doubled down on the sureness of this underlining by stating, "Don't over-analyze Govt. on why erasing 2nd Indictment," and "0 chance that Allen or Jackson do not comply with the Plea Agreement constraints propsed by Govt." [Atchs. 10,20,25,29]. Mr. Woodward failed to provide effective assistance, per Strickland, over and over in plea negotiations and contracts.

Pursuant to Strickland's second prong, 1) Martinovich would have never knowingly, intelligently, and volunatarily entered a contract with multiple provisions designed to constrain redress against the court-appointed representative reportedly negotiating in his favor, certainly after previously experiencing egregious ineffective assistance of counsel which caused hundreds of errors not to surpass plain error review, but likely to overturn the conviction on a collateral attack on the ineffectiveness of counsel. 2) With effective assistance, Mr. Martinovich would have never signed a contract which exposed himself to even more sentencing years, after previously rejecting three plea agreements, going to trial, and fighting day and night for three years to bring justice. [Aff. #103][Attchs. #1-9]. "Judges should look to contemporaneou evidence to substantiate a defendant's expressed preferences." [Lee]. 3) Any plea or sentencing colloquy does not cure this ineffective assistance, as the District Court never verbalized or addressed these conflict of interest provisions, and any attempt "would exalt form over substance." [Williams].

Mr. Woodward provided ineffective assistance, and Mr. Martinovich was severely prejudiced.

RELIEF REQUESTED

Founded on the enclosed ten Grounds, Mr. Martinovich respectfully requests this Court provide a Certificate of Appealability for the enclosed Grounds and VACATE Case 4:15cr50 sentence, acceptance of guilt, and plea agreement, as well as Case 4:12cr101 sentence as this was fully dependent upon the Case 4:15cr50 plea agreement, acceptance of guilt, and sentencing, along with the Case 4:12cr101 conviction as void as determined by the District Court pursuant

to Ground Five.

Although Mr. Martinovich strongly requests complete vacation as the existing record already demands this remedy, in the alternative Mr. Martinovich requests an evidentiary hearing to hear all ten Grounds submitted.

Mr. Martinovich in the alternative also requests this Court GRANT the Motion For Bond (Doc. 76), Motion in Limine (Doc. 72), Motion for Evidentiary Hearing (Doc. 81), Motion to Waive Counsel (Doc. 82), Motion to Proceed in Forma Pauperis (Doc. 83), and Motion for Mediation (Doc. 86).

6. I have filed other cases in this Court.
   a. Direct Appeal #13-4828 (Sentence Vacated/Judge Removed).
   b. Direct Appeals #16-4644/4648 (Denied on Waiver Provision).
   c. Direct Appeals #17-6651/6652 (Denied).

Date: 09/12/2018

Jeffrey A. Martinovich
Reg. No. 81091-083
FPC - Beckley / P.O. Box 350
Beaver, WV 25813

TYPE-VOLUME CERTIFICATE

This Informal Brief, in Memorandum Format, complies the type-volume limitations of Rule 32(a)(7)(B) as it contains 12,123 words, counted manually.

Date: 09/12/2018

Jeffrey A. Martinovich

CERTIFICATE OF SERVICE

I certify that on 09/12/2018 I served a copy of this Informal Brief on all parties addressed as shown below:

Mr. Brian Samuels AUSA
U.S. Attorneys Office / World Trade Center
101 W. Main St., Suite 8000
Norfolk, VA 23510

Jeffrey A. Martinovich

9/30/18

Love -

2 Copies for any use you desire & you can scan/convert to Word or I can type you more. Feel free to give to anyone & everyone as we rebuild the World.

Love -

I have a book of literary agents here who I will send to each week to build our database & just see what happens.

Keep Swinging You Smoking Hot Publisher!

Love -

Mr. Mark Gerald
The Agency Group, LLC
142 W. 57th St., 6th Floor
New York, NY 10019

October 3, 2018

Dear Mr. Gerald:

I built a billion-dollar company from zero, rejected three government plea offers following the 2008 Financial Crisis, and defended my employees and myself in a bizarre circus trial resulting in my conviction and sentence to fourteen years in federal prison. Seemingly overnight, I morphed from CEO, industry-leader, and charity-civic director to pariah and continual front-page story. Mansions, Bentleys, and Ferraris were replaced with prison cells, gang stabbings, and endless legal battles. "For whom the gods wish to destroy they first call promising."

I have been informed that after five years struggling day and night in the prison law library, I will finally be victorious in release during the first quarter of 2019. I am seeking an agent, a partner, interested in championing my books, speaking engagements, and platform for a resurgence and successful next chapter.

I have written a parable/narrative nonfiction in which the enigmatic Bob Vukovich takes the rookie financier, Cole, under his wing over the course of weekly happy hours at the mystical Bistro. Bob offers Cole lessons in business, women, politics, success, failure, and serving the perfect martini. This friendship, in-turn, enables Bob to exorcise his own demons, his disgrace, so that he may reenter this competitive game of life.

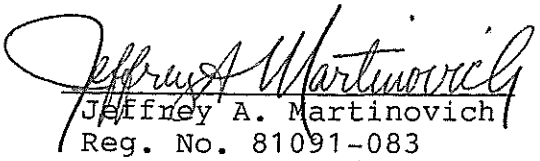
I have also written a rough draft of a unique business advisory book, "Zero to a $Billion to Zero," which provides thirty actionable lessons for creating a billion-dollar organization and culture, while interspersed with fifteen lessons detailing the mistakes I made presiding over the total destruction of this dream.

Finally, I wish to produce a true story novel/nonfiction which includes the significant documentation of this conspiracy involving the crooked U.S. Congressman, corrupt two federal judges, and the fraudulent prosecutor, most of which has not yet been released due to confidentiality provisions. Yet, truth and "never-die-effort" wins out and enables a life restart from zero, once again.

With my upcoming release, I plan to restart my public speaking and consulting platform, domestically and internationally, with these initial tools, and I am seeking an A-Player partner, or partners, for the books, speaking, online, and publicist-public relations. A substantial amount of revenue and capital must be rebuilt for my shareholders and my family.

If of interest, please visit www.jeffmartinovich.com which highlights my business-economics blog, JAM Views, the upcoming books, and my legal archives (the "Fall of MICG" booklet on this site was prepared for our shareholders to explain the closure of the company but is not indicative of the level of projects I wish to produce forward). I am available by mail, I may send you a current email link, or you may contact my lovely fiance, Ashleigh Amburn, at aamburn11@gmail.com. Thank you for your consideration.

Sincerely,



B.S., U.S. Air Force Academy
MBA, College of William & Mary
CEO, MICG Investment Management
Writer, JAM Views Blog
Encl.: SASE

Jeffrey A. Martinovich
Reg. No. 81091-083
FPC - Beckley / P.O. Box 350
Beaver, WV 25813

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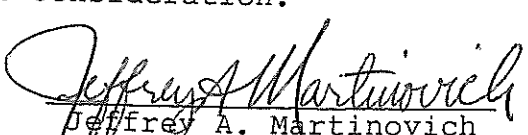

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