

LIST OF APPENDICES

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- Appendix 4-A.** Declaration of Frank L. Amodeo Summarizing into two minute statements the basis for §2255 relief and for factual innocence.
- Appendix 4-B.** Copy of the Eleventh Circuit opinion that identifies the type of proof needed to establish the conflict of interest claims.
- Appendix 4-C.** Letters from the Supreme Court extending time for filing a writ of certiorari.
- Appendix 4-D.** Documents demonstrating the Berman malpractice actions concluded in or about June 2011, revealing the pervasive misadvice concerning the consequences of the guilty plea.
- Appendix 4-E.** Is a composite of documents, which demonstrate the attorneys' the court's, and my misunderstanding of the guilty plea's consequences. Furthermore, the pleading prepared by Mr. Berman's co-counsels reveal the true nature of the tax memorandum.

Appendix 4-A

A declaration containing two brief
factual summaries of the reasons
the guilty plea is constitutionally unintelligent
and I am factually innocent

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FRANK LOUIS AMODEO,

Petitioner,

v.

Case No. 12-176-CR-28000
(6:08-cr-176-Ord-28000)

UNITED STATES of AMERICA,

Respondent.

DECLARATION OF FRANK L. AMODEO IN SUPPORT OF \$2255 RELIEF

I have found it important periodically, to pause, and to assess, and to recap your situation, especially long, complex activities like this legal case. Here I try in two 90 second narratives to articulate the substance of the alleged offense and an explanation why the guilty plea is unconstitutional. I provided in the form a sworn statement comprising facts not opinions.

Alleged Offense

In 2005, I designed the method of transferring certain assets between the five Sunshine Companies and their parent company Presidion Solutions, Inc.. Thereafter, in 2006, these assets were again transferred to AFM, Inc., a Mirabilis Ventures, Inc. subsidiary. During this period, the debt to the Internal Revenue Service increased from 25 million to 181 million.

I did not believe my conduct nor the conduct of any person involved was criminal. At worst I thought certain individuals, particularly those with certain express legal duties, were incurring personal liability for the debt.

This belief was created by my communications with the IRS (in the early

1990's) when I practiced bankruptcy law. A belief augmented in 2005 by the comments of IRS Agent Pace McNealy to Dan Myers, C.P.A.; in 2005, I learned of the comments by IRS Special Agent Patterson to James Baiers, Esquire; and in 2005 and 2006 by communications between IRS Supervisor Judy Berkowitz and Jose Marerro (Enrolled Agent), Richard Berman, Esq., Hans Beyer, Esq., Variety of persons: Sharmilla Kharekar, C.P.A., and Dan Myers, C.P.A. Further support for the belief resulted from conversations between IRS General Counsel John Lordi and myself. Also, communications between the United States Attorney's Office in Fort Lauderdale and Craig Vanderburg supported the conclusion the tax deferment plan was legitimate.

In addition to the government's various acceptances, numerous private entities were aware of and participated in the illegal-appearing conduct. Significantly, most of these persons had fiduciary duties to myself or others thus, if they were aware that the tax-deferment plan was criminal, they had a duty to inform us. None ever did. Including the dozens of accountants and attorneys, who were involved. A list are a small sample of those professionals follows:

-James Baiers, Esq.	-Paul Glover, CFA
-Richard Berman, Esq.	-Mike Stanley, CPA
-Hans Beyer, Esq. -	-Dan Myers, CPA
-Eddie Curry, Esq.	-Lauri Hotz, CPA
-James Sodrianna, Esq.	-Bill Walsh, CFA

In total more than 100 professionals and executives participated in these transactions, yet, (apparently) because the tax returns were accurately prepared and filed plus the IRS was routinely apprised of the nonpayment, none of these individuals considered the activity criminal. Or, at least, none of these ever expressed to me that the conduct was illegal.

Lest anyone doubt, whether the IRS, other government agencies, or these professionals knew about and condoned the deferred-payment strategy; A review of the contemporaneously made audio-video recordings show the professionals discussing the tax liabilities, an examination of the tax returns and Social Security returns reveal disclosure to the government, and neither last nor least, simply reading the results of my four separate polygraph examinations demonstrate how widespread and total the disclosure was. (FrankL.Amodeo.com)

The fact of the taxes not being paid is undisputed, the legal conclusion drawn by the enforcement agents callously in error.

