

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BOBBY BOYE : Hon. Freda L. Wolfson, U.S.D.J.
v. :
UNITED STATES OF AMERICA : Civ. No. 16-6024 (FLW)

ANSWER

The United States of America, through its attorney, William E. Fitzpatrick, Acting United States Attorney for the District of New Jersey (by Shirley U. Emehelu, Assistant U.S. Attorney), responds to the allegations in Petitioner Bobby Boye’s motion to vacate, set aside, or correct his sentence pursuant to Title 28, United States Code, Section 2255 (the “2255 Motion”) and states:

BACKGROUND

Boye’s Fraudulent Scheme

1. In or about September 2007, Petitioner Bobby Boye (“Petitioner” or “Boye”) was released from a California State facility after serving a three-year sentence for embezzling money from his former employer, 3-D Systems, Inc. (Pre-sentence Report (“PSR”) ¶ 76). Petitioner relocated to the East Coast, ultimately settling in Franklin Lakes, New Jersey (PSR ¶ 13), and was admitted to practice law in the State of New York in or about 2010. That same year, in or about July 2010, Petitioner was hired to serve as an international petroleum legal advisor for the Ministry of Finance of “Country A,” a foreign sovereign

nation, through an international development program sponsored by the Kingdom of Norway. As a legal advisor, Petitioner's responsibilities included securing contracts with outside vendors for Country A's benefit. (PSR ¶ 13).

2. In or around February 2012, Country A marketed and solicited bids for an approximately \$4.9 million contract to provide legal and tax accounting advice to Country A (the "Contract"). As a member of an approximately three-member committee responsible for reviewing and scoring the submitted bids for the Contract (the "Bid Review Committee"), and due to the deference that other members of the Bid Review Committee paid to him, Boye held tremendous sway in determining which company would be awarded the Contract. Boye exploited his position as a trusted legal advisor to Country A and as a member of the Bid Review Committee by steering the Contract to Opus & Best Law Services LLC ("Opus & Best"), a company that, unbeknownst to Country A, Boye controlled and had only recently incorporated. (PSR ¶¶ 14-18, 25).

Boye's False Representations Regarding Opus & Best's Credentials

3. Country A awarded the lucrative Contract to Opus & Best based largely upon the recommendation of Boye (PSR ¶ 17) and the false representations contained in Opus & Best's bid documents, rejecting bids from well-renowned accounting and consulting firms. In Opus & Best's bid documents (the "Bid Documents"), which Boye and a relative authored and emailed to Country A on or about March 17, 2012 using an email account for a "Dominic Lucas," a purported partner at Opus & Best. Boye's Bid Documents

contained numerous false statements and material misrepresentations concerning Opus & Best's qualifications that were intended to give Country A the misimpression that Opus & Best was a legitimate, established firm. (PSR ¶¶ 18, 26, 27, 28). For example, the Bid Documents claimed, in pertinent part, that:

- “Opus & Best [wa]s a multi-disciplinary corporation, proving [sic] legal, accounting and economics services principally to the oil and gas sector. It is organized under the New York State laws as a limited liability corporation. Opus & Best was founded in 1985 and it is also registered as a legal and accounting services provider in Europe, Middle East and Africa.” (PSR ¶ 28).
 - In truth, Opus & Best's Articles of Incorporation were not filed with the State of New York, Department of State, until March 30, 2012 – after the Bid Documents were submitted to Country A. (PSR ¶ 29). Thus, Opus & Best had not been in operation for almost thirty years, as falsely indicated in the Bid Documents.
- “Opus & []Best [wa]s endowed with first class talent of attorneys, accountants and economists performing services principally in the mining, oil and gas sector” (collectively, the “Opus & Best Employees”). (PSR ¶ 30).
 - In truth, other than a “staff attorney” listed by Boye as one of the purported Opus & Best Employees, there was no record of individuals of those same names being admitted to practice law in New York or New Jersey. As for the listed “staff attorney,” there was an attorney of the same name admitted to practice in New York, but this attorney worked in the Tokyo, Japan office of a U.S.-based law firm, not as an attorney for Opus & Best in New York. (PSR ¶ 31).
 - Additionally, there was no record, in the New York State's Office of Professions' official online database, indicating that the accountants listed by Boye among the Opus & Best Employees held certified public accountancy licenses. (PSR ¶ 32).

- Simply put, Opus & Best employed no one other than Boye, let alone the licensed professionals identified in the Bid Documents as supposedly employed by Opus & Best.
- Opus & Best’s “Relevant Consulting Experience in the last Five (5) Years/References” purportedly included the “[p]rovision of consulting services” to other foreign sovereign nations. (PSR ¶ 34).
 - These other countries had never awarded any contracts to defendant Boye/Opus & Best or otherwise had any business dealings with Boye and his entity. (PSR ¶ 34).
- Boye failed to disclose, and caused others to fail to disclose, that his affiliation with Opus & Best created a conflict of interest and rendered him a third-party beneficiary of the proposed Contract. Indeed, in the Bid Documents’ “Statement of any Potential Conflicts of Interest,” Boye falsely “confirm[ed] that [Opus & Best] ha[d] no conflicts of interest in undertaking th[e] assignment[.]” Additionally, the Bid Documents falsely claimed that “there [we]re no third party beneficiaries to th[e] [proposed] Agreement” between Opus & Best and Country A. (PSR ¶ 33).
 - In truth, Boye was the sole member of Opus & Best, created Opus & Best for the sole purpose of misappropriating the multimillion dollar Contract for his own personal benefit, and deliberately masked his affiliation with Opus & Best so that he could deceive Country A into believing that Opus & Best was a legitimate, independent firm, free of conflicts of interest and undisclosed third-party beneficiaries. (PSR ¶¶ 33, 35).

4. Boye’s material misrepresentations were not limited to the Opus & Best Bid Documents. As charged in the Information, Boye also caused a website to be generated for Opus & Best, in or about March 2012, which

contained many false claims regarding Opus & Best's credentials, including the following:

- "Our professional tax advisors are simply the best in the business. We have over 40 top tax professionals, each with decades of high-level oil and gas tax/accounting experience spread across the Americas, Middle East, Europe, Africa and South East Asia."
- "Our experienced tax professionals, accountants and economists jointly bring an unparalleled breadth of industry experience to every engagement. We work with organizations to proactively and efficiently address tax matters connected with the business decisions in relation to the oil and gas industry. We provide tax advisory services on all aspects of oil and gas taxation and tax department operations to corporations. We also assist sovereign government revenue agencies to write tax laws, regulations, tax manuals and rulings."

(See Information, Crim. No. 15-196, docket no. 19, at ¶ 10).

After Fraudulently Steering the Lucrative Contract to Opus & Best, Boye Diverted the Contract Proceeds to His Own Personal Use

5. After steering the \$4.9 million Contract to Opus & Best through fraud and deceit, Boye swiftly diverted the Contract payments to his own personal use. He opened a J.P. Morgan Chase Bank business account ending in -0399 for Opus & Best in New York (the "Opus & Best -0399 Account") in or about April 2012. Boye was the sole signatory on this bank account. (PSR ¶ 37). Starting in or about June 2012 and continuing through in or about December 2012, pursuant to the terms of Country A's "Contract for Consulting Services" with Opus & Best, Country A caused wire transfers totaling more than \$3.5 million to be made from Country A's account at the Federal Reserve Bank of New York to the Opus & Best -0399 Account. These transfers were

made via the Automated Clearing House (“ACH”) payments system and processed at the Federal Reserve’s ACH facility located in East Rutherford, New Jersey, thereby involving interstate wire transfers between New York and New Jersey. (PSR ¶¶ 38, 40).

6. Boye then diverted the Contract payments to his own personal use to purchase numerous assets, including, but not limited to:

- Four properties located in Ramsey, New Jersey, North Haledon, New Jersey, Oakland, New Jersey, and Elizabeth, New Jersey, respectively, for a total of more than approximately \$1.5 million in cash;
- Three luxury vehicles, namely a 2012 silver Bentley Continental for approximately \$172,000, a 2012 black Range Rover for approximately \$100,983, and a 2011 gray Rolls Royce Ghost for approximately \$215,000; and
- Two designer watches for, in total, almost \$20,000.

(PSR ¶ 41).

7. Boye’s fraudulent scheme came to an end because Country A became suspicious of his background, particularly after his claim in early 2013 that he was suffering from a life-threatening illness—a claim that turned out to be a sham. Through its own private investigation of Boye, Country A learned of his criminal record. In or around April 2013, by which time Boye and his coconspirators had defrauded Country A of more than \$3.5 million through the fraudulent scheme, Boye left his legal advisor position and departed from Country A. (PSR ¶ 42).

Boye's Attempts to Fraudulently Collect Additional Payments from Country A

8. Even after he abandoned his employment as a legal advisor to Country A, Boye continued trying to extract Contract payments from Country A by impersonating or causing the impersonation of a purported employee of Opus & Best. For example, on or about May 26, 2013, purported Opus & Best Employee, "Dominic Lucas," attached to an email to certain Country A representatives, an invoice for a "final payment" of approximately \$630,000 purportedly owed to Opus & Best under the Consulting Contract. The wiring instructions at the bottom of the invoice provided that the approximately \$630,000 payment should be made to the Opus & Best -0399 Account secretly controlled by defendant Boye. (PSR ¶ 43).

9. Boye's fraud did not end there. He sought other opportunities to fraudulently obtain moneys from Country A. For example, after registering an Opus & Best entity as a Hong Kong company in or about December 2012 ("Opus & Best-Hong Kong"), Boye tried to enter into a contract for "Tax Consulting and Advisory Services" with Country A in or about April 2013. In seeking this engagement, Opus & Best-Hong Kong sought an advanced payment of approximately \$250,000 from Country A. Country A rejected this proposal. (PSR ¶ 44).

Boye's Arrest

10. Boye was arrested on June 19, 2014 (PSR ¶ 9) and charged by federal Criminal Complaint, in Count One, with wire fraud conspiracy, in violation of Title 18, United States Code, Section 1349; and, in Counts Two

through Seven, with substantive acts of wire fraud and abetting the same, in violation of Title 18, United States Code, Sections 1343 and 2. (Complaint, Crim. No. 15-196, docket no. 1). The day after his arrest, on June 20, 2014, Boye was released on a \$1.5 million secured property bond. (PSR ¶ 9).

11. Boye initially was represented by retained counsel, Joseph Rem, Jr., Esq. In November 2014, presumably after Boye exhausted his funds to pay for legal fees, Assistant Federal Public Defender K. Anthony Thomas (“AFPD Thomas” or “Mr. Thomas”) was appointed counsel for Boye. (See Order Appointing Federal Public Defender filed on Nov. 12, 2014, Crim. No. 15-196, docket no. 14).

Boye’s Guilty Plea

12. The parties entered into a plea agreement in March 2015, pursuant to which Boye agreed to plead guilty to a one-count Information charging him with conspiracy to commit wire fraud, in violation of Title 18, United States Code, Section 1349. (See Plea Agreement, Crim. No. 15-196, docket no. 23).

13. Pursuant to their plea bargain, the parties stipulated in the Schedule A of the Plea Agreement to: (a) an aggregate loss amount greater than \$2,500,000 but not more than \$7,000,000, resulting in an 18-level increase to the base offense level of 7; (b) the application of the two-level enhancement for abuse of position of trust; (c) a three-level reduction for acceptance of responsibility; and (d) a resulting total Guidelines offense level of 24. (Id., Schedule A, at 10-11). Additionally, the parties waived the right to

appeal or collaterally attack the sentence if it fell within, or, as to Boye's waiver, below, the total Guidelines range resulting from offense level 24. (Id., Schedule A, at 11 ¶¶ 9 & 11). Boye also "agree[d] to make full restitution for all losses resulting from the offense of conviction or from the scheme, conspiracy, or pattern of criminal activity underlying the offense, to Country A in the amount of \$3,510,000." (Id. at 3). Additionally, he "agree[d] that as part of his acceptance of responsibility . . . , he w[ould] consent to the entry of a forfeiture money judgment in the amount of \$4,233,015.42[.]" (Id. at 4).

14. At his plea hearing on April 28, 2015, Boye entered his guilty plea to the single-count Information charging him with wire fraud conspiracy. During the hearing, the Court conducted an extensive colloquy to ensure that Boye's guilty plea was intelligent, knowing, and voluntary. (See generally Plea Hearing Transcript ("Plea Tr."), attached hereto as Exhibit ("Ex.") A).

Boye's Sentencing

15. The sentencing took place before Your Honor on October 15, 2015. The applicable Guidelines calculation was not contested by the Government or Boye. Applying the November 1, 2014 edition of the Sentencing Guidelines manual, the Probation Office determined that: (1) Boye had a criminal history category of III, with four criminal history points (PSR ¶ 79); (2) the loss was \$4,369,706.30, or more than \$2.5 million but less than \$7 million, resulting in an 18-level increase from the Base Offense Level of 7 pursuant to U.S.S.G. § 2B1.1(b)(1)(J) (Id. ¶ 65); (3) Boye abused a position of private trust in a manner that significantly facilitated the commission or concealment of the

offense, resulting in a 2-level increase pursuant to U.S.S.G. § 3B1.3 (Id. ¶ 68); and (4) Boye was eligible for a 3-level reduction for acceptance of responsibility pursuant to U.S.S.G. §§ 3E1.1(a) and 3E1.1(b) (Id. ¶¶ 72 & 73). The Total Offense Level was 24 (Id. ¶ 74), which resulted in an advisory Guidelines range of 63 months to 78 months. (Id. ¶ 123). The Probation Office's Guidelines calculations were consistent with the parties' plea agreement stipulations. (PSR ¶ 124).

16. After hearing extensive arguments by both parties, the Court sentenced Petitioner to 72 months in prison, three years of supervised release, a \$100 special assessment, and ordered Boye to pay the stipulated restitution amount of \$3,510,000 to Country A. (Judgment, Crim. No. 15-196, docket no. 29).

Boye's Direct Appeal

17. Boye filed a notice of appeal on November 16, 2015, retaining Michael Confusione, Esq. as his appellate counsel. (Notice of Appeal, Crim. No. 15-196, docket no. 31). On appeal, the United States moved to enforce the appellate waiver and for summary affirmance, which motion was granted by the Third Circuit. (See Third Circuit Mandate filed Feb. 19, 2016, Crim. No. 15-196, docket no. 45).

Boye's 2255 Motion

18. In his pending 2255 Motion, Petitioner does not claim his innocence; indeed, he notes: "There was no issue that [he] committed the conspiracy to commit wire fraud crime to which he pleaded guilty."

(Petitioner’s Memorandum of Law in Support of Defendant’s Petition Under 28 U.S.C. § 2255 (“Pet. Br.”) filed on Sept. 28, 2016, Civ. No. 16-6024, docket no. 1-1, at 2)¹. Rather, Petitioner claims: “There was an issue . . . on the amount of the ‘loss’ caused by [his] crime.” (*Id.*).

19. Specifically, Petitioner insists that the Court should not have accepted the parties’ stipulated loss amount, arguing that “[t]hough he duped [Country A] into awarding him the contracts, he was fully capable of performing, and did perform, the work under the contracts.” (*Id.* at 3). Moreover, Petitioner notes that he was “admitted to the Bar of the State of New York” and “retained other professionals to help produce the complex work-products contracted for,” including “Peter Chen, a New York and New Jersey licensed attorney, CPA, and former tax partner at Deloitte & Touche LLP[.]” (*Id.*). While freely admitting that he and his coconspirators, including Chen, impersonated a coterie of licensed attorneys and accountants, Petitioner alleges that AFPD Thomas was constitutionally ineffective because he failed to secure a plea bargain with the Government wherein the stipulated loss amount would be off-set by the value of the work product generated by Petitioner and his coconspirators, pursuant to U.S.S.G. § 2B1.1 app. n.3(E)(i). (*Id.* at 15-16). Moreover, Petitioner argues that Mr. Thomas was ineffective for “fail[ing] to submit to the District Court at sentencing the work products that [Petitioner]

¹ In addition to filing a brief in support of his 2255 Motion, Petitioner also filed a Certification and a Supplemental Certification in support of his 2255 Motion. (*See* Certification filed Sept. 28, 2016, Civ. No. 16-6024, docket no. 1-2; and Supplemental Certification, Civ. No. 16-6024, docket no. 7). In this Answer, the United States responds to the legal arguments raised in Petitioner’s Brief, Certification, and Supplemental Certification.

provided to [Country A] in exchange for the payments [he] received under the three contracts.” (Id. at 22).

