

**Paul W. Bergrin**  
**Reg. No. 16235-050**  
**FCI Terre Haute**  
**Federal Correctional Institute**  
**P.O. Box 33**  
**Terre Haute, IN 47808**

May 25, 2016

Clerk  
United States District Court  
District of New Jersey  
50 Walnut Street  
Newark, NJ

RE: United States v. Paul W. Bergrin  
Criminal No. 09-369

Dear Sir or Madam:

Enclosed please find a Motion under 18 U.S.C. §2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody which I am sending a copy of the brief and appendix to this Honorable Court for filing.

I am respectfully requesting that the Appendix remain on record for the governments review. I do not have the funds nor capacity to duplicate.

Thank you.

Most respectfully,

/s/  
Paul Wayne Bergrin

cc: AUSA J. Gay  
AUSA J. Minish  
AUSA S. Sanders

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Respondent

v.

PAUL BERGRIN,

Petitioner

Criminal No. 09-369 (JLL)

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

TO: John Gay, Assistant United States Attorney  
Joseph N. Minish, Assistant United States Attorney  
Steven G. Sanders, Assistant United States Attorney  
United States Attorney's Office  
970 Broad Street  
Newark, New Jersey 07102

**PLEASE TAKE NOTICE** that Petitioner Paul Bergrin hereby moves before the Honorable Jose L. Linares, United States District Judge, District of New Jersey, for an Order Granting Petitioner's Motion under 28 U.S.C. §2255 to Vacate, Set Aside or Correct a Sentence by a Person in Federal Custody.

Petitioner relies on the enclosed Brief and Appendix filed with the Court in Support of this Motion; the Appendix and Compendium of all Pleadings, motions, and correspondence filed by all parties in the proceedings to date; and all Transcripts, Orders and documents on file with the court. A proposed form of order is filed herewith.

By: /S/  
Paul W. Bergrin  
Reg. No. 16235-050  
FCI Terre Haute  
Federal Correctional Institute  
P.O. Box 33  
Terre Haute, IN 47808

Dated: May 23, 2016

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

United States District Court	District of New Jersey
Name (under which you were convicted): Paul Bergrin	Docket or Case No.: 09-369
Place of Confinement: Federal Correctional Institute, Terre Haute, In.	Prisoner No.: 16235050
UNITED STATES OF AMERICA	Movant (include name under which you were convicted)
v.	Paul Bergrin

**MOTION**

1. (a) Name and location of court that entered the judgment of conviction you are challenging:  
United States District Court, District of New Jersey,  
Newark, New Jersey
- (b) Criminal docket or case number (if you know): District Court - 09-369; Third Cir. 13-3934
2. (a) Date of the judgment of conviction (if you know): September 23, 2013
- (b) Date of sentencing: September 23, 2013
3. Length of sentence: Life
4. Nature of crime (all counts): Murder, murder conspiracy, drug trafficking conspiracy, murder for hire conspiracy, aiding prostitution and evading reporting requirements.
5. (a) What was your plea? (Check one)
  - (1) Not guilty
  - (2) Guilty
  - (3) Nolo contendere (no contest)
 (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?
6. If you went to trial, what kind of trial did you have? (Check one)
 Jury 
Judge only

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Respondent

v.

PAUL BERGRIN,

Petitioner

Criminal No. 09-369 (JLL)

PROOF OF SERVICE

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

I, \_\_\_\_\_, hereby certify as follows:

1. Mr. Paul W. Bergrin is appearing *pro se* in the within Motion under 28 U.S.C. §2255 to Vacate, Set Aside or Correct a Sentence by a Person in Federal Custody.
2. All notices from the court and correspondence from the parties in this matter should be noted as special legal mail and sent to Mr. Bergrin at the following address:

Paul W. Bergrin  
Reg. No. 16235-050  
FCI Terre Haute  
Federal Correctional Institute  
P.O. Box 33  
Terre Haute, IN