Causes of the Unconstitutional Guilty Plea

I pleaded guilty less than 30 days after being released from a mental hospital. At the time, I was six weeks into an 18 month recovery plan, but had no treating psychiatrist or psychologist. All the doctors I contacted in Central Florida refused to have me as a patient because of the high publicity prosecution.

And, beyond my vulnerable health condition, my attorney had a conflict of interest, he had witnessed the criminal conduct, yet did not disclose the conflict to me, the court, or the government. Similarly, he had not disclosed, that he had made a deal with the government to protect more than a million in defense fees from forfeiture. Nor, did he mention that he had the potential to receive a multimillion contingency fee on certain civil lawsuits, but only as long as I pleaded guilty.

Moreover, he missed informed me about the meaning of specific intent, the scope of the deliberate ignorance doctrine, and the contents of a memorandum, which was the object of the deliberate ignorance. Additionally, he affirmatively misinformed about the necessarily implicate findings arising

from a guilty plea; the consequences of the guilty plea on certain civil lawsuits; and the evidentiary limitations I would face at sentencing. Actually, Mr. Slaughter told me I would have at least 15 days over a 3 month period to present my case. That at sentencing if any of these had not been "guaranteed" I would not have pleaded, but instead gone to trial.

Even with all this still more was required for me to enter a guilty plea, I was assured that I would receive at least a four level substantial assistance reduction from my efforts early in the investigation and more likely a greater reduction as a result of the "Tampa" letter. Plus, I would get derivative credit from any efforts taken by Craig Vanderburg or Dan Myers on behalf of the prosecution. Additionally, I would get "credit" for any money collected from an source; and I would get a 3 level reduction for acceptance of responsibility. None of these promises were fulfilled. If I had known any were not going to be honored; I would not have pleaded guilty.

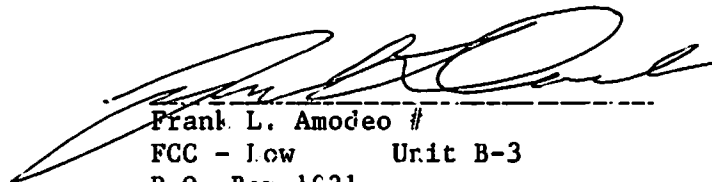
Finally, on the day of the plea hearing, I had been directed by the forensic psychiatrist to take a half dosage of Seroquel. The drug I now am aware was the source of my legal incompetency. An incompetency, which lead the State of Florida to appoint a plenary guardian. A guardianship still in affect at the time change of plea and at sentencing; yet my guardian was never present.

In sum, I pleaded guilty while legally incompetent, while on medication known to pacify me into a stupor, with conflicted counsel, who misadvised me about the critical elements of the crime, misinformed me about facts material of my decisions, and misrepresented the consequences of entering a guilty plea. All while the government threaten to prosecute innocent people if I did not plead while at the same time promising me reduction in sentence from cap

25 years amounting to less than 7 levels and several additional years. Something my attorney expressly told me would lead to an effective sentence of no more than 2 years.

Just reading (or writing) this paragraph reveals this guilty plea lacks an iota of constitutionality and the only fair event is to allow me to proceed to trial.

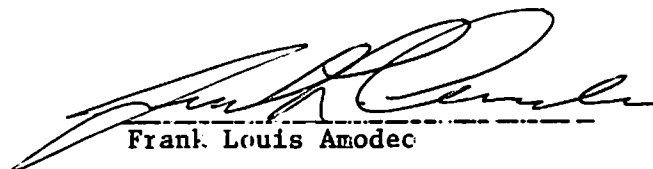
I have personal knowledge of events identified in this declaration, and in accordance with 28 U.S.C. §1746 this declaration is made under penalty of perjury.



Frank L. Amodio #
FCC - Low Unit B-3
P.O. Box 1031
Coleman, FL 33531-1031

CERTIFICATE OF SERVICE

A copy of this motion has been delivered to prison authorities on the same day as executed, postage prepaid. I respectfully request that the clerk distribute the filing to all person or agencies of interest, and registered with the CM/ECF System. Respectfully submitted this 10th day of February 2013, by:



Frank Louis Amodio

Appendix B

A copy of the Eleventh Circuit opinion that notes the two actual conflicts of Mr. Slaughter and indicates the needed proof to establish an entitlement to relief: the Meck Deposition video (Third Motion to Expand Record) and the government e-mail (First Motion to Authorize Discovery: Request for Production of Documents).