20. Furthermore, Petitioner maintains that AFPD Thomas was ineffective for failing to argue the alleged inapplicability of the set-off exception embodied in U.S.S.G. § 2B1.1 app. n.3(F)(v)(I), which provides in pertinent part:

In a case involving a scheme in which (I) services were fraudulently rendered to the victim by persons falsely posing as licensed professionals . . . , loss shall include the amount paid for the property, services or goods transferred, rendered, or misrepresented, with no credit provided for the value of those items or services.

Petitioner maintains that this exception does not apply because he was in fact a licensed attorney—albeit, a licensed attorney impersonating various fictitious licensed attorneys and CPAs at his fake law/accounting firm, “Opus & Best”—and because he subcontracted at least some of the work to Chen, a purportedly licensed attorney and CPA who also allegedly performed work under the Contract without the knowledge of Country A. (Pet. Br. at 16-18).

21. Additionally, as a fall back, Petitioner maintains that there was no requirement that the highly technical work of drafting petroleum tax regulations, a transfer pricing study, and interpretive guidelines for Country A’s tax provisions be done by licensed professionals (id. at 17-18). Nevertheless, professional licensing clearly seemed to have been a prerequisite since, as a member of the committee reviewing the contract bids, Petitioner ensured that Opus & Best’s bid made clear that its project team would be heavily staffed with supposedly licensed attorneys and accountants.

22. Finally, Petitioner claims that AFPD Thomas was ineffective for failing to argue that the restitution ordered in the case should have been off-set by the value of the services rendered by Petitioner to Country A. (Id. at 21).

DISCUSSION

I. Legal Standard for Boye's Ineffective Assistance of Counsel Claim.

23. Boye's various arguments boil down to a claim of ineffective assistance of counsel. In order to prevail, Boye must satisfy the two-pronged test announced by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984). To do so, he must show that: (1) counsel's performance fell below an objective standard of reasonableness; and (2) counsel's deficient performance prejudiced the defense. Id. at 687; United States v. Day, 969 F.2d 39, 42 (3d Cir. 1992). A petitioner bears the heavy burden of proving ineffective assistance of counsel. United States v. Baynes, 622 F.2d 66, 69 (3d Cir. 1980).

24. Under the first prong, the court must assess whether counsel's performance "was within the range of competence demanded of attorneys in criminal cases." McMann v. Richardson, 397 U.S. 759, 771 (1970); Tollett v. Henderson, 411 U.S. 258, 267 (1973). In order to find counsel's performance deficient, the petitioner must "demonstrate that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." United States v. Gregorio, No. 12-297, 2016 U.S. Dist. LEXIS 29179, at *8 (E.D. Pa. Mar. 8, 2016) (quoting Strickland, 466 U.S. at 687) (internal quotation marks omitted). "The standard for ineffective

assistance of counsel under Strickland is highly deferential and there is a presumption that counsel's actions might be sound trial strategy." Alexander v. Shannon, 163 F. App'x 167, 175 (3d Cir. 2006) (citing Buehl v. Vaughn, 166 F.3d 163, 169 (3d Cir. 1999)). In evaluating a claim that counsel was ineffective, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that under the circumstances, the challenged action might be considered sound trial strategy." Strickland, 466 U.S. at 689 (quotation marks and citation omitted). If the government proves "that counsel actually pursued an informed strategy (one decided upon after a thorough investigation of the relevant law and facts) . . . the initial presumption that counsel performed reasonably becomes 'virtually unchallengeable.'" Lewis v. Horn, 581 F.3d 92, 113 n.13 (3d Cir. 2009).

25. Under the second prong, in the context of the primary allegations raised in the pending 2255 Motion, the petitioner must prove prejudice by establishing that "a deficiency by counsel resulted in a specific, demonstrable enhancement in sentencing . . . which would not have occurred but for counsel's error." United States v. Otero, 502 F.3d 331, 337 (3d Cir. 2007) (quoting United States v. Franks, 230 F.3d 811, 815 (5th Cir. 2000)).

26. Although the Strickland test sets forth the performance prong of an ineffectiveness claim prior to the prejudice prong, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant

makes an insufficient showing on one.” Strickland, 466 U.S. at 697. Indeed, as the Supreme Court has noted:

[A] court need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. The object of an ineffectiveness claim is not to grade counsel’s performance. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed. Courts should strive to ensure that ineffectiveness claims not become so burdensome to defense counsel that the entire criminal justice system suffers as a result.

Id.; see also United States v. Lilly, 536 F.3d 190, 196 (3d Cir. 2008).

II. Boye Cannot Show Deficient Attorney Performance at Sentencing.

27. Boye has not satisfied either prong of the Strickland test, in terms of establishing ineffective assistance of counsel at sentencing. As to the first prong, he alleges that AFD Thomas erred at sentencing by: (1) failing to argue for application of the credit against loss provision set forth under U.S.S.G. § 2B1.1 app. n.3(E)(i), such that the loss to Country A would be off-set by the value of the work product that he generated while impersonating fictitious licensed attorneys and accountants at “Opus & Best”; (2) failing to argue the inapplicability of U.S.S.G. § 2B1.1 app. n.3(F)(v)(I), which bars any credit for the value of services provided where the services were fraudulently rendered by persons impersonating licensed professionals; (3) failing to argue for a credit for services provided in the calculation of restitution under the Mandatory Victims Restitution Act (MVRA); (4) “fail[ing] to submit to the District Court at sentencing the work products that [Petitioner] provided to [Country A] in exchange for the payments [he] received under the three contracts” (Pet. Br. at

22); and (5) failing to alert the Court at sentencing that not only had he falsely impersonated a team of licensed attorneys and accountants at Opus & Best, but so had coconspirator Chen who was assisting him with the work that was supposed to be done by licensed Opus & Best professionals. (Id. at 15-25).

28. AFD Thomas' performance was not deficient, as he vigorously argued at sentencing that Petitioner should receive some credit for the value of the work product that he delivered to Country A—not because the credit exclusion rule set forth in Application Note 3(F)(v)(I) did not apply, but as mitigation under the application of the Section 3553(a) factors. Arguing for a sentence of 63 months, at the bottom of the applicable Guidelines range, Mr. Thomas expressed to this Court:

In the victim's submission that's attached to the government's brief, it's silent, [Y]our Honor, with regard to the actual product that Mr. Boye produced. And, in fact, [Y]our Honor, what Mr. Boye produced is still being used by the country. . . . [W]hat we have here is Mr. Boye created this fraudulent company from the very onset, all right, but he did work.

It's not excuse. It's absolutely no excuse for committing the fraud to begin with. You can't, you can't get the benefit of that, and I'm not saying he should. But in fashioning a reasonable sentence, [Y]our Honor, one that's sufficient but not greater than necessary[,] we should look at the total picture.

At one point when I first got involved in this case I looked at the country's 2012 annual report and there is nothing in there that talks about the fraudulent nature of what—the product, the end product, the work product that he did. Nothing in there talks about that. The attorneys don't mention that the country is in irreparable harm because the product he submitted was lousy and insufficient.

[Country A] hired a big law firm in California that did at least \$600,000 plus – close to \$900,000 of investigation and nothing is said about the fact that the work product was faulty. They still use

it to generate funds and it's going to be continued to be used to generate funds.

So what we have here is somewhat of an unjust enrichment. . . . [T]his case doesn't cry out for a sentence at the high end of the Guideline range.

Simply put, [Y]our Honor, we respectfully ask that this Court sentence Mr. Boye to 63 months.

(See Transcript of Sentencing Hearing on Oct. 15, 2015 attached hereto as Ex. B ("Sent. Tr.") at 17:21-25, 18:12-25, 19:1-22).

29. It was strategically wise for Mr. Thomas not to contest the application of the credit exclusion for the impersonation of licensed professionals, since there was absolutely no question that Petitioner had impersonated an entire firm of licensed attorneys and accountants. To try to argue that simply because Petitioner himself was a licensed attorney negated the application of the credit exclusionary rule, when in fact Petitioner impersonated a team of numerous licensed attorneys and accountants at the sham firm "Opus & Best," would circumvent the spirit and intent of the credit exclusionary rule. In implementing this rule, "[t]he [Sentencing] Commission determined that the seriousness of these offenses and the culpability of these offenders is best reflected by a loss determination that does not credit the value of the unlicensed benefits provided." U.S. Sentencing Guidelines Manual app. C, vol. II, amend. 617, at 183-84 (2003), reported in 66 FR 30512 (June 6, 2001).

30. Petitioner claims that this is not a case where "unlicensed benefits" were provided, since he and Chen purportedly performed the work, and he is a

licensed attorney and Chen is supposedly a licensed attorney and accountant. Petitioner's arguments miss the point. Country A was not hiring and awarding contracts worth more than \$4 million to two solo practitioners. Rather, the sovereign nation believed it was retaining the services of a preeminent law and accounting firm staffed with numerous licensed accountants and attorneys whose purported credentials were presented to Country A for review in deciding whether to award the contracts to "Opus & Best."

31. The Bid Documents that Petitioner, posing as an Opus & Best "partner," caused to be submitted to Country A were attached to the United States' sentencing memorandum as evidence of the elaborate nature of Petitioner's fraud and impersonation. (See Exhibit A to the Government's Sentencing Memorandum ("Bid Documents), Pet. Br. at A094-A109). These Bid Documents fraudulently cast Opus & Best, a sham entity, as a preeminent law and accounting firm, stating:

Opus & Best [wa]s a multi-disciplinary corporation, proving [sic] legal, accounting and economics services principally to the oil and gas sector. . . . Opus & [Best] [wa]s endowed with first class talent of attorneys, accountants and economists performing services principally in the mining, oil and gas sector. The services include tax planning, tax advisory services, transfer pricing documentation, assisting government with writing oil and gas regulations and legislation, audit defense, mergers and acquisitions.

(Bid Documents, Pet. Br. at A094 & A096). Petitioner's Bid Documents also described at length the fictitious Opus & Best lawyers, accountants, and economists, whom Petitioner was impersonating, and who would purportedly form the "Representative Key members of the [Country A] Project Team":

Dominic Lucas :Attorney & CPA

Dominic Lucas (Dominic) will be the leader of the Timor-Leste Project and he is based in New York City. Dominic is an attorney and a Certified Professional Accountant. He is a graduate of University of Southern California and Yale. He is the head of the oil and gas tax practice of Opus & Best.

Dominic has practiced tax and accounting for over 20 years and he is an oil and specialist [sic] with a diverse background in government and the private sector. He was previously employed by the IRS' oil and gas section and he was a partner in the law firm of Brobek, Phleger & Harrison, LLP's oil and gas practice.

Raymond S. Weils: Attorney & CPA

Raymond Weils (Raymond) is an attorney and certified accountant and he shares him [sic] time between New York and Trinidad. He is a graduate of Aberdeen University, UK and holds a post graduate degree in business (MBA) from Wharton University, Pennsylvania.

Raymond has over 18 years of mining tax and accounting experience working variously with an oil an company [sic] in San Ramon as a corporate tax attorney, Michigan Oil & Gas Association and the law firm of Samuels & Weis, Dallas-Texas (Samuels & Weis) was acquired by and merged with Opus & Best in 2008.

Elizabeth Ackerman: Attorney

Elizabeth Ackerman (Beth) is an attorney and she is based in New York City. She is a graduate of Duke University and UCLA Law School. Prior to joining Opus & Best in 2005, she was variously engaged with Arthur Anderson, LLP as a Senior Manager in Los Angeles and New Energy Ventures, LLC; where she headed the Oil & Gas Practice. She was previously engaged as a staff of the of the [sic] US Congressional Committee (Ways & Means)[.] She has 25 years of oil and gas practice.

Michelle Harrison: CPA & Economist

Michelle Harrison (Michelle) is an economist and a certified accountant with 15 years of experience in the oil and gas industry. She is a graduate of Pepperdine University and USC, where she obtained a Master's Degree in Finance (MBA). She holds a

doctorate degree in economics (PhD) from the City University of New York.

She is a specialist in related party transactions (transfer pricing) and complicated LNG pricing models.

Paul Davis, Staff Attorney

Paul Davis (Paul) joined Opus & Best in 2006, fresh from law school. He has been involved with several oil and gas projects undertaken by Opus & Best since October, 2006. Paul is a graduate of NYU Law School and also an LLM post graduate degree from University of London.

Rebecca Samuelson: Staff Tax Accountant

Rebecca Samuelson (Becky) joined Opus & Best in 2007 as a staff accountant. She is a tax accounting specialist and she is heavily involved in projects relating to oil and gas taxation/IFRS/US GAAP.

Becky is [a] certified accountant and a graduate of Brown University, Providence, Rhode Island. She was previously engaged by Ernst & Young (oil & gas practice in Houston Texas before her current employment).

Both Dominic and Raymond will act as joint director for this engagement. Raymond will act as the Project Manager and Dominic will be responsible for the day to day activities associated with the engagement, including communication with NDPR and the stakeholders. He will also be in charge in charge of the deliverables. Michelle and Becky will supply the expertise on transfer pricing and tax accounting part of the project.

(Bid Documents, attached to Pet. Br. at A102-A104). Petitioner's Bid

Documents further represented: "Opus & Best hereby confirms that we have no conflicts of interest in undertaking this assignment. . . . At this point, we have no plan of collaborating with any outside law firm on this engagement." (Id. at A108).

32. Accordingly, through the false biographical descriptions of the supposedly licensed attorneys, accountants, and economists who would form

the project team and other deceitful representations, Petitioner concocted a carefully calculated scheme to induce Country A to award the multimillion-dollar Contract to Opus & Best, thereby placing Petitioner in the heartland of the credit exclusion for impersonating licensed professionals set forth under Application Note 3(F)(v)(I). As such, AFPD Thomas did not render deficient performance for strategically determining not to raise the meritless claim that his client was entitled to a credit against loss for the value of the services that Boye provided while impersonating numerous licensed professionals at “Opus & Best.” Country A hired and paid for Opus & Best and its team of licensed professionals to perform the highly complex work, not for Boye and undisclosed individuals (e.g., Chen) to do so. See United States v. Hunter, 618 F.3d 1062, 1065 (9th Cir. 2010) (observing that the victim entities paid for nursing services that defendant was not qualified to perform, and so did not get what they paid for); United States v. Bennett, 453 F. App’x 395, 397 (4th Cir. 2011) (defendant posing as a doctor); United States v. Kieffer, 621 F.3d 825, 834 (8th Cir. 2010) (defendant posing as a licensed attorney).

33. Petitioner further maintains that AFPD Thomas was ineffective for failing to argue that there was no proof that a licensed professional was required to perform the work called for under the contracts with Country A. Such an argument would have been tenuous and Mr. Thomas was strategically wise not to lodge it. To appreciate the complexity of the work that was required under the contracts, one has to look no further than the work methodology proposed by Petitioner himself—through his impersonation of licensed

professionals at Opus & Best—in the fraudulent Bid Documents that he caused to be submitted to Country A. Petitioner, posing as Opus & Best Employee, described the ten-step methodology for the Contract work as including the following:

- “[S]tarting . . . [with] a comprehensive and detailed review of the legislative history of all relevant Timor-Leste tax laws (including UNTAET Directives, Timor Sea Treaty and its predecessor—Timor Gap Treaty, the inherited Indonesian tax laws, Regulations), the mining laws applicable in Timor-Leste and the model PSC.” (Bid Documents at A104-A105).
- “[P]erform[ing] a diagnostic review of some of the income tax and APT returns filed to date by the taxpayers . . . to make a determination of whether the taxpayers have correctly applied relevant provisions of the TDA and TBUCA to each item in the returns and to reflect areas where there is a common agreement between the taxpayers and NDPR in the new regulations.” (*Id.* at A106).
- “[D]raft[ing] [r]egulations under the TDA and TBUCA.” (*Id.* at A107).
- “Power point presentations . . . cover[ing] critical areas like transfer pricing, depreciation and amortization, tax accounting, international petroleum accounting and the computation of income tax under the TDA Regulations. It will also cover the computation of APT under the new TBUCA Regulations.” (*Id.* at A108).

AFPD Thomas therefore cannot be deemed ineffective for failing to raise the meritless argument that such highly technical work would not have required the retention of licensed accountants and attorneys.

34. The Court should also reject Petitioner’s claim that AFPD Thomas was constitutionally deficient for failing to argue that restitution should have been offset by the value of the work product that Petitioner and Chen provided.

As noted by the United States Sentencing Commission, “th[e] [credit exclusion] provision eliminates the additional burden that would be imposed on courts if required to determine the value of these benefits,” where the services were provided by individuals impersonating licensed professionals. Id.; see also Hunter, 618 F.3d at 1065 (finding that the set-off exception embodied in U.S.S.G. § 2B1.1 app. n. Note 3(F)(v)(I) supports, in calculating restitution, no deduction for the value of work that the defendant performed when she was falsely acting as a nurse, since the work had no legal value for purposes of calculating the victims’ losses); United States v. Curran, 525 F.3d 74, 84 (1st Cir. 2008) (upholding restitution order where defendant “concocted a scheme predicated on holding himself out falsely as a doctor and conducting bogus tests and therapies for which he charged his clients large sums” and “[t]he evidence [wa]s well-established as to the identity of the clients and the amounts charged to each.”). Cf. United States v. Allen, 529 F.3d 390 (7th Cir. 2008) (finding that profession in which the defendant was scheming was not a licensed one, so the lower court could not rely on Application Note 3(F)(v)(I) in declining to deduct the value of the services provided from the loss suffered by the victim).

35. Eliminating the additional burden on the Court of determining the value of the impersonation-derived services for the purpose of calculating restitution is consistent with U.S.S.G. § 5E1.1(b), which provides courts the ability to avoid determining “complex issues of fact” related to the calculation of restitution that would delay and overly burden the sentencing process. See

United States v. Michelson, No. 09-748-01 (FLW), 2012 U.S. Dist. LEXIS 44884, at *16 (D.N.J. Mar. 30, 2012) (Wolfson, J.) (declining to award restitution for certain losses under the MVRA, this Court observed that “in spending considerable time reviewing Petitioners’ numerous submissions, . . . it [wa]s apparent that the Court would be required to resolve multiple complex factual issues in order to determine the proper restitution amount”).

36. Moreover, it is also noteworthy that, pursuant to the terms of the plea agreement, Petitioner “agree[d] to make full restitution for all losses resulting from the offense of conviction or from the scheme, conspiracy or, pattern of criminal activity underlying the offense, to Country A in the amount of \$3,510,000.” (See Plea Agreement dated March 12, 2015, at 3 (A060), attached to Pet. Br.). Petitioner also agreed to forfeit to the United States an even higher figure, \$4,233,015.42, which he acknowledged “represent[ed] the amount of proceeds obtained as a result of the offense of conviction[.]” (Consent Judgment of Forfeiture (Money Judgment) and Preliminary Order of Forfeiture as to Specific Property (Final as to the Defendant), filed on July 16, 2015, Crim. No. 15-196, docket no. 26, at 2).

37. Based on the foregoing, Petitioner has not met his heavy burden of establishing attorney deficiency at sentencing. Indeed, cases cited by Petitioner in support of his claim of ineffective assistance at sentencing are distinguishable. In Glover v. United States, 531 U.S. 198 (2001), the Supreme Court addressed the narrow issue of whether to uphold the Seventh Circuit’s rule that a “minimal amount of additional time in prison [resulting from

counsel's alleged deficiency] cannot constitute prejudice" under the Strickland standard. Glover, 531 U.S. at 202-03. The Supreme Court reversed the Seventh Circuit's decision and remanded the case for further proceedings, finding that "the amount by which a defendant's sentence is increased . . . cannot serve as a bar to a showing of prejudice." Id. at 204. In reaching its holding, the Supreme Court did not address whether trial counsel's failure to argue for grouping of the money laundering counts at sentencing was deficient², as the question was neither raised nor resolved by the lower courts. Id. at 205. On remand, the district court in Glover granted the defendant's motion to vacate his sentence, finding both prejudice and deficient performance at sentencing because "[c]ounsel's conclusory and fumbling response [to the grouping issue], which appear[ed] to have been made off the cuff without any significant preparation, fell outside the wide range of competent representation." Glover, 149 F. Supp. at 381.

38. Here, unlike in Glover, counsel's performance cannot be said to "f[a]ll outside the wide range of competent representation." Id. As noted above, AFPD Thomas' decision not to challenge the applicability of the credit for services exclusion for impersonating licensed professionals was strategically wise, since Petitioner had carried out such an impersonation and did so on a grand scale. See United States v. Gregorio, No. 12-297, 2016 U.S. Dist. LEXIS

² "[G]rouping would have resulted in a total offense level of 26 and a guideline range of 63 to 78 months, which would have resulted in a sentence of incarceration of 6 to 21 months less than the 84 months to which he had been sentenced." United States v. Glover, 149 F. Supp. 2d 371, 374-75 (N.D. Ill. 2001)

29179, at *15 (E.D. Pa. Mar. 8, 2016) (“It appears that defense counsel made a strategic decision to cast her client in an empathetic light by highlighting [defendant’s] commitment to his family and plans to reside lawfully in the Dominican Republic after serving his sentence, rather than to argue that the court should deviate from the enhancements prescribed by law. Her decision was not unreasonable, and we will not second-guess it.”).

39. Petitioner also relies on the Third Circuit’s holding in Otero, where “[t]he Court of Appeals held that counsel was ineffective in failing to object to the erroneous application of the Sentencing Guidelines.” (Pet. Br. at 27 (citing Otero, 502 F.3d at 335)). Here, unlike in Otero, there was no erroneous application of the Sentencing Guidelines, as the Court properly sentenced Petitioner in accordance with the parties’ stipulated loss range, with no credit for services that he provided while impersonating a team of purportedly highly qualified, licensed accountants and attorneys at the sham firm “Opus & Best.” Accordingly, AFPD Thomas was not deficient for choosing not to backpedal from the parties’ stipulated loss range by challenging the lawful applicability of the credit exclusion. As such, Mr. Thomas also not deficient for not submitting copies of the work product surreptitiously generated by Boye and others while impersonating “Opus & Best” licensed professionals, since there was no legally viable basis for arguing that the value of the work product (if even quantifiable) could be used to off-set the loss or the restitution owed to Country A.

40. Based on the foregoing, Petitioner’s ineffective assistance of counsel claim fails as to the first prong, since AFPD Thomas rightly chose not

to make the meritless arguments at sentencing that Petitioner cites in his 2255 Motion. Additionally, Petitioner cannot establish prejudice.

III. Boye Cannot Establish Prejudice Arising From Counsel's Performance at Sentencing.

41. Boye also cannot establish prejudice arising from AFPD Thomas' arguments at sentencing. "[I]f there is no legal basis for the petitioner's claimed entitlement to a reduction in sentence, 'it necessarily follows that [petitioner's] counsel was not ineffective.'" United States v. Sanders, 165 F.3d 248, 251 (3d Cir. 1999). The petitioner cannot have suffered prejudice "based on an attorney's failure to raise a meritless argument." Id. at 253. As demonstrated above, Boye's claim that the credit exclusion for impersonating licensed accountants and attorneys does not apply is meritless, as is his argument that the restitution that he agreed to should be reduced by the value of the services that he provided while impersonating licensed professionals. Accordingly, Boye cannot establish that AFPD Thomas was ineffective for failing to pursue these arguments at sentencing.

IV. Boye Fails to Establish Ineffective Assistance of Counsel Concerning the Guilty Plea.

42. Boye argues that AFPD Thomas was deficient "in counseling [him] to stipulate (in the plea agreement) to a 'loss' figure that contravenes th[e] governing law" by failing to subtract from the loss figure the fair market value of the services that Petitioner—impersonating various licensed accountants and attorneys—rendered under the guise of the sham law firm, "Opus & Best." (Pet. Br. at 20).

43. Where the petitioner alleges ineffective assistance of counsel concerning the guilty plea, the petitioner has the burden to prove “that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” See Hill v. Lockhart, 474 U.S. 52, 57 (1985). “The petitioner cannot succeed on the ineffectiveness claim if the ‘[p]etitioner d[oes] not allege in his habeas petition that, had counsel correctly informed him . . . he would have pleaded not guilty and insisted on going to trial.’” United States v. Gregorio, No. 12-297, 2016 U.S. Dist. LEXIS 29179, at *9 (E.D. Pa. Mar. 8, 2016) (quoting Hill, 474 U.S. at 60).

44. Here, Petitioner does not allege that he would have pleaded not guilty and insisted on going to trial but for prior counsel’s allegedly deficient performance in construing the application notes to U.S.S.G. § 2B1.1 governing the calculation of loss. Moreover, as established above, Petitioner has failed to demonstrate that AFPD Thomas was ineffective for making the strategic and informed decision not to argue that Petitioner was entitled to a credit for the value of the services that Petitioner provided while impersonating various licensed professionals. Along those same lines, Mr. Thomas cannot be faulted for failing to secure a plea agreement with the United States that carved out the application of the credit exclusionary rule, where under the facts of this case Petitioner clearly impersonated numerous licensed accountants and attorneys

through his fake firm, “Opus & Best.”³ Accordingly, Petitioner cannot satisfy the Strickland standard as to counsel’s performance during the plea process.

V. No Evidentiary Hearing is Warranted on Petitioner’s Claim.

45. For the reasons set forth above, Boye’s ineffective assistance of counsel claim fails to establish any plausible basis for relief, given that his factual claims do not substantiate AFPD Thomas’ purported deficiency or prejudice, for that matter. Even if there were a credible factual basis to Boye’s claim, it is legally insufficient to meet the stringent standard set forth in Strickland. Therefore, where the evidence so clearly establishes the legal insufficiency of Boye’s claim, no evidentiary hearing is required.

46. The question of whether to order an evidentiary hearing is committed to the district court’s sound discretion. See Virgin Islands v. Bradshaw, 726 F.2d 115, 117 (3d Cir. 1984), cert. denied, 469 U.S. 829 (1984), modified by United States v. Dawson, 857 F.2d 923 (3d Cir. 1988) (holding that if a non-frivolous ineffective assistance of counsel claim clearly fails to demonstrate either deficiency of counsel’s performance or prejudice to the defendant, then the claim does not merit a hearing). An evidentiary hearing must be held unless “the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief.” Fontaine v. United States, 411 U.S. 213, 215 (1973) (per curiam). In determining whether to grant

³ Petitioner has not demonstrated that the United States likely would have agreed to a stipulation waiving the application of the credit exclusionary rule. Indeed, the United States was not obligated to plea bargain with Petitioner, on any terms. As the Supreme Court has expressly recognized, “a defendant has no right to be offered a plea” at all, let alone a plea with specific terms. Missouri v. Frye, 566 U.S. 134, 136 (2012) (citation omitted).

the defendant a hearing, the defendant's factual allegations are accepted as true unless the record shows those allegations to be frivolous. United States v. Lilly, 535 F.3d 190, 195 (3d Cir. 2008).

47. Where the record conclusively establishes that Petitioner's claim for relief is without merit, as is the case here, the refusal to hold a hearing will not be deemed an abuse of such discretion. See Virgin Islands v. Nicholas, 759 F.2d 1073, 1075 (3d Cir. 1985); Solis v. United States, 252 F.3d 289, 295 (3d Cir. 2001) ("a defendant would not be entitled to a hearing if his allegations were contradicted conclusively by the record, or if the allegations were patently frivolous").

VI. If the Court Concludes that Boye's Claim Creates a Material Fact Issue, the Court Should Issue an Order Finding that the Attorney-Client Privilege has been Waived and Requiring Counsel to Submit an Affidavit.

48. As discussed above, the United States contends that there is no material fact issue given that Boye's ineffective assistance of counsel claim is legally unsupported. If, however, the Court determines that Boye's ineffective assistance claim creates a material fact issue, the United States respectfully submits that the Court should issue an Order finding that Boye's 2255 Motion waives the attorney-client privilege with respect to all communications relevant to the issue raised by Boye's claim—specifically, what conversations Boye's counsel had with him related to his guilty plea and sentencing.

49. It is anticipated that Boye's prior counsel would not provide information regarding this matter without a court order so as not to run afoul

of the professional rules of conduct regarding the confidentiality of attorney-client communications.

A. Relevant Case Law

50. The case law is clear that the filing of a Section 2255 petition alleging ineffective assistance of counsel does waive the attorney-client privilege with respect to all communications relevant to the issues raised by the petition. See, e.g., United States v. Butler, 167 F. Supp. 102 (E.D. Va. 1957), aff'd, 260 F.2d 574 (4th Cir. 1958); Laughner v. United States, 373 F.2d 326, 327 (5th Cir. 1967); Smith v. Berge, 139 F.3d 902, 1998 WL 109719, at *2 (7th Cir. 1998) (unpublished) (citing Tasby v. United States, 504 F.2d 332, 336 (8th Cir. 1974)); Anderson v. Calderone, 232 F.3d 1053, 1099 (9th Cir. 2000); Randall v. United States, 314 F.2d 800 (10th Cir. 1963); Crutchfield v. Wainwright, 803 F.2d 1103, 1121 (11th Cir. 1986) (en banc) (Edmondson, J., specially concurring).

51. Here, an allegation of ineffective assistance of counsel is the sole claim raised in Boye's 2255 Motion. As such, there can be no doubt that his filing acted to waive the attorney-client privilege with respect to all communications relevant to Boye's decision to plead guilty and all communications related to sentencing.

CONCLUSION

52. Based on the foregoing, Petitioner's Section 2255 Motion should be dismissed with prejudice on the merits, without an evidentiary hearing. If, however, the Court instead determines that Petitioner's ineffective assistance of

counsel claim has created a material fact issue as to trial counsel's alleged deficiency during the plea and sentencing phases, this Court should order that the attorney-client privilege has been waived with respect to all communications relevant to the issue of Boye's discussions with his counsel regarding his decision to plead guilty and the arguments to be made at sentencing, and direct Boye's prior counsel to provide an affidavit to the Court pertaining to any consultation with Boye regarding the issue raised by Boye's 2255 Motion in this matter. A proposed form of order is enclosed.

Respectfully Submitted,

WILLIAM E. FITZPATRICK
Acting United States Attorney

s/ Shirley U. Emehelu

By: SHIRLEY U. EMEHELU
Assistant U.S. Attorney

Dated: April 6, 2017
Newark, New Jersey

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CRIMINAL NO. 15-196-1 (FLW)

UNITED STATES OF AMERICA :
 : TRANSCRIPT OF PLEA
 :
 v. :
 : APRIL 28, 2015
 BOBBY BOYE, a/k/a/ BOBBY :
 AJIBOYE, a/k/a/ BOBBY :
 AJI-BOYE, :
 :
 Defendant :
 :

CLARKSON S. FISHER, UNITED STATES COURTHOUSE
402 EAST STATE STREET, TRENTON, NEW JERSEY 08608

B E F O R E: THE HONORABLE FRED A. WOLFSON, USDJ

A P P E A R A N C E S:

PAUL J. FISHMAN, UNITED STATES ATTORNEY
By: SHIRLEY U. EMEHELU, AUSA
On behalf of the Government

K. ANTHONY THOMAS,
On behalf of the Defendant

* * * * *
VINCENT RUSSONIELLO, CCR
OFFICIAL U.S. COURT REPORTER
(609) 588-9516

C E R T I F I C A T I O N

PURSUANT TO TITLE 28, U.S.C., SECTION 753, THE
FOLLOWING TRANSCRIPT IS CERTIFIED TO BE AN ACCURATE
TRANSCRIPTION OF MY STENOGRAPHIC NOTES IN THE
ABOVE-ENTITLED MATTER.



VINCENT RUSSONIELLO, CCR
OFFICIAL U.S. COURT REPORTER

1 (In open court, defendant present.)

2

3 THE CLERK: All rise.

4 THE COURT: Thank you.

5 I'll have the appearances, then you may be
6 seated.

7 MS. EMEHELU: Good morning, your Honor.

8 Assistant United States Attorney Shirley
9 Emehelu on behalf of the United States. With me at
10 counsel table is Special Agent Richard Tilenda of the
11 FBI.

12 MR. THOMAS: Good morning, your Honor.

13 K. Anthony Thomas, Assistant Federal Public
14 Defender, on behalf of Mr. Bobby Boye, who is standing
15 to the right of me.

16 THE COURT: Thank you. You may be seated at
17 this time.

18 I understand that Mr. Boye and the government
19 have entered into a plea agreement and that Mr. Boye
20 wishes to proceed with a Rule 11 hearing. Is that
21 correct?

22 MR. THOMAS: That's correct, your Honor.

23 THE COURT: Would you please administer the
24 oath.

25 ///

1 **BOBBY BOYE, sworn.**

2 **EXAMINATION BY the Court:**

3

4 THE COURT: Mr. Boye, do you understand that
5 you are now under oath and if you answer any of my
6 questions falsely your answers may later be used
7 against you in another prosecution for perjury or
8 making a false statement?

9 THE DEFENDANT: Yes, your Honor, I do.

10 THE COURT: Please state your full name.

11 THE DEFENDANT: Bobby Boye.

12 THE COURT: How old are you?

13 THE DEFENDANT: I'm 51.

14 THE COURT: What is your education?

15 THE DEFENDANT: I have two Master's degrees. I
16 have a law degree, and two Master's degrees in law and
17 tax accounting.

18 THE COURT: Are your degrees here in the United
19 States?

20 THE DEFENDANT: Yes, UCLA, and an MBA in tax
21 accounting from USC.

22 THE COURT: Thank you.

23 Mr. Boye, have you ever been treated or
24 recently been treated for any mental illness or
25 addiction to narcotic drugs of any kind?

1 THE DEFENDANT: Never.

2 THE COURT: In the last 24 hours have you taken
3 any medication, any pills, any drugs, or drunk any
4 alcoholic beverage of any kind?

5 THE DEFENDANT: I had vitamin C yesterday.

6 THE COURT: Beyond vitamin C, anything else,
7 any medication?

8 THE DEFENDANT: No, I don't take any
9 medication.

10 THE COURT: The oath that you have taken
11 obliges you to provide me with truthful answers. So
12 if, at any time, you do not understand my question,
13 please let me know so I could try to make it clearer
14 for you.

15 So please speak up if you do not understand my
16 questions. All right.

17 THE DEFENDANT: Yes, I will.

18 THE COURT: Thank you.

19 Have you received a copy of the Information
20 that is being filed against you in this case, that is,
21 the written charges being made?

22 THE DEFENDANT: Can you say that again, please?

23 THE COURT: Have you received a copy of the
24 Information?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you understand that the
2 Information charges: From in or about March 2012
3 through in or about May 2013, in the District of New
4 Jersey, and elsewhere, that you knowingly and
5 intentionally conspired and agreed with others, known
6 and unknown, to devise a scheme and artifice to
7 defraud what is known as "Country A," and to obtain
8 money and property from Country A by means of
9 materially false and fraudulent pretenses,
10 representations, and promises, and for the purpose of
11 executing such scheme and artifice, transmitted and
12 caused to be transmitted by means of wire
13 communications in interstate and foreign commerce,
14 certain writings, signs, signals, pictures, and
15 sounds, in violation of Title 18, United States Code,
16 Section 1343, and in violation of Title 18, United
17 States Code, Section 1349.

18 Do you understand the charge against you in
19 this case?

20 THE WITNESS: Yes, I do.

21 THE COURT: Have you discussed the charge and
22 the case in general with Mr. Thomas as your attorney?

23 THE DEFENDANT: Yes.

24 THE COURT: Are you fully satisfied with the
25 counsel, representation, and advice that he has given

1 to you in this case?

2 THE DEFENDANT: Yes.

3 THE COURT: Since this is proceeding by way of
4 an Information, there are certain questions that I
5 will ask you at this time.

6 You have been charged with the commission of a
7 felony. You have a constitutional right to be charged
8 by an Indictment of a grand jury. But you could waive
9 that right and consent to being charged by Information
10 of the United States Attorney. Instead of an
11 Indictment, the felony charge against you has been
12 brought by the United States Attorney by the filing of
13 an Information.

14 Unless you waive Indictment, you may not be
15 charged with a felony unless a grand jury finds by
16 return of an Indictment that there is probable cause
17 to believe that a crime has been committed and that
18 you committed it. If you do not waive Indictment, the
19 government may present the case to the grand jury and
20 request it to indict you.

21 A grand jury is composed of at least 16 and
22 not more than 23 persons, and at least 12 grand jurors
23 must find that there is probable cause to believe you
24 committed the crime with which you are charged before
25 you may be indicted. The grand jury might or might

1 not indict you. If you waive Indictment by the grand
2 jury, the case will proceed against you on the United
3 States Attorney's Information just as though you had
4 been indicted.

5 Mr. Boye, have you discussed the matter of
6 waiving your right to Indictment by the grand jury
7 with your attorney?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand your right to
10 Indictment by a grand jury?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: Have any threats or promises been
13 made to induce you to waive Indictment?

14 THE DEFENDANT: No.

15 THE COURT: Do you wish to waive your right to
16 Indictment by a grand jury?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: Mr. Thomas, do you see any reason
19 why your client should not waive Indictment?

20 MR. THOMAS: No, your Honor.

21 THE COURT: If you have the Waiver of
22 Indictment form, present it to your client. If he
23 agrees, he should sign it at this time.

24 (Pause.)

25 THE COURT: Would you hand it up, please.

1 (Document handed up to the Court.)

2 THE COURT: First, I note that the Waiver of
3 Indictment form has been signed in open court by both
4 Mr. Boye and Mr. Thomas, after I have informed him of
5 his rights, and I find that the waiver is knowingly
6 and voluntarily made, it is accepted, I have signed
7 it, and we will proceed.

8 Mr. Boye, my understanding is your willingness
9 to plead guilty today is a result of discussions that
10 you or your attorney have had with the attorney for
11 the government. Is that correct?

12 THE DEFENDANT: That's correct.

13 THE COURT: You may have a seat at this time.

14 I'd ask, Ms. Emehelu, if you would, please
15 summarize the essential terms of the plea agreement.

16 MS. EMEHELU: Yes, your Honor.

17 The proposed plea agreement provides that, if
18 Mr. Boye enters a guilty plea and is sentenced on the
19 charge of conspiracy to commit wire fraud and
20 otherwise fully complies with all the terms of the
21 agreement, the U.S. Attorney's Office for the District
22 of New Jersey will not initiate any further criminal
23 charges against Mr. Boye for, between in or about
24 March 2012 through in or about May 2013, conspiring
25 with others, known and unknown, to commit wire fraud

1 by engaging in a scheme to defraud Country A, whereby
2 Mr. Boye caused Country A to award a multi-million
3 dollar consulting contract to his firm, Opus & Best
4 Law Services, LLC, or Opus & Best, without disclosing
5 his affiliation with Opus & Best to Country A, and
6 then divert it to his own personal use the more than
7 \$3.5 million that Country A paid to Opus & Best under
8 the contract.

9 The plea agreement also provides on pages 4
10 through 7 inclusive that Mr. Boye agrees to forfeit
11 certain items:

12 First, a forfeiture money judgment in the
13 amount of \$4,233,015.42;

14 Any contents of five JP Morgan Chase bank
15 accounts ending in 0399, 6170, 5820, 7116 and 2735,
16 respectively;

17 As well as three vehicles, namely, a 2012
18 Bentley Continental, a 2012 Range Rover, and a 2011
19 Rolls Royce;

20 Two watches, namely, an IWC "DaVinci"
21 Perpetual and a Franck Muller "Conquistador Grand
22 Prix" watch; and.

23 Four real estate properties located in Ramsey,
24 North Haledon, Oakland, and Elizabeth, New Jersey,
25 respectively, or any proceeds traceable to those

1 properties.

2 The plea agreement also includes a Schedule A
3 with factual and Guideline stipulations, including the
4 applicable base offense level 7, and the applicable
5 loss calculation, specifically, a stipulation that the
6 total loss resulting from the wire fraud conspiracy
7 was more than \$2.5 million but not more than \$7
8 million, resulting in an increase of 18 levels from
9 the base offense level.

10 In addition, the parties have stipulated that
11 Mr. Boye abused a position of trust, resulting in a
12 two-level enhancement, and that he is entitled to a
13 three-level reduction for acceptance of
14 responsibility.

15 Finally, the plea agreement includes an agreed
16 upon total Guidelines offense level of 24, and an
17 appellate waiver, which I can discuss in greater
18 detail, if your Honor wanted to go through the waiver
19 colloquy.

20 THE COURT: I will be doing that. Feel free
21 to just briefly describe it on the record.

22 MS. EMEHELU: Yes, your Honor.

23 Essentially, if Mr. Boye is sentenced within
24 the Guideline range resulting from an offense level 24
25 or below that range, he waives his right to file an

1 appeal, collateral attack, or other post-conviction
2 motion, with the exception of a later motion,
3 post-conviction motion, of ineffective assistance of
4 counsel. That is the only exception.

5 The government likewise waives its right to
6 file an appeal if Mr. Boye is sentenced within the
7 Guideline range resulting from an offense level 24 or
8 higher than that range.

9 The government believes that these are the
10 essential terms of the plea agreement entered into by
11 the parties, your Honor.

12 THE COURT: Thank you.

13 Do you have the plea agreement at counsel
14 table, Mr. Thomas?

15 MR. THOMAS: Yes, I do, your Honor.

16 THE COURT: Would you put it before your
17 client, please.

18 Mr. Boye, you are being shown the plea bargain
19 letter in this case. Have you read the entire plea
20 agreement?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And have you had an opportunity to
23 discuss the plea agreement with your lawyer before you
24 signed it?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Please look at the agreement and
2 let me know if your signature appears there.

3 THE DEFENDANT: Yes.

4 THE COURT: Mr. Thomas, does your signature
5 appear as defense counsel?

6 MR. THOMAS: Yes, your Honor.

7 THE COURT: Ms. Emehelu, does your signature
8 appear or that of a representative of the U.S.
9 Attorney's Office?

10 MS. EMEHELU: Yes, your Honor.

11 THE COURT: Thank you.

12 Mr. Boye, do you feel with the explanations
13 and advice of your attorney that you fully understand
14 all of the terms of plea bargain letter?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: That letter is supposed to set out
17 all the bargains, benefits, things that flow to you in
18 exchange for your willingness to plead guilty to the
19 Information.

20 Do you feel that the plea bargain letter sets
21 forth both accurately and completely all of the terms
22 of the plea bargain as you understand it?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you have any questions at all
25 that you wish to ask me or your attorney about what

1 the plea bargain letter means or what any of the words
2 or phrases in there mean?

3 THE DEFENDANT: No.

4 THE COURT: Do you understand the terms of the
5 plea agreement?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: Has anyone made any other or
8 different promises or assurances to you of any kind in
9 an effort to induce you to enter a plea of guilty in
10 this case?

11 THE DEFENDANT: No.

12 THE COURT: Has anyone attempted in any way to
13 force you to plead guilty in this case?

14 THE DEFENDANT: No.

15 THE COURT: Are you pleading guilty of your own
16 free will because you are guilty?

17 THE DEFENDANT: That's correct.

18 THE COURT: Do you understand that the offense
19 to which you are pleading guilty is a felony offense?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: If your plea is accepted, you will
22 be adjudged guilty of that offense and that
23 adjudication may deprive you of certain civil rights,
24 such as the right to vote, the right to hold public
25 office, the right to serve on a jury, and the right to

1 possess any kind of firearm. Do you understand those
2 consequences?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: Your plea agreement also provides
5 that under certain circumstances you are waiving or
6 giving up your right to file an appeal or collaterally
7 attack the sentence imposed in this case. Are you
8 familiar with those terms?

9 THE DEFENDANT: Yes.

10 THE COURT: I will now ask you certain
11 questions in that regard.

12 Do you understand that in the absence of a
13 waiver, the law permits every defendant, such as
14 yourself, to file an appeal of a conviction or
15 sentence if you believe that there has been an error?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: Do you understand that in the
18 absence of a waiver, you have a right, if you believe
19 that there has been an error, to file a collateral
20 challenge to your conviction or sentence under 28
21 U.S.C., Section 2255?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: Do you understand that by pleading
24 guilty, you are automatically waiving your right to
25 appeal any errors that occurred before your entry of

1 this guilty plea including any rulings on any pretrial
2 motions that may have been filed?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: And do you understand, as set forth
5 in your plea agreement, if I impose a sentence that
6 falls within or below the Guidelines range applicable
7 to an offense level 24, you cannot file an appeal, a
8 Section 2255 petition, writ, motion, or any collateral
9 attack challenging your sentence?

10 THE DEFENDANT: Yes, I do.

11 THE COURT: And do you understand that your
12 plea agreement only allows you to challenge your
13 sentence under the following circumstances:

14 One, if I impose a sentence that is above the
15 range applicable to the offense level 24;

16 Two, to challenge my determination of your
17 criminal history category; or

18 Lastly, to claim that you received
19 constitutionally ineffective assistance of counsel.

20 Do you understand that those are the only
21 circumstances under which you can file an appeal?

22 THE DEFENDANT: Yes, I do, your Honor.

23 THE COURT: Did you discuss the effect of this
24 unconditional guilty plea and waiver of appeal and
25 waiver of your right to file for post-conviction

1 relief with your attorney?

2 THE DEFENDANT: Yes, I did.

3 THE COURT: Are you satisfied with the
4 explanations that he has provided to you?

5 THE DEFENDANT: Yes, I am.

6 THE COURT: At this time, I'm going to, first,
7 describe the statute under which you have been
8 charged, and then the maximum penalties that you face.

9 Title 18, United States Code, Section 1343
10 provides in relevant part:

11 "Whoever, having devised or intending to
12 devise any scheme or artifice to defraud, or for
13 obtaining money or property by means of false or
14 fraudulent pretenses, representations, or promises,
15 transmits or causes to be transmitted by means of
16 wire, radio, or television communication in interstate
17 or foreign commerce, any writings, signs, signals,
18 pictures, or sounds for the purpose of executing such
19 a scheme or artifice, shall be guilty of a crime
20 against the United States."

21 Section 1349 provides:

22 "Any person who conspires to commit any
23 offense under this chapter, including wire fraud,
24 under 18 U.S.C., Section 1343," which I just read to
25 you, "shall be guilty of a crime against the United

1 States."

2 First, do you understand the statute under
3 which you have been charged?

4 THE WITNESS: Yes, I do.

5 THE COURT: The maximum penalties are as
6 follows:

7 A statutory maximum prison sentence of
8 20 years.

9 A statutory maximum fine equal to the greatest
10 of \$250,000, or twice the gross amount of any
11 pecuniary gain that any persons derived from the
12 offense, or twice the gross amount of any pecuniary
13 loss sustained by any victims of the offense.

14 Any fines imposed by the Court in excess of
15 \$2500 are subject to the payment of interest.

16 You will be ordered to pay a mandatory special
17 assessment of \$100 for the single count of conviction,
18 which must be paid on or before the date of
19 sentencing.

20 You may be ordered to pay restitution.

21 You may be ordered to give notice to any
22 victims of your offense.

23 The Court may impose a term of supervised
24 release of not more than 3 years, which would begin at
25 the expiration of any term of imprisonment imposed.

1 And if you are placed on a term of supervised
2 release and then violate any of the conditions of that
3 release before the term expires, you may be sentenced
4 to not more than 2 years imprisonment in addition to
5 any prison term previously imposed and in addition to
6 the statutory maximum term of imprisonment I have just
7 outlined for you, and you may be required to serve an
8 additional term of supervised release.

9 Mr. Boye, do you understand the penalties that
10 you face as a result of your guilty plea?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: All right. At this time, as well,
13 I'm going to briefly describe the Sentencing
14 Guidelines.

15 First, however, do you understand that the
16 United States Sentencing Guidelines are advisory and
17 not mandatory?

18 THE DEFENDANT: Yes.

19 THE COURT: And, thus, do you understand that
20 this Court, I, may impose a sentence that is higher or
21 lower than that recommended by the Guidelines?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: Are you aware that the Sentencing
24 Guidelines take into account the actual conduct in
25 which you engaged, consider the victims of your

1 offense, the role that you played, and whether or not
2 you have engaged in any obstruction of justice or have
3 accepted responsibility for your acts?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you also understand that your
6 criminal history is an important factor in applying
7 the Sentencing Guidelines?

8 THE DEFENDANT: Yes.

9 THE COURT: And do you understand that until a
10 Presentence Report is completed, it is impossible for
11 either me or for your lawyer to know exactly what
12 sentence range will be required by the Guidelines?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you also understand that it may
15 be necessary to resolve disputed facts contained in
16 the Presentence Report and that also may affect the
17 applicable Guidelines and your sentence?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you discussed the Sentencing
20 Guidelines with your attorney?

21 THE DEFENDANT: Yes.

22 THE COURT: Has he explained to you the various
23 considerations that go into determining what Guideline
24 shall be applied?

25 THE DEFENDANT: Yes.

1 THE COURT: And certainly by having reviewed
2 the plea agreement, my understanding is your attorney
3 has attempted to predict for you what the Guideline
4 range may be based on the information that he
5 currently has. Is that correct?

6 THE DEFENDANT: That's correct, your Honor.

7 THE COURT: But do you understand that at this
8 point in time, it may be impossible for him to make a
9 completely accurate assessment as to the Guideline
10 range which will actually apply in your case because
11 he does not yet have all the necessary information and
12 has not seen the Presentence Report?

13 THE DEFENDANT: Yes.

14 THE COURT: And do you understand that you will
15 not be able to withdraw your plea on the ground that
16 anyone's prediction as to the Guideline range proved
17 to be inaccurate?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you also understand that the
20 Court will not be able to determine the Guideline
21 sentence for your case until after the Presentence
22 Report has been completed and you and the government
23 have had an opportunity to challenge the reported
24 facts and the application of the Guidelines
25 recommended by the Probation Office?

1 THE DEFENDANT: Yes.

2 THE COURT: And do you understand the sentence
3 imposed may be different from any estimate your
4 attorney may have given you?

5 THE DEFENDANT: That's correct.

6 THE COURT: And do you realize that any
7 stipulations or agreements between you and the
8 government as to what the applicable facts are or what
9 the guidelines are, are not binding on me if the
10 Presentence Investigation Report or other sources
11 persuade me that they are inaccurate?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you also understand that there
14 is no parole in the federal system and that if you are
15 sentenced to prison, you will not be released on
16 parole prior to the completion of the sentence that I
17 actually impose on you except for good time credits,
18 if any?

19 THE DEFENDANT: Yes.

20 THE COURT: While I understand from the
21 Pretrial Services report that you are a naturalized
22 citizen, nevertheless, I'm going to ask you these
23 questions out of an abundance of caution.

24 Do you understand that if you are not a
25 citizen of the United States, your guilty plea to the

1 charged offense would likely result in your being
2 subject to immigration proceedings and removed from
3 the United States?

4 THE DEFENDANT: Yes.

5 THE COURT: Did you consult with counsel about
6 any possible immigration consequences?

7 THE DEFENDANT: Yes.

8 THE COURT: All right.

9 At this time, I'm going to describe for you
10 certain rights that you have.

11 Do you understand that you have a right to
12 plead not guilty to any offense charged against you
13 and to persist in that plea to a trial by jury.

14 THE DEFENDANT: Yes.

15 THE COURT: During a trial, you would also have
16 the right to the assistance of counsel for your
17 defense, the right to see and hear all the witnesses
18 and have them cross-examined in your defense, the
19 right on your own part to decline to testify unless
20 you voluntarily elected to do so in your own defense,
21 and the right to the issuance of subpoenas or
22 compulsory process to compel the attendance of
23 witnesses to testify in your defense.

24 Mr. Boye, do you understand you would have
25 those rights at a jury trial?

1 THE DEFENDANT: Yes.

2 THE COURT: Also, at a jury trial, you would
3 have the benefit of the presumption of innocence. The
4 Court would instruct the jury that consistent with
5 your presumed innocence, they must look upon you as
6 innocent of all the charges against you and that that
7 presumption continues during the jury deliberations,
8 thereafter, until such point in time, if it ever
9 arrived, when a unanimous jury was satisfied that the
10 government had proved your guilt beyond a reasonable
11 doubt.

12 Also, at a trial, you would have no duty to
13 testify or to introduce any evidence. I would
14 instruct the jury that they could not hold that
15 against you or consider it in any way.

16 Thus, at your trial, you would have no burden
17 of proving anything and the sole burden of proof would
18 be upon the government to prove each and every
19 essential element of the crime charged beyond a
20 reasonable doubt, and that burden would never shift
21 from the government at any time.

22 Mr. Boye, do you understand that you have the
23 right to appointment of counsel if you could not
24 afford one for the trial and appeal if there were a
25 guilty verdict?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: Do you also understand that by
3 entering a plea of guilty, if that plea is accepted by
4 me, that there will be no trial?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that you will
7 have waived or given up your right to a trial, as well
8 as the other rights associated with the trial, that I
9 have just described for you?

10 THE DEFENDANT: Yes.

11 THE COURT: I've previously read to you the
12 statute under which you have been charged. I'm now
13 going to describe the essential elements of the crime
14 to which you are pleading guilty, and the government
15 would have to prove each and every one of the
16 essential elements beyond a reasonable doubt:

17 Section 1349, of Title 18, the elements are as
18 follows:

19 First, that two or more persons agreed to
20 commit wire fraud;

21 Second, that you were a party to or member of
22 that agreement; and

23 Third, that you knowingly joined the
24 agreement.

25 The elements of the object of the conspiracy,

1 that is, wire fraud, in violation of Title 18, Section
2 1343, are as follows:

3 First, that someone devised, or intended to
4 devise, a scheme or artifice to defraud another of
5 money or property;

6 Second, that you knowingly and wilfully
7 participated in the scheme or artifice with specific
8 intent to defraud another of money or property; and

9 Third, for the purpose of executing or
10 attempting to execute that scheme the use of
11 interstate wires occurred.

12 Do you understand the essential elements of
13 the crime to which you are pleading guilty?

14 THE WITNESS: Yes, I do.

15 THE COURT: And do you understand the
16 government would have to prove each of those beyond a
17 reasonable doubt?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: At this time, I'm going to ask you
20 questions about what you did in this matter.

21 Starting in or about April 2010, were you
22 working as an international petroleum tax advisor for
23 a foreign sovereign nation, that I will refer to as
24 "Country A"?

25 THE DEFENDANT: Yes.

1 THE COURT: From in or about March 2012 through
2 in or about May 2013, in the District of New Jersey,
3 and elsewhere, did you knowingly and intentionally
4 conspire and agree with others to enrich yourself by
5 fraudulently obtaining, and attempting to obtain,
6 lucrative consulting contracts from Country A for your
7 entity, Opus & Best Law Services, LLC, that I'll refer
8 to as "Opus & Best" in the rest of the questions?

9 THE DEFENDANT: Yes.

10 THE COURT: In or about February 2012, did you
11 learn that Country A was soliciting bids for a
12 contract to provide legal and tax accounting advice to
13 Country A?

14 THE DEFENDANT: Yes.

15 THE COURT: I'm going to refer to that as the
16 "contract" in the rest of my questions.

17 Around the same time, in or about March 2012,
18 did you create Opus & Best for the purpose of bidding
19 for the contract from Country A and other countries?

20 THE WITNESS: Yes.

21 THE COURT: In or about March 2012, did you
22 author several fraudulent documents submitted by Opus
23 & Best to Country A, in connection with Opus & Best's
24 bid for the contract?

25 THE DEFENDANT: Yes.

1 THE COURT: And I'll refer to those documents
2 in the ensuing questions as the "bid documents."

3 Around this time, in or about March 2012, did
4 you pay a relative to create a website for Opus &
5 Best, which contained numerous misrepresentations,
6 including but not limited to, false claims regarding
7 Opus & Best's credentials and experience?

8 THE WITNESS: Yes.

9 THE COURT: Did you also create or cause others
10 to create Opus & Best email accounts, including an
11 email account for a purported partner at Opus & Best
12 with the initials DL?

13 THE DEFENDANT: Yes.

14 THE COURT: I will refer to that email account
15 as the "DL email account."

16 On or about March 17th, 2012, did you cause an
17 email containing the bid documents to be sent from the
18 DL email account to representatives of Country A, in
19 order to submit Opus & Best's formal bid for the
20 contract?

21 THE WITNESS: Yes.

22 THE COURT: Did the bid documents that you
23 caused to be submitted contain a number of false
24 statements and material misrepresentations that were
25 intended to give Country A the misimpression that Opus

1 & Best was a legitimate established firm?

2 THE DEFENDANT: Yes.

3 THE COURT: Specifically, did you falsely claim
4 in the bid documents that Opus & Best was founded in
5 1985, when in reality you created Opus & Best in or
6 about March 2012 for the purpose of submitting the
7 fraudulent bid documents to Country A?

8 THE DEFENDANT: Yes.

9 THE COURT: Did you falsely claim in the bid
10 documents that Opus & Best was registered as a legal
11 and accounting services provider in Europe, the Middle
12 East, and Africa, when in reality the newly formed
13 Opus & Best was only registered in the State of New
14 York?

15 THE DEFENDANT: Yes.

16 THE COURT: Did you also falsely claim in the
17 bid documents that Opus & Best employed numerous first
18 class attorneys, accountants, and economists who
19 practiced in the mining, oil and gas sector, when in
20 reality you were the sole member of Opus & Best?

21 THE DEFENDANT: Yes.

22 THE COURT: Did you falsely claim in the bid
23 documents that Opus & Best's relevant consulting
24 experience over the past 5 years purportedly included
25 the provision of consulting services to another

1 foreign sovereign nation, which I'll refer to as
2 "Country B," when in reality Opus & Best had never
3 done consulting work for Country B?

4 THE DEFENDANT: Yes.

5 THE COURT: At the time you submitted the bid
6 documents to Country A, and as part of your employment
7 as a legal advisor to Country A, did you serve on a
8 committee responsible for reviewing and evaluating the
9 submitted bids for the contract including Opus &
10 Best's submission?

11 THE DEFENDANT: Yes.

12 THE COURT: I'll refer to that committee as the
13 "bid review committee."

14 By virtue of sitting on the bid review
15 committee, do you acknowledge that Country A trusted
16 you to advise them correctly?

17 THE DEFENDANT: Yes.

18 THE COURT: Did you cause the bid documents
19 that Opus & Best submitted to falsely state that there
20 was no conflict of interest entailed by Opus & Best's
21 proposed engagement, when in reality your affiliation
22 with Opus & Best created a conflict of interest and
23 rendered you a third-party beneficiary of the proposed
24 contract?

25 THE DEFENDANT: Yes.

1 THE COURT: In or about 2012, did Country A
2 award Opus & Best the contract?

3 THE DEFENDANT: Yes.

4 THE COURT: On or about June 3, 2012, did you
5 and others cause Country A to enter into a contract
6 for consulting services with Opus & Best -- I'll refer
7 to it as the "consulting contract" -- which consulting
8 contract listed you as one of the two project
9 coordinators acting on behalf of Country A?

10 THE DEFENDANT: Yes.

11 THE COURT: Was the consulting contract in the
12 amount of approximately \$4,900,000?

13 THE DEFENDANT: Yes.

14 THE COURT: Upon becoming a project
15 coordinator, did you fail to disclose to Country A
16 your affiliation with Opus & Best?

17 THE DEFENDANT: Yes.

18 THE COURT: Did you cause Country A to wire a
19 total of approximately \$3,510,000 from a Country A
20 account to the Federal Reserve Bank of New York --
21 I'll refer to it as the "Country A account" -- to Opus
22 & Best's JP Morgan Chase account ending in 0399?

23 THE DEFENDANT: Yes.

24 THE COURT: I'll refer to that as the "Opus &
25 Best 0399 account."

1 Do you acknowledge that these wires were
2 processed via transmissions from New Jersey to New
3 York?

4 THE DEFENDANT: Yes.

5 THE COURT: Specifically, on or about June 15,
6 2012, did you cause Country A to wire approximately
7 \$1,080,000 from the Country A account to the Opus &
8 Best 0399 account?

9 THE DEFENDANT: Yes.

10 THE COURT: On or about July 20, 2012, did you
11 cause Country A to wire approximately \$432,000 from
12 the Country A account to the Opus & Best 0399 account?

13 THE DEFENDANT: Yes.

14 THE COURT: On or about August 3, 2012, did you
15 cause Country A to wire approximately \$720,000 from
16 the Country A account to the Opus & Best 0399 account?

17 THE DEFENDANT: Yes.

18 THE COURT: On or about December 12, 2012, did
19 you cause Country A to wire approximately \$648,000
20 from the Country A account to the Opus & Best 0399
21 account?

22 THE DEFENDANT: Yes.

23 THE COURT: On or about December 17, 2012, did
24 you cause Country A to wire approximately \$630,000
25 from the Country A account to the Opus & Best 0399

1 account?

2 THE DEFENDANT: Yes.

3 THE COURT: In or about 2013, did you attempt
4 to obtain additional business from Country A?

5 THE DEFENDANT: Yes.

6 THE COURT: For example, in or about
7 March 2013, after you and others registered an Opus &
8 Best entity as a Hong Kong company -- that I'll refer
9 to as "Opus & Best-Hong Kong" -- did Opus & Best-Hong
10 Kong along with a local Hong Kong law firm cause a
11 proposal to be sent to Country A for training Country
12 A's employees in conducting tax auditing?

13 THE DEFENDANT: Yes.

14 THE COURT: Did you and others seek an advanced
15 payment of approximately \$250,000 from Country A for
16 this proposed venture with Opus & Best-Hong Kong?

17 THE DEFENDANT: Yes.

18 THE COURT: Did you divert the more than
19 approximately \$3.5 million wired by Country A to Opus
20 & Best for purported consulting services for your own
21 personal use?

22 THE DEFENDANT: Yes.

23 THE COURT: Did you use more than \$2 million of
24 the total proceeds of the fraud to purchase four
25 properties located in New Jersey, three luxury

1 vehicles, and two designer watches?

2 THE DEFENDANT: Yes.

3 THE COURT: In committing the actions described
4 in the Information, did you act knowingly, wilfully,
5 and with the intent to defraud?

6 THE DEFENDANT: Yes.

7 THE COURT: And are you pleading guilty today
8 because you are, in fact, guilty of the crime charged
9 in the Information, that is, conspiring to commit wire
10 fraud?

11 THE DEFENDANT: Yes.

12 THE COURT: Ms. Emehelu, would you please
13 represent what the government would be prepared to
14 prove at trial if the case proceeded to trial.

15 MS. EMEHELU: Yes, your Honor.

16 The United States represents that, had this
17 matter proceeded to trial, the government would have
18 been prepared to prove beyond a reasonable doubt all
19 of the essential elements of the offense charged in
20 the Information.

21 The government would have proven beyond a
22 reasonable doubt that the funds paid by Country A to
23 Opus & Best were transmitted by means of interstate
24 wire.

25 The government would have proven its case

1 through the introduction of, among other things,
2 documentary evidence, including the fraudulent bid
3 documents submitted, or caused to be submitted, by Mr.
4 Boye to Country A, bank and other business records,
5 witness testimony, and email and other communications.

6 The United States believes that, in
7 conjunction with the representations set forth by the
8 United States, as well as Mr. Boye's affirmative
9 answers to the questions posed by your Honor, that
10 this will provide a sufficient factual basis for the
11 Court to accept his guilty plea to the proposed
12 Information.

13 THE COURT: Thank you.

14 Mr. Boye, how do you now plead to the charge
15 in the Information, guilty or not guilty?

16 THE DEFENDANT: Guilty.

17 THE COURT: It is the finding of the Court in
18 the case of United States v. Bobby Boye that the
19 defendant is competent and capable of entering an
20 informed plea, that he is aware of the nature of the
21 charge and the consequences of the plea, and that the
22 plea of guilty is a knowing and voluntary plea
23 supported by an independent basis in fact containing
24 each of the essential elements of the offense.

25 The plea is therefore accepted and the

1 defendant is now adjudged guilty of that offense.

2 Mr. Boye, a written Presentence Report will be
3 prepared by the Probation Office to assist me in
4 sentencing. You will be asked to give information for
5 the report and your attorney may be present if you
6 wish.

7 You and your attorney will have the
8 opportunity to read the Presentence Report before the
9 sentencing hearing and file any objections to the
10 report before the sentencing hearing.

11 At the sentencing hearing you will have the
12 opportunity to speak in mitigation of your sentence
13 and your attorney will be given the opportunity to
14 speak on your behalf as well.

15 You will now be referred to the Probation
16 Office for a Presentence Investigation Report with
17 sentencing scheduled for August 13, 2015, at
18 10:00 a.m..

19 Mr. Boye has been on pretrial release with
20 bail conditions. Are there any applications in that
21 record?

22 MS. EMEHELU: None by the government, your
23 Honor.

24 MR. THOMAS: No, your Honor, not at this time.

25 THE COURT: Thank you.

1 Then, at this time, I'll take the original of
2 any of the documents I haven't received, the
3 Information, the plea agreement, and the Rule 11
4 application, please.

5 (Documents handed up to the Court,).

6 THE COURT: Anything else, counsel?

7 MS. EMEHELU: No, thank you, your Honor.

8 MR. THOMAS: No, your Honor.

9 THE COURT: Thank you.

10 THE CLERK: All rise.

11 (Proceedings concluded.)

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C E R T I F I C A T E

I, **Vincent Russoniello**, Official United States Court Reporter and Certified Court Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.


Vincent Russoniello, CCR
Certificate No. 675

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EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CRIMINAL NO. 15-196-(FLW)-1

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UNITED STATES OF AMERICA : TRANSCRIPT OF
 : SENTENCE
 v. :
 : OCTOBER 15, 2015
 BOBBY BOYE, :
 a/k/a, BOBBY AJIBOYE :
 a/k/a, BOBBY AJI-BOYE :
 Defendant :
----- :

CLARKSON S. FISHER, UNITED STATES COURTHOUSE
402 EAST STATE STREET, TRENTON, NEW JERSEY 08608

B E F O R E: THE HONORABLE FRED A L. WOLFSON, USDJ

A P P E A R A N C E S:

PAUL J. FISHMAN, UNITED STATES ATTORNEY
BY: SHIRLEY UCHENNA EMEHELU, AUSA
On behalf of the Government

K. ANTHONY THOMAS, ESQUIRE
On behalf the Defendant Bobby Boye

A L S O P R E S E N T:

DON MARTENZ, US PROBATION OFFICER

* * * * *

VINCENT RUSSONIELLO, CCR, CRR
OFFICIAL U.S. COURT REPORTER
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C E R T I F I C A T I O N

PURSUANT TO TITLE 28, U.S.C., SECTION 753, THE
FOLLOWING TRANSCRIPT IS CERTIFIED TO BE AN ACCURATE
TRANSCRIPTION OF MY STENOGRAPHIC NOTES IN THE
ABOVE-ENTITLED MATTER.

S/Vincent Russoniello
VINCENT RUSSONIELLO, CCR
OFFICIAL U.S. COURT REPORTER

1 (In open court, defendant present.)

2

3 THE CLERK: All rise.

4 THE COURT: Thank you.

5 I'll have the appearances. Everyone else may
6 be seated.

7 MS. EMEHELU: Good morning, your Honor.

8 Assistant United States Attorney Shirley
9 Emehelu on behalf of the United States.

10 With me at counsel table is Special Agent
11 Richard Tylenda of the FBI.

12 THE COURT: Thank you.

13 MR. THOMAS: Good morning, your Honor.

14 K. Anthony Thomas, Assistant Federal Public
15 Defender, on behalf of Bobby Boye who is seated to the
16 right of me.

17 THE COURT: Thank you.

18 We are here for the sentencing of Mr. Boye in
19 connection with his guilty plea to a count of
20 conspiracy to commit wire fraud.

21 I know that all counsel have received the
22 Presentence Report.

23 Mr. Thomas, have you had sufficient
24 opportunity to fully review the report with your
25 client?

1 MR. THOMAS: Yes, your Honor, I did have an
2 opportunity to review the Draft Presentence Report.

3 There are no Guideline corrections or
4 objections, and our objections with regard to certain
5 matters in the Presentence Report are noted in the
6 final version of the Presentence Report.

7 THE COURT: Thank you.

8 Then with that I will begin by calculating the
9 Guidelines in this matter.

10 To begin, the base offense level in this
11 matter is found in Sentencing Guideline 2X1.1(a), and
12 it is a level 7 under 2B1.1(a)(1).

13 There is an increase of 18 levels under
14 2B1.1(b)(1)(J), since the amount of loss exceeds
15 \$2.5 million, but is less than \$7 million, and that is
16 agreed to by the parties, and therefore the total
17 offense level is a 25.

18 With regard to specific offense
19 characteristics, the only adjustment upward is under
20 3B1.3, which is that Mr. Boye abused a position of
21 trust in a manner that significantly facilitated the
22 commission or concealment of the crime. There is a
23 two-level increase for that making it an adjusted
24 offense level of 27.

25 I find that Mr. Boye based on prior statements

1 would qualify for the two-level adjustment for
2 acceptance of responsibility.

3 And the government is moving for the
4 additional one level?

5 MS. EMECHELU: Yes, your Honor.

6 THE COURT: All right.

7 I will grant that and thus the total offense
8 level is a level 24.

9 With regard to criminal history, there are
10 four criminal history points and thus he is in a
11 criminal history category of 3.

12 So based upon a total offense level of 24 and
13 a criminal history category of 3, under the statute it
14 is up to 20 years imprisonment. The Guideline range
15 is 63 to 78 months.

16 Supervised release under the statute is up to
17 3 years, with a Guideline range of 1 to 3 years.

18 Under the statute, probation is a range of 1
19 to 5 years. He is ineligible under the Guidelines.

20 The fine under the statute is \$250,000, with a
21 Guideline range of \$10,000 to \$100,000.

22 I will discuss restitution in a moment, though
23 my understanding is that there was a stipulated amount
24 of restitution of \$3,510,000.

25 I understand that there may be some other

1 items that the victim wanted to have addressed. I'll
2 deal with those in a moment. But the stipulated
3 amount is the \$3,510,000.

4 Then there is the mandatory special assessment
5 of \$100 for the single count of conviction.

6 There is also, I understand, a forfeiture
7 order that's going to be entered.

8 First, counsel, are there any disagreements
9 with the Guideline ranges as I've read them to you?

10 MR. THOMAS: No, your Honor.

11 MS. EMEHELU: None from the government, your
12 Honor.

13 THE COURT: All right.

14 We should turn before I hear any sentencing
15 comments to the issue of restitution.

16 As I've indicated, I know that the parties in
17 the plea agreement had stipulated to the number of
18 \$3,510,000 which represented the contract payments
19 that were made to Mr. Boye that underlie the
20 substantive offense here. Correct?

21 MR. THOMAS: That's correct, your Honor.

22 MS. EMEHELU: Yes, your Honor.

23 THE COURT: All right.

24 And while I understand that the victim in this
25 case -- are we going to refer to it as Country A as

1 opposed to by its name? Everyone put it in the papers
2 already.

3 MS. EMEHELU: For today we can refer to the
4 country by name. We preferred from the government's
5 standpoint in the publicly filed documents, as we do
6 with all victims, that we not identify the victim by
7 name.

8 THE COURT: All right.

9 They had brought to the attention of the
10 government and the Court that there were other losses
11 and tax revenue proceeds from another matter which was
12 referred to as the Macau scheme. But as the
13 government concedes, it was prior to the time charged
14 in this conspiracy, and that amount had been
15 \$859,706.30.

16 They do concede and understand that because it
17 is prior to the time charged in the conspiracy, it
18 must be excluded from the restitution award. That
19 will not be entered.

20 There is also, Country A would like to receive
21 the \$130,000 in salary payments that were made to Mr.
22 Boye. The government points out in not actually
23 putting this forward that, first, they were payments
24 that could have been outside of the temporal period of
25 the charged conspiracy.

1 In any event, there would still be the issue
2 of offsetting them as to any kind of legitimate
3 services that were actually provided by Mr. Boye.
4 Nothing has really been presented to me at this point
5 and it would be very difficult to determine whether
6 there would be offsets to it based upon the services
7 that he gave or not.

8 Therefore, under the statute this would
9 obviously complicate and prolong the sentencing
10 process and would require additional hearings, and,
11 therefore, balancing of the factors, that will not be
12 awarded either.

13 The last is investigative costs and attorney's
14 fees. My understanding here is that there is a claim
15 for investigative costs and auditing costs in the
16 amount of \$379,169 that were paid to Deloitte.

17 MS. EMEHELU: Yes, your Honor, to Deloitte.

18 THE COURT: And then there were also claiming
19 to be in this certification that was submitted legal
20 expenses totaling at least \$600,000.

21 First of all, there is the issue under the
22 MVRA whether investigative costs and attorney's fees
23 qualify as, "other expenses incurred during
24 participation in the investigation of prosecution of
25 the offense," which may be reimbursable.

1 I'll hear from counsel on this issue. I
2 understand that the government based upon the plea
3 agreement is abiding by the stipulation of the
4 restitution amount. Is that correct?

5 MS. EMEHELU: Yes, your Honor.

6 The government abides by the stipulation that
7 the restitution amount due from Mr. Boye is
8 \$3,510,000. But would note as required by the parties
9 plea agreement that the government is obligated to
10 providing information requested by the Court or to
11 clarify any issues that may arise.

12 And so just for the record I would note that
13 there is some legal precedent for the award of
14 investigative costs, auditing costs, and attorney's
15 fees. The government has cited that case law in its
16 sentencing memorandum dated October 13th, 2015.

17 For example, there is a Third Circuit case,
18 United States v. Hayward, 359 F.3d 631, in which the
19 Third Circuit affirmed the District Court's awarding
20 reasonable costs that were incurred in the return of
21 the victimized children from London and making the
22 children available to participate in the investigation
23 and trial.

24 Here we are not dealing with victims
25 participating in trial, testifying as witnesses. But

1 in that situation the Court certainly did find that
2 reasonable costs were reimbursable and subject to
3 restitution.

4 I also cited a Second Circuit case, United
5 States v. Amato; United States v. Gordon, out of the
6 Ninth Circuit; and United States v. Phillips out of
7 the Fifth Circuit.

8 Now of course the wrinkle here though is the
9 government did try to parse out what subset of the
10 claimed investigative auditing costs and attorney's
11 fees are attributable to the charged offense, because
12 of course the victim provided information related to
13 the Macau scheme which your Honor has noted predated
14 the charged conspiracy here.

15 And in speaking with the victims's counsel,
16 it's my understanding that the billing, for example,
17 the attorney's fees were not itemized to segregate out
18 attorney's fees associated with simply the
19 investigation of the charged consulting contract
20 scheme.

21 And so this may render this basket of claimed
22 expenses including the auditing investigative expenses
23 as really being too difficult to confirm. And as your
24 Honor has already noted under the Mandatory Victims
25 Rights Act, Section 3663(A)(c)(3)(B), if the

1 determination of restitution would complicate or
2 prolong the sentencing process to a degree that would
3 result in the need to provide restitution to the
4 victim being outweighed by the burden on the
5 sentencing process, the Court in its discretion can
6 roll back determining whether that restitution claim,
7 that specific claim -- the Court can essentially take
8 a pass and say it's too complicated. It's going to
9 prolong this proceeding unnecessarily.

10 The parties have already stipulated the terms
11 of the charged scheme, the restitution due and owing
12 is \$3,510,000. And, in any case, the parties have
13 also entered into a forfeiture order that provides
14 that the forfeiture money judgment here in this case
15 is \$4,233,015.42.

16 So the defendant certainly will be forfeiting
17 proceeds, a large portion of which will go toward
18 making the victim whole, and he's agreed to forfeit
19 even more than what he's agreed is the restitution
20 number in this case.

21 THE COURT: Thank you.

22 Mr. Thomas, do you want to be heard on this?

23 MR. THOMAS: Certainly, your Honor.

24 Respectfully, your Honor, we ask the Court to
25 exercise its discretion because of the convoluted

1 nature of the request for either attorney's fees or
2 for accounting.

3 As the Assistant U.S. Attorney indicated, we
4 signed a forfeiture agreement that far exceeded what
5 we stipulated for restitution, and that forfeiture
6 agreement was signed away before any of the victims
7 submitting additional claims for restitution.

8 If your Honor is not inclined to exercise the
9 Court's discretion, we will respectfully request that
10 a hearing be conducted in order to ascertain the true
11 amount of money that should be attributed to this
12 offense with regard to the accounting firm and also
13 with regard to the law firm.

14 Thank you.

15 THE COURT: Thank you.

16 I've had an opportunity also to do some
17 additional research on the issue, and, first, I should
18 also point out that there is certainly case law that
19 would support investigative costs and/or attorney's
20 fees as being part of the recovery under the Mandatory
21 Victims Restitution Act.

22 Specifically, the Second Circuit and the Ninth
23 Circuit have ruled in that way. There are other
24 Circuits, the Seventh, Tenth and others that have
25 found that consequential damages such as attorney's

1 fees are not recoverable under the MVRA.

2 While I think this is an issue that they may
3 be recoverable, it's really not completely settled in
4 the Third Circuit. I nonetheless will go about why in
5 this particular case I will not be ordering either the
6 investigative costs or attorney's fees.

7 First of all, let me note, for instance, in
8 the Second Circuit, which has allowed such expenses,
9 the Court has found that what must be done is to show
10 by a preponderance of the evidence that:

11 One, the expenses were necessary;

12 Two, they were incurred while participating in
13 the investigation, prosecution, or attendance at
14 proceedings regarding the offense;

15 Three, they were incurred by a victim as
16 defined by the MVRA;

17 And, four, they do not require unduly
18 complicated determinations of fact.

19 First, obviously, the third factor, they were
20 incurred by the victim. Here, Country A had to pay
21 these fees. But the other factors are the ones that I
22 think at this point are problematic.

23 The first is obviously some kind of
24 investigation would have been necessary in this case.
25 But as has been candidly pointed out by the government

1 because -- I must first say that the certification
2 that has been submitted was bare bones at best and a
3 hearing would have been required to determine whether
4 indeed all of the expenses being claimed or what
5 portion of them were necessary, and then whether they
6 were incurred in connection with the investigation,
7 the prosecution for this particular crime, and whether
8 they do not require unduly complicated determinations
9 of fact.

10 So looking ahead on this record they would not
11 be allowable. I could not find by a preponderance
12 that the factors would have been satisfied. If a
13 hearing were held, what I'm hearing at this point is
14 that it would be difficult, if not impossible, to
15 parse out what portions of the investigative costs and
16 attorney's fees were attributable solely to the
17 conspiracy for which Mr. Boye is being sentenced as
18 opposed to investigating the Macau scheme, or any
19 other items that they may have looked at in connection
20 with Mr. Boye's employment and that go beyond the
21 particular scheme that we are looking at that involved
22 this \$3.5 million. So understanding that even if I
23 had a hearing that it would basically not be possible
24 to parse out those fees.

25 The last factor also cannot be satisfied in

1 that it would require unduly complicated
2 determinations of fact that frankly it does not appear
3 the Court could even make based upon the proffer as to
4 what might have been able to be provided by way of
5 testimony or documentation because of the manner in
6 which those services were incurred and the fees billed
7 to the country.

8 Therefore, while they might have been
9 recoverable items of damages -- and I'm not making
10 that legal determination either because, as I said,
11 the law is really in flux as to whether those would
12 constitute consequential damages that are clearly
13 recoverable in this Circuit -- it is not necessary for
14 me to make that legal determination because I find
15 that I would not be able to satisfy or the government
16 would not be able to satisfy me of those factors.

17 Thus, the restitution will remain at the
18 stipulated amount of \$3,510,000.

19 I also note in making this determination,
20 because I do appreciate that clearly there were some
21 costs involved by the country, that the forfeiture
22 order, as it has been pointed out by the government,
23 includes properties that will yield a recovery to the
24 country in excess of the restitution amount that's
25 been stipulated to, as well, and therefore will give

1 them some more relief towards any other expenses that
2 they may have incurred.

3 Therefore, I find also that that provides them
4 with some hopefully solace and recovery that they were
5 looking for in connection with these other fees and
6 costs.

7 With that, we will go on to the sentencing
8 comments. I understand from both letters and from the
9 plea agreement that there are no applications for
10 variances or departures. Is that correct?

11 MS. EMEHELU: None from the government, your
12 Honor.

13 MR. THOMAS: That's correct, your Honor.

14 THE COURT: Then, Mr. Thomas, I'm ready to
15 hear from you with regard to sentencing.

16 MR. THOMAS: Thank you, your Honor.

17 Your Honor, based on my submission to the
18 Court, we respectfully request a sentence of
19 63 months. 63 months, your Honor, it accounts for Mr.
20 Boye's fraud, it accounts for his criminal history.

21 As your Honor points out, his criminal
22 history, he has four criminal history points. That
23 moves him to category 3. Had he not been in category
24 3 or been in a lower category, your Honor, obviously
25 the penalty would have been much lower.

1 The Guidelines account for his abuse of trust.
2 There is no question, your Honor, that Mr. Boye abused
3 his trust with regard to Timor-Leste and acted as a
4 tax advisor for that country. He abused his trust.
5 In his plea allocution to your Honor, he indicated
6 that he was in a position of trust. He did not
7 disclose his interest when he submitted his bid. And,
8 yes, it's a bid.

9 And as the Assistant U.S. Attorney attached to
10 the sentencing letter, the company he created was
11 absolutely fraudulent. There is absolutely no
12 question about that. We are not standing here
13 disputing that. Mr. Boye admitted that the company he
14 created in order to submit this international tax
15 consultant bid was fraudulent.

16 But one of the things that strike me as odd
17 from the very beginning, your Honor, is that at its
18 inception Mr. Boye created a fraudulent company in
19 order to get the tax consultant work to try to benefit
20 the country of Timor-Leste.

21 In the victim's submission that's attached to
22 the government's brief, it's silent, your Honor, with
23 regard to the actual product that Mr. Boye produced.
24 And, in fact, your Honor, what Mr. Boye produced is
25 still being used by the country.

1 Your Honor, the last time I touched contract
2 law was probably in law school 20 years ago. But I
3 think there is a concept, I'm not sure whether it's
4 still valid or not, but back then 20 years ago there
5 was a concept called unjust enrichment.

6 THE COURT: It still exists.

7 MR. THOMAS: What we have here, your Honor, is
8 clearly a fraud from the very beginning. Unlike other
9 fraud cases where you know somebody is going in to
10 commit fraud and they are not going to worry about the
11 end product because they are going in to grab the
12 money and run, what we have here is Mr. Boye created
13 this fraudulent company from the very onset, all
14 right, but he did the work.

15 It's no excuse. It is absolutely no excuse
16 for committing the fraud to begin with. You can't,
17 you can't get the benefit of that, and I'm not saying
18 he should. But in fashioning a reasonable sentence,
19 your Honor, one that's sufficient but not greater than
20 necessary we should look at the total picture.

21 At one point when I first got involved in this
22 case I looked at the country's 2012 annual report and
23 there is nothing in there that talks about the
24 fraudulent nature of what -- the product, the end
25 product, the work product that he did. Nothing in

1 there talks about that. The attorneys don't mention
2 that the country is in irreparable harm because the
3 product he submitted was lousy and insufficient.

4 They hired a big law firm in California that
5 did at least \$600,000 plus -- close to \$900,000 of
6 investigation and nothing is said about the fact that
7 the work product was faulty. They still use it to
8 generate funds and it's going to be continued to be
9 used to generate funds.

10 So what we have here is somewhat of an unjust
11 enrichment. And, no, your Honor, I am not saying, I
12 am not saying one bit that his original fraudulent
13 conduct should be excused. Absolutely not. It should
14 not be excused. But when you look at the total
15 picture, your Honor, and you compare this fraud case
16 to others -- I don't know if there is any traditional
17 fraud case. There probable should not be. But just
18 your typical fraud case, your Honor, this case doesn't
19 cry out for a sentence at the high end of the
20 Guideline range.

21 Simply put, your Honor, we respectfully ask
22 that this Court sentence Mr. Boye to 63 months.

23 With that said, your Honor, Mr. Boye has been
24 on bail conditions prior to me being appointed to
25 represent him. There has been no issues with regard

1 to his compliance on bail.

2 We would respectfully request that Mr. Boye be
3 allowed to voluntary surrender. Specifically, your
4 Honor, Mr. Boye's lease on his current residence
5 expires on November 30th, which is a Monday, and we
6 would respectfully ask that a voluntary surrender date
7 be sent for November 30th.

8 Finally, your Honor, and I've explained to Mr.
9 Boye that the only thing your Honor can do is make a
10 recommendation with regards to the facility, we
11 respectfully request that Mr. Boye be designated to
12 Fort Dix.

13 Thank you.

14 THE COURT: Thank you, Mr. Thomas.

15 Mr. Boye, you may speak on your own behalf at
16 this time.

17 THE DEFENDANT: Your Honor, I stand before you
18 humbled for my misconduct. This is very painful, your
19 Honor. Timor-Leste gave me an opportunity that I did
20 not deserve and this, my conduct, is highly
21 unjustifiable. In that country I was very friendly
22 with everybody in the government there. They gave me
23 this opportunity and I abused it.

24 But also, your Honor, the sad part of it is
25 that the good I have done for that country has been

1 ruined by my criminal conduct. I volunteered as a
2 professor in the school for two years. I was teaching
3 there without any regulations on top of my employment.
4 I was buying books for the students that I was
5 teaching at the university.

6 But all of that and all of that good stuff
7 this single criminal conduct this is something that
8 until I go to my grave I will continue to regret
9 because I had enough goodwill from that country. If I
10 had disclosed that I owned this company based on my
11 professional competence, if they wanted to grant this
12 contract, they would have given it to me. The demons
13 misled me into this.

14 Your Honor, I assure you that until I go to my
15 grave, I will continue to regret this and I pray to
16 you, your Honor, that you administer justice -- I have
17 two young children, one is two years old, one is
18 four-year-old -- so that when I come back home I can
19 be a good role model and I could be a good father to
20 them. So I urge you, your Honor, to just have mercy
21 on me.

22 And to the people of Timor-Leste who are
23 represented here today, I extend my apologies to the
24 people and government of Timor-Leste. If there is any
25 way I can make this up in my life, any good deed that

1 I could do, and that's the reason why all the
2 properties that I owned I disclosed to them and I
3 forfeited them without any question.

4 So, finally, your Honor, I pray for mercy.

5 THE COURT: Thank you.

6 Ms. Emehelu.

7 MS. EMEHELU: Your Honor, the government
8 submits that a sentence firmly within the applicable
9 Guideline range of 63 to 78 months would be a just
10 result in this case.

11 The defendant, Mr. Boye, preyed upon a young
12 poor nation ravaged by years of civil war that was
13 just now embarking upon a period of independence and
14 critically had to rely on the expertise of
15 international advisors in an array of different areas,
16 but most particularly with respect to the management
17 and cultivation of its vast petroleum resources,
18 really it's only major source of national revenue.

19 Mr. Boye's history is quite remarkable. This
20 is an individual who was convicted in the state of
21 California for almost the same scheme. Different
22 facts, but the bottom line was he embezzled money from
23 his then employer and entered into a plea agreement,
24 was sentenced to 3 years, was released in 2007 after
25 having had the good fortune of serving out that

1 sentence in a halfway house for white collar
2 offenders.

3 At that point he was at a crossroads. He
4 could have taken a path toward leading an honest and
5 righteous life given his education, his intellect. He
6 is a person of tremendous abilities and yet what he
7 did was he relocates to the East Coast. He's no
8 longer Bobby Ajiboye. He's now Bobby Boye.

9 He's admitted to practice law in the state of
10 New York. We don't know whether he disclosed his
11 California conviction to the Character and Fitness
12 Board in New York in connection with his admission to
13 the bar there.

14 We do know he certainly did not disclose his
15 prior conviction to Country A or to the Kingdom of
16 Norway who actually was the nation who hired him
17 because Norway through the International Humanitarian
18 and Development Program was helping Country A identify
19 the creme de la creme of legal advisors and other
20 experts who could help the country really lift up and
21 develop and progress.

22 And Mr. Boye was one of those individuals who
23 was identified as being somebody who could make a real
24 contribution to the nation, and again he was at a
25 crossroads. He could have just proceeded as a legal

1 advisor. He was drawing a very good salary from that
2 position and he could have done what his duty was. He
3 had made a commitment to helping this country and what
4 does he do? Well, my salary is not enough. I need
5 more money. The lifestyle that I aspired to I guess
6 cannot be satisfied by making \$100,000, \$130,000 a
7 year. I need more money. And so he creates this sham
8 company.

9 This theme was so methodical and planned out.
10 This wasn't just some rash decision. He puts together
11 what appears to be a legitimate law and accounting
12 firm under the name Opus & Best and creates
13 documentation that would lead one to believe and
14 certainly led Country A to believe that this was a
15 long-standing legitimate firm with accountants and
16 lawyers, with 20, 30 years experience in the area of
17 petroleum taxation who had worked at various places,
18 whether the IRS or for some of the big accounting
19 firms, or the most prominent law firms, and these were
20 going to be the very people who would be staffing this
21 project -- quote, unquote-- when Opus & Best won the
22 contract.

23 At no time did Mr. Boye disclose that clearly
24 I am Opus & Best. I am the only member of Opus &
25 Best. Opus & Best is no other than me and I only just

1 created it. Actually, he didn't even formally file
2 the articles of organization until after he submitted
3 his bid, but certainly it was not in existence decades
4 before as falsely represented in the bid documents.

5 Now, Mr. Boye stands up today and says, oh, I
6 should have just been honest. Surely they would have
7 granted me the contracts given the relationship I had
8 with the country at the time. Well, I don't think
9 that has been shown and I don't think any rational Bid
10 Review Committee would award a contract to an
11 interested party.

12 Here the bid review process required the
13 disclosure of any conflicts of interest and Mr. Boye
14 who not only is Opus & Best but is also a member of
15 the three member Bid Review Committee. He's clearly
16 on both sides of the transaction here. He doesn't
17 disclose the conflict of interest. He doesn't
18 disclose that he is the real beneficiary of the
19 contract if it is awarded to Opus & Best. None of
20 that.

21 He creates fictitious individuals, employees
22 of Opus & Best. He has one of these fictitious
23 partners send an email to Country A attaching the
24 fraudulent bid documents that he, based on the
25 metadata for those documents, authored along with a

1 relative of his. He has a website created by that
2 relative again setting forth numerous false
3 representations as to the credentials of this Opus &
4 Best, and ultimately Country A -- again, they are a
5 young nation, inexperienced. Granted, Mr. Boye had
6 experience in this area of petroleum taxation and so
7 they relied upon his recommendation.

8 As a member of the Bid Review Committee, he
9 recommended, don't award the bid to these other
10 accounting and law firms that are much more prominent
11 that a lot of us would know. I highlyly recommend
12 Opus & Best. And the country relied on his
13 recommendation because he held a position of trust.
14 They trusted him.

15 And then what does he do? Well, he sets up a
16 bank account so that monies that are paid from Country
17 A to Opus & Best go to an account in New York that he
18 controls, and he then in no time spends the \$3.51
19 million that's paid under the consulting contract.

20 He's not just using money to feed his family.
21 No. He's buying a Rolls Royce. He's buying a
22 Bentley. He's buying an SUV. He's buying lucrative
23 rental properties, not one, but two, three multiple
24 properties. He's buying expensive watches. It goes
25 on and on. And, again, at no time is he disclosing

1 his affiliation with Opus & Best.

2 Now, Mr. Thomas has argued that, well, in
3 mitigation my client did provide some work product
4 under the consulting contract. Well, Your Honor, the
5 government would submit that was an essential part of
6 the scheme. If he had just blown it off and not
7 provided any work product, he wouldn't have gotten the
8 continuous payments under the contract. The payments
9 were not paid up front. They were paid in
10 installments based on the delivery of work products
11 and he continued to get paid because he was providing
12 some services under the contract.

13 Now, in terms of the value of those services,
14 as the government noted in its sentencing memorandum,
15 the Sentencing Commission in its creation of the
16 Commentary to Section 2B1.1 has certainly indicated
17 that where there are false representations as to the
18 licensing of particular professionals who are
19 rendering services in a particular scheme, that there
20 should be no credit for the value of services
21 provided.

22 Your Honor, that is because, the government
23 would submit, that there is a special kind of abuse of
24 trust and a special kind of manipulation that occurs
25 when an individual is posing as a trusted licensed

1 accredited individual. Here he was posing as various
2 licensed accountants who claimed were CPAs, other
3 attorneys, and he needed to create an aura of
4 expertise in order to get the contract, and then once
5 he had the contract to ensure the continued payments
6 in installments under the terms of the contract.

7 In fact, even after the \$3.51 million is paid
8 to Mr. Boye, he again impersonating a fake employee of
9 Opus & Best seeks to get paid an additional amount of
10 money in excess of \$600,000 under the terms of the
11 contract saying this is what is owed to Opus & Best.

12 He even goes so far as to try to obtain a
13 separate contract with an Opus & Best basically
14 subsidiary that he creates in Hong Kong, again, not
15 disclosing his affiliation with that Hong Kong branch,
16 if you will, of Opus & Best and trying to obtain an
17 additional contract with that country.

18 And so it just is unquestionable that the
19 offense perpetrated by Mr. Boye was serious, it was
20 meticulously planned and executed, and he undoubtedly
21 abused his position of trust and did so for greed.
22 Again, he did so for greed. He was already making
23 substantial income.

24 In fact, throughout his career he has made
25 substantial income from the various employments that

1 he's held, whether it be at the job where he embezzled
2 money and which led to his California state
3 conviction, as well as in other subsequent employment.
4 So this is certainly not somebody who had to resort to
5 fraud in order to just make ends meet. He resorted to
6 fraud to live a lifestyle beyond his means.

7 Now, in terms of the need for deterrence, your
8 Honor, the government would submit deterrence is
9 absolutely necessary in this case. Apparently, the
10 California state conviction and sentence had no
11 deterrent effect upon Mr. Boye, since just some years
12 after that, he commences this scheme and he got a
13 break there. Again, it's a 3-year sentence, he only
14 serves a part of that sentence, and gets to serve it
15 in a halfway house.

16 In addition, your Honor, some years before
17 he's censored by the New York Stock Exchange. And in
18 that case, again, elements of fraud. He had engaged
19 in trades through clients' accounts without their
20 authorization and as a result he was censored and
21 barred from any affiliation with the New York Stock
22 Exchange.

23 Again, this goes back. This is even before
24 the embezzlement from the prior employer. But it
25 shows a pattern, a life-long pattern of fraud starting

1 from the New York Stock Exchange where he was
2 censored, to the California state conviction, and
3 ultimately to his federal proceedings here in the
4 District of New Jersey.

5 And so the government submits that specific
6 deterrence is necessary as well as general deterrence.
7 Again, this country, Country A, like other small
8 countries who have been ravaged by civil war, by
9 unrest, really was in a vulnerable situation.

10 So a message needs to be sent to those who
11 look for opportunities in other countries that are
12 facing similar challenges rather than working for the
13 public good there, who seek to convert opportunities
14 to their own personal good at the expense of those
15 countries, and there needs to be a clear message that
16 will not be tolerated.

17 Turning to the history and characteristics of
18 the defendant. I've gone through his criminal
19 history, his prior instances of fraud. This is a man
20 of tremendous intellect, training and experience who
21 squandered those abilities and opportunities by
22 exploiting the trust of his employers and clients time
23 and again in order to satisfy his own personal greed.

24 So for all these reasons including the impact
25 on the victim -- and I would note for the record

1 present in the courtroom today is Ambassador Domingos
2 Sarmento Alves. He is the U.S. Ambassador to Country
3 A who has also submitted a victim impact statement
4 which is attached as Exhibit B to the government's
5 sentencing memorandum who gives in that submission
6 just some background about Country A, its people, the
7 challenges it faced in post-colonization period and
8 its rise to independence, as well as the impact this
9 specific offense has had.

10 It weakened some of its diplomatic relations
11 with other countries, particularly, Norway which
12 actually hired Mr. Boye initially, as well as it
13 compromised some of their relationships with major oil
14 companies because the work product in this case
15 involved the generation of highly complex tax
16 regulations that the result of which is to basically
17 collect tax revenue from oil companies and other
18 entities within Country A.

19 So when you have a situation such as this
20 where the entity that was supposed to be generating
21 those tax regulations and levies was a sham, that
22 certainly puts Country A at some risk whether it be
23 litigation or just in terms of negotiating future
24 contracts and tax arrangements with these oil
25 companies.

1 So it's not such an easy situation where we
2 can say that some work product was provided and so no
3 harm, no foul essentially. Really the true impact, I
4 would say, of Mr. Boye's offense may not be known
5 today, but may have long-term consequences in terms of
6 future contractual relationships with multi-national
7 oil companies operating in Country A.

8 So for all of these reasons, your Honor, the
9 government submits that a sentence within the
10 applicable Guideline range of 63 to 78 months would be
11 appropriate in this case.

12 The government also suggests a supervised
13 release period of 3 years following any term of
14 imprisonment.

15 In terms of a fine, given the substantial
16 restitution obligations in this case, as well as the
17 forfeiture money judgment, the government would submit
18 that a fine probably should be waived in this matter,
19 so that Mr. Boye can meet his other financial
20 obligations.

21 The government thanks you for your time, your
22 Honor.

23 THE COURT: Thank you, Ms. Emehelu.

24 I'll make my comments now with regard to the
25 3553(a) factors. Starting with the nature and

1 circumstances of the offense and the seriousness of
2 the offense.

3 I think that the government has just spent
4 substantial time going through, in fact, what the
5 offense was which on its face demonstrates the
6 seriousness of it. So I will make only a few comments
7 which should not in any way be interpreted as because
8 they may not be as lengthy as the government's that it
9 minimizes in any manner the seriousness of this
10 offense.

11 It is correct that the victim in this case was
12 a very young and poor nation that relied principally
13 upon this asset that it had, its natural resource of
14 petroleum, and that it was using and relying on
15 advisors to assist them with it, and also Norway that
16 was involved in this endeavor and locates the
17 defendant.

18 The fraud here was really of such a major
19 level that I can't say enough about it in that Mr.
20 Boye was given a wonderful opportunity. There was
21 employment, yes, and he was going to be paid well for
22 that employment. But it was more than just the salary
23 he was going to get. He accepted a position that was
24 really of a new kind that was going to assist this
25 country.

1 He was going to be on the ground floor of
2 assisting them in moving forward in an economic way.
3 That opportunity to not only perform professional
4 services that appears from his educational background
5 that he had the ability to do and advise upon, but to
6 also do what I would call "do good" to assist this
7 country in moving forward in a very important way, and
8 a country that had been ravaged by civil war and was
9 looking to get itself on its feet and move forward
10 based upon this very important and valuable natural
11 resource. So the opportunities for Mr. Boye were
12 tremendous to accomplish some very, very good things.

13 And you had a country who based upon its in
14 many ways naivete about this industry upon which it
15 was embarking and how to go about it clearly needed
16 the advisors to assist it, was taking the assistance
17 from Norway in selecting such individuals, or
18 suggesting to them the individuals, and obviously
19 having made the selection put great trust and faith in
20 Mr. Boye in performing the services and having a
21 loyalty and fidelity to them that they expected to
22 have.

23 And even today Mr. Boye says how fond he was
24 of the country and how well he was treated by the
25 government. Obviously, particularly because of the

1 kind of small country it was and where they were going
2 and the number of limited people involved in assisting
3 them, this position of trust was obviously fostered
4 and created at an early stage. This country welcomed
5 him and made him one of their own which makes even
6 more egregious the fraud that was then committed upon
7 them. It wasn't simply some stranger committing the
8 fraud that we sometimes get in bid-rigging or things
9 of this nature, but this was one of their own at this
10 point who decided to abuse that trust.

11 In that connection I need to comment obviously
12 upon the manner in which it was carried out and the
13 comments that were made that Mr. Boye seems to think
14 because he was held in such good light by this country
15 that if he had simply disclosed that he could do this
16 work he would have been picked. Don't pull the wool
17 over my eyes.

18 We all know that you placed yourself in a
19 tremendous conflict of interest and you understood
20 that which is why you hid it so well. But it wasn't
21 just you presenting that this was an Opus & Best with
22 one man at the top -- not you, whoever you wanted to
23 claim it was going to be -- but you had a host of
24 professionals that you represented to be part of this
25 company with resumes to match that would indicate they

1 were looking at a multi-million dollar contract of
2 work that was going to go forward to give them advice
3 both from an accounting and legal perspective, which
4 is why when you created this company you didn't just
5 make it a two or three-person company. You presented
6 it as a dozen people, 20 people who could perform all
7 these different services.

8 Because as we know when you are talking about
9 something of this level nobody goes out and hires the
10 solo practitioner out there with the shingle out, but
11 looks for the big firms that have many individuals
12 that can perform the different kinds of work at any
13 given time. So you very well plotted out what it would
14 be that would be necessary to convince, one, the other
15 two on the committee to make a recommendation and
16 ultimately the country to accept this sham company.

17 So let's not be fooled today that if you just
18 said, I could do all the work for you, that they would
19 have said, great, come in, do everything, be our
20 advisor, be everything else too, a one-man-show.
21 Obviously, though, you have great talents because you
22 were able to do the work.

23 I must say when I read through all of what you
24 did and the way you described these individuals, some
25 fake -- I don't know if you found real names out there

1 somewhere and put some resumes on -- but whatever it
2 was it was quite sophisticated and involved to come up
3 with this. And all to get, not to help the country,
4 because there were others out there that could have
5 done a good job too that could have helped the
6 country, but to line your pockets. And what did you
7 do with the money? Expensive cars, jewelry,
8 properties. Partly the reason why there is an ability
9 to get this forfeiture and hopefully compensate to
10 more or less say because you spent your money on
11 things.

12 And the victim here, the country, the fact
13 that they received services that you described as
14 services that are still being used and good services
15 doesn't mitigate the crime. One, it was of course
16 important that you perform the services because
17 otherwise Opus & Best would have been terminated if
18 they weren't providing services, but moreover it's not
19 novel to me.

20 I have sat and seen many defendants in fraud
21 cases obtaining contracts from government. Here it's
22 generally here in the US. This happens to be a
23 foreign country. But obtaining contracts that are
24 sent out for bidding and obtaining them through fraud
25 or bribes. And in virtually all of those cases they

1 did the work. Whether it was a demolition contractor,
2 or whoever it might have been, it wasn't a mitigating
3 factor because they did the work. That was the only
4 way they were going to get paid and they may have been
5 capable of doing the work. But here it's how you went
6 about getting it and the fact that not only did you do
7 it dishonestly, but it prevented honest bidders from
8 getting the work that could have also done the work
9 and been paid the same money. It's a fraud upon the
10 country.

11 It's more egregious in my mind because it was
12 not just upon a corporation who may have some kind of
13 insurance or whatever that could make them whole, and
14 not just done to our country, but you were really sent
15 out there in some ways as a personal ambassador to
16 this country hand picked by Norway to assist an
17 underdeveloped poor country.

18 It's almost akin to what we call the
19 vulnerable victim here, but it's not exactly. But
20 I'll point out, this particular country that welcomed
21 you and that you took advantage of, the crime is
22 extremely serious and I won't go through all the
23 aspects of it at this point.

24 Now, looking at deterrence both from a
25 specific and general deterrence perspective. As to

1 specific deterrence, it is absolutely an important
2 consideration here. This is not the first time that
3 you committed a criminal act, defrauded. What is
4 incredible to me is given how obviously intelligent
5 and educated and able that you were to do good work,
6 that you were employed by very high ranking companies,
7 Morgan Stanley, Mastercard, and this company out in
8 California that I'm not familiar with, that you
9 embezzled from the company and you received a sentence
10 and apparently the sentence allowed you to serve it in
11 a halfway house for white collar criminals.

12 We don't do that here in federal court for
13 some important reasons, but that did not act as a
14 deterrence to you because you would have thought that
15 someone of your intellect that would have been a
16 wake-up call. I escaped prison. I did something
17 really wrong. I could never do anything like that
18 again to an employer or anyone else, and lo and behold
19 here you were a few years later doing the same.

20 And even with your employer there of course
21 preceding that was the employment with Morgan Stanley
22 and your actions there that ultimately result in you
23 being banned by the New York Stock Exchange. Frankly,
24 it boggles my mind that one of the things apparently
25 when you went to California was telling Morgan Stanley

1 that you were on a medical leave with some illness,
2 and it turns out you took another job in California
3 and then they terminated you upon discovering that and
4 all the investigation occurs and that's where it comes
5 out. And here too at some point this investigation
6 begins when you told Timor-Leste that you had a life
7 threatening illness and they started looking into
8 that.

9 There is a pattern here and it's a pattern
10 that unfortunately goes back to your days working with
11 Morgan Stanley, your other employer, that's more than
12 a decade old and you have not learned the lesson. So
13 specific deterrence is a very important consideration
14 for this Court and you clearly have never served real
15 prison time.

16 As to a general or public deterrence, it is an
17 important consideration for this Court because also
18 different than how you were treated in California by,
19 quote, this halfway house for white collar criminals,
20 we take seriously fraud, white collar crimes, and
21 there has to be a recognition of that by the public
22 that no matter how educated you are, how good you are
23 at what you do, you commit a serious crime, you have
24 to do serious time.

25 There is also of course the concern of the

1 Court for disparity of sentencing for similar crimes
2 and I must consider that as well.

3 Looking at your personal history and
4 characteristics. Some of the things that I've
5 mentioned about, the prior activity in your employment
6 both with Morgan Stanley, the criminal history that
7 you had already speak to that somewhat, but let me
8 point out that what I've got here is, it was
9 indicated, I do understand that there is some
10 difficulty in early childhood, your father, but you
11 went about succeeding.

12 You got a law degree in your home country of
13 Nigeria. You came to the US. You attended UCLA. You
14 got a LOM. Then got a Masters in Business Tax at USC.
15 First of all, amazing schools, opening up amazing
16 opportunities for you. You are clearly a very
17 intelligent man and able and capable man and had a law
18 degree. I'm not quite sure how New York State
19 admitted you to the bar considering your prior
20 conviction, but that's not for me to determine.

21 All of those degrees that you had, you earned
22 those degrees, and clearly when you went to
23 Timor-Leste you were capable. You did work as an
24 advisor and you pointed out even the other advice that
25 you gave them was a one-man show without the advantage

1 of a big firm behind you. It was real. It was good
2 work product.

3 As I said, I am stymied by what greed must
4 have motivated you to do this because you could have
5 achieved and accomplished so many things just because
6 of the qualities and education that you had, and
7 instead you used that to take advantage.

8 I know that you currently have two small
9 children. I know it also appears from the PSR that
10 you are in the midst of divorce. Clearly, your
11 relationship has broken down. On a personal level,
12 you have a lot of things to make up for, mending to do
13 at some point if you want relationships with your
14 children.

15 Now, what you are going to do when you are
16 released from prison is going to be up to you.
17 Presumably, with this felony conviction, you are going
18 to be disbarred. There are certain limitations you
19 are going to have on what you are able to do. But
20 certainly given your natural innate abilities, you
21 should be able to do and accomplish a number of
22 things, but you are going to need a major change.

23 I have considered all of those 3553(a) factors
24 and in fashioning a sentence that's sufficient but not
25 greater than necessary I, one, disagree with the

1 request by the defendant for a sentence at the bottom
2 of the Guideline range. I think that absolutely does
3 not suffice as a sufficient sentence.

4 A Guideline sentence is appropriate and I am
5 going to impose a sentence of 72 months in this case.

6 I am also going to impose a 3-year period of
7 supervised release in this matter.

8 I would also agree that given the large
9 restitution and forfeiture order in this case that he
10 would not have the ability to satisfy a fine. My
11 interest is in making sure that restitution is paid.
12 So I will waive the fine.

13 Sentence is as follows:

14 It is the judgment of the Court that the
15 defendant, Bobby Boye, is hereby committed to the
16 custody of the Bureau of Prisons to be imprisoned for
17 a term of 72 months.

18 Upon release from imprisonment, the defendant
19 shall be placed on supervised release for a term of
20 3 years.

21 Within 72 hours of release from the custody of
22 the Bureau of Prisons, the defendant shall report in
23 person to the Probation Office in the district to
24 which he is released.

25 While on supervised release, the defendant

1 shall not commit another federal, state, or local
2 crime, shall be prohibited from possessing a firearm
3 or other dangerous device, shall not possess an
4 illegal controlled substance, and shall comply with
5 the other standard conditions that have been adopted
6 by this Court.

7 Based on information presented, the defendant
8 is excused from the mandatory drug testing provision.
9 However, he may be requested to submit to drug testing
10 during the period of supervision if Probation
11 determines a risk of substance abuse.

12 The following special conditions shall apply:

13 There will be had a new debt restriction that
14 will be in place until the restitution is satisfied.
15 There will also be a self-employment or business
16 disclosure condition as well. Those are the only
17 conditions being imposed.

18 It is further ordered that the defendant shall
19 make restitution in the amount of \$3,510,000. I will
20 waive the interest requirements in the case. Payments
21 shall be made payable to the U.S. Treasury and
22 forwarded to the Clerk of the Court in Trenton, for
23 distribution to Ambassador Pierre-Richard Prosper, and
24 there is an address for that.

25 The restitution is due immediately. It is

1 recommended that the defendant participate in the
2 Bureau of Prisons Inmate Financial Responsibility
3 Program. If he participants, the restitution shall be
4 paid from those funds at a rate equivalent to \$25
5 every 3 months.

6 In the event the entire restitution is not
7 paid prior to the commencement of supervision, the
8 defendant shall satisfy the amount due in monthly
9 installments of no less than \$500 to commence 30 days
10 after release from confinement.

11 Defendant shall notify the United States
12 Attorney for this district within 30 days of any
13 change of mailing or residence address that occurs
14 while any portion of the restitution remains unpaid.

15 As I've indicated, I find the defendant does
16 not have the ability to pay a fine. I will waive the
17 fine in this case.

18 Finally, it is further ordered the defendant
19 shall pay to the United States a total special
20 assessment of \$100 for the single count of conviction,
21 which is due immediately.

22 I advise the parties of their right to appeal
23 this sentence.

24 I will also be entering a forfeiture order
25 that is going to be submitted to me upon consent. Is

1 that correct?

2 MS. EMEHELU: Yes, your Honor.

3 A preliminary forfeiture order has already
4 been entered and filed in this matter. The United
5 States will be submitting a corrected consent judgment
6 of forfeiture that simply corrects the description of
7 the Elizabeth properties that has the correct street
8 number. That's the only correction.

9 THE COURT: Thank you.

10 The last thing, there has been a request for
11 voluntary surrender. Is there any objection by the
12 government?

13 MS. EMEHELU: No objection, your Honor.

14 THE COURT: I think you were requesting a
15 November 30th date.

16 MR. THOMAS: That's correct, your Honor.

17 THE COURT: If he has not yet been designated
18 at that point -- where is he currently living?

19 THE DEFENDANT: Mahwah, New Jersey.

20 THE COURT: If you have not gotten a
21 designation, you are to report to the Marshal's Office
22 in Newark on November 30th. It's a Monday. Just so
23 he doesn't have to come down to Trenton, we'll have
24 him report to Newark.

25 I know you asked that I recommend Fort Dix.

1 I'll recommend it. You know that it's totally up to
2 the BOP, however.

3 MR. THOMAS: Your Honor, one last issue with
4 regards to the \$500 per month while on supervised
5 release.

6 Would your Honor be inclined to put a range
7 and leave it up to the discretion of Probation and not
8 more than \$500?

9 THE COURT: We don't know what his employment
10 will be. I put that out there at this point because I
11 think he is capable of getting employment. It can be
12 adjusted. I usually say adjust it based upon what his
13 employment is at the time, but I can't leave it
14 totally at the discretion of Probation.

15 Mr. Martenz, is that correct?

16 THE PROBATION OFFICER: Set an amount now and
17 it could be adjusted. An amount has to be set.

18 THE COURT: Right. It has to be set. And it
19 can't be like saying a range or up to. We have to set
20 it.

21 MR. THOMAS: Can we put at least 500?

22 THE COURT: No. Or I wouldn't even say at
23 most because if he got a job that was very high paying
24 it could be more than 500. We don't know. I'm
25 putting out a number there that's based upon what his

1 education is and a possibility of getting employment.

2 Absolutely, one, if he doesn't obtain
3 employment immediately, he can't make that; and, two,
4 when he does get employment Probation may adjust that.
5 Absolutely.

6 MR. THOMAS: My concern is, your Honor, it's
7 setting him up for failure for a potential violation.
8 That's all.

9 THE COURT: Well, it wouldn't be a violation
10 anyway because they wouldn't violate if he doesn't
11 have employment that would allow him to pay that.

12 THE PROBATION OFFICER: Correct. It has to be
13 willful.

14 THE COURT: Right.

15 And I must tell you, I haven't seen a
16 violation on a failure to pay restitution unless there
17 are a lot of other things going on at the same time.

18 It will be adjusted. I have it on the record
19 that I've indicated that is to be adjusted based upon
20 whatever his employment situation is at the time.

21 MR. THOMAS: Thank you, your Honor.

22 THE COURT: Thank you.

23 MS. EMEHELU: Thank you, your Honor.

24 THE CLERK: All rise.

25 (Proceedings concluded.)

C E R T I F I C A T E

I, **Vincent Russoniello**, Official United States Court Reporter and Certified Court Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.

S/Vincent Russoniello
Vincent Russoniello, CCR, CRR
Certificate No. 675

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BOBBY BOYE : Hon. Freda L. Wolfson, U.S.D.J.
v. : Civ. No. 16-6024 (FLW)
UNITED STATES OF AMERICA : ORDER

This matter having come before the Court on Petitioner Bobby Boye's motion to vacate, set aside, or correct his sentence pursuant to Title 28, United States Code, Section 2255 (the "2255 Motion") (docket no. 1) including the exhibits and related filings, namely, Petitioner's memorandum of law in support of his 2255 Motion (docket no. 1-1), Petitioner's certification (docket no. 1-2), and Petitioner's supplemental certification (docket no. 7) (collectively, the "2255 Motion"); and the Court having considered the 2255 Motion, the records of proceedings in this matter, and Answer of the United States (Shirley U. Emehelu, Assistant U.S. Attorney, appearing); and for good cause shown,

IT IS on this day of , 2017,

ORDERED that the 2255 Motion is hereby denied;

IT IS FURTHER ORDERED that the 2255 Motion is hereby dismissed with prejudice; and

IT IS FURTHER ORDERED that, for the reasons set forth in the opinion of the Court, a certificate of appealability shall not issue because the Petitioner has failed to make a substantial showing of a denial of a constitutional right.

HONORABLE FREDA L. WOLFSON