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JULY 21, 2010
JOHN LEY
CLERK

No. 09-12937
Non-Argument Calendar

D. C. Docket No. 08-00176-CR-ORL-28-GJK

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANK L. AMODEO,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(July 21, 2010)

Before EDMONDSON, PRYOR and ANDERSON, Circuit Judges.

PER CURIAM:

Frank L. Amodeo appeals his convictions after he pleaded guilty to (1) conspiracy to defraud the United States, 18 U.S.C. § 371; (2) failure to remit payroll taxes, 26 U.S.C. § 7202; and (3) obstruction of an agency investigation, 18 U.S.C. § 1505. On appeal, Amodeo seeks to have his guilty plea set aside and his case remanded to the district court based on (1) ineffective assistance of counsel by his lawyer, who allegedly labored under two actual conflicts of interests⁷ and (2) the district court's failure to make a competency determination. No reversible error has been shown; we affirm.

We generally do not consider claims of ineffective assistance of counsel on direct appeal "where the district court did not entertain the claim nor develop a factual record." United States v. Bender, 290 F.3d 1279, 1284 (11th Cir. 2002). In such a case, the preferred method of raising ineffective assistance of counsel is in a 28 U.S.C. § 2255 motion to vacate. See Massaro v. United States, 123 S.Ct. 1690, 1694 (2003).

We decline to address Amodeo's ineffective assistance of counsel claims

⁷The first supposed conflict involved his criminal defense counsel's attendance at a pre-indictment "mock" deposition, where Amodeo was being prepared for an interview with the Internal Revenue Service. And the second supposed conflict arose from an alleged threat the government made to Amodeo to seek forfeiture of his lawyer's fees if Amodeo did not agree to an earlier proposed plea agreement.

because the record is not sufficiently developed to evaluate the claims at this time. The record reveals that the ineffective assistance of counsel claims raised by Amodeo in his present appeal were not addressed at any depth in the district court. Although Amodeo briefly raised the underlying issues about the alleged conflicts, these claims were not the subject of separate briefing as constitutional ineffectiveness claims nor addressed as such and made the subject of findings and conclusions at the sentencing hearing. See id. (an appellate court is not best suited to assess the factual predicate for an ineffective assistance of counsel claim in the first instance “even if the record contains some indication of deficiencies in counsel’s performance”). Without a factual record revealing the reasons for counsel’s choices, we cannot effectively decide these claims.

Amodeo’s claim that the district court failed to make a competency determination plainly is belied by the record. Notwithstanding the stipulation by both Amodeo and the government that he was competent, the district court heard testimony from one of Amodeo’s treating doctors about his treatment in the year leading up to the plea agreement; and this doctor opined that Amodeo was competent under the federal standard. And, at the plea hearing, after engaging in lengthy colloquies directly with Amodeo about his mental state, his comprehension of the charges against him, the details of the plea agreement, and the legal

consequences of the guilty plea, the district court determined specifically that Amodeo was competent to enter into the plea agreement. Therefore, Amodeo's competency argument is without support in the record.

AFFIRMED.

Appendix 9-C

Letters from the Supreme Court
extending the time for filing certiorari
and confirm an original petition
may be filed out-of-time

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

November 12, 2010

Frank Louis Amodeo
Reg. No. 48883-019
FCC (low)
PO Box 1031
Coleman, FL 33521-1031

RE: Amodeo v. United States
USCA11 No. 09-12937


Dear Mr. Amodeo:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case was postmarked November 1, 2010 and received November 12, 2010. The application is returned for the following reason(s):

The application is out-of-time. The date of the lower court judgment or order denying a timely petition for rehearing was July 21, 2010. Therefore, the application for an extension of time was due on or before October 19, 2010. Rules 13, 30.1 and 30.2. However, you may promptly submit an untimely petition for a writ of certiorari in a criminal case, which will be submitted to the Court with a notation of untimeliness. A sample petition for a writ of certiorari and a copy of the Rules of this Court are enclosed.

Sincerely,
William K. Suter, Clerk

By:


Jeffrey Atkins
(202) 479-3263



Enclosures
cc: Neal Kumar Katyal

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

November 24, 2010

Frank Louis Amodeo
Reg. No. 48883-019
FCC (low)
PO Box 1031
Coleman, FL 33521-1031

RE: Amodeo v. United States
No: 10A437

Dear Mr. Amodeo:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case was postmarked November 17, 2010 and received November 24, 2010. The application is returned for the following reason(s):

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case was presented to Justice Thomas, who on October 28, 2010 extended the time to and including November 22, 2010.

Pursuant to Rule 14.5, a Justice may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days. Therefore, no additional application to extend time will be entertained.

When the time to file a petition for a writ of certiorari in a civil case has expired (including any habeas action), the Court no longer has the power to review the petition or to consider an application for an extension of time to file the petition.

Sincerely,
William K. Suter, Clerk

By:



Kyle R. Ratliff
(202) 479-3039

Enclosures

Supreme Court of the United States

Office of the Clerk

Washington, DC 20543-0001

**William K. Suter
Clerk of the Court
(202) 479-3011**

October 28, 2010

Clerk
United States Court of Appeals for the Eleventh
Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303

Re: Frank L. Amodeo
v. United States
Application No. 10A437
(Your No. 09-15255)

Dear Clerk:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Thomas, who on October 28, 2010 extended the time to and including November 22, 2010.

This letter has been sent to those designated on the attached notification list.

Sincerely,

William K. Suter, Clerk

by

**Erik Fossum
Case Analyst**

Appendix 4-D

These items reveal that I only became aware the advice of my attorneys, the government's attorneys, and the district court was wrong in or about June 2011 after the conclusion of the Florida State lawsuit against Mr. Berman. Notably, triggering a new date for the petition as a whole or four several of the grounds separately.

1. I am aware of the Eleventh Circuit recent en banc reversal of Walker v. Crooks; but believe it in error and if not, then inapplicable to me anyway. (Judicial Est Post Facto or it is Pretext equivalent)

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PARK, FLORIDA 32789

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Frank L Amodeo
Inmate Register No. 48883-019
FCI Coleman
P.O. Box 1031
Coleman, FL 33521



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FORT LAUDERDALE, FLORIDA 33301

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Frank L. Amodeo
Inmate Registry No. 48883-019
FCI Coleman
P.O. Box 1031
Coleman, FL 33521

Job # 812945, ke

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN
AND FOR ORANGE COUNTY,
FLORIDA

FRANK L. AMODEO,

CASE NO.: 08-CA-31333 (32)

Plaintiff,

vs.

BERMAN, KEAN & RIGUERA, P.A.,
and RICHARD E. BERMAN,

Defendants.

_____ /

NOTICE OF HEARING
(Special Set hearing – 2 hours reserved)
(Confirmation No. 123400)

PLEASE TAKE NOTICE that on **Monday, May 16, 2011 at 10:00 a.m.**, or
as soon thereafter as the matter can be heard, we will call up for hearing:

**DEFENDANTS' RENEWAL OF MOTION FOR SANCTIONS PURSUANT
TO SECTION 57.105, FLORIDA STATUTES**

AND

**DEFENDANTS' MOTION TO TAX COSTS AND
MEMORANDUM OF LAW IN SUPPORT**

before **The Honorable Thomas B. Smith**, in the Judge's Chambers, at the Orange
County Courthouse, Hearing Room 1100.02, 11th Floor, 425 North Orange
Avenue, Orlando, FL.

Keller Landsberg PA
Broward Financial Centre, 500 E. Broward Boulevard, Suite 1400, Fort Lauderdale, FL 33394

eFiled in the Office of Clerk of Court, Orange County Florida 2011 Mar 10 02:16 PM Lydia Gardner

Job # 812945, ke

KINDLY GOVERN YOURSELVES ACCORDINGLY.

I HEREBY CERTIFY that on this 10th day of March, 2011, I electronically filed the foregoing with the Clerk of the Courts by using the ECF system which will send a notice of electronic filing to the following: Michael Maher, Esq. and J. Brent Smith, Esq., Maher Law Firm, 631 West Morse Boulevard, Suite 200, Winter Park, FL 32789; and Jack Scarola, Esq., Searcy, Denney, Scarola, Barnhart & Shipley, 2139 Palm Beach Lakes Boulevard, West Palm Beach, FL 33409, and a true and correct copy of the foregoing has been furnished by U.S. Mail to: Frank L. Amodeo, pro se, Inmate Registered No. 48883-019, FCI Coleman Low, Federal Correction Institution, P. O. Box 1031, Coleman, FL 33521.

KELLER LANDSBERG PA
Counsel for Defendants
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500 East Broward Boulevard
Fort Lauderdale, FL 33394
Telephone: (954) 761-3550
Facsimile: (954) 525-2134
Email: david.keller@kellerlandsberg.com

By: /s/ D. David Keller
D. David Keller
Florida Bar No.: 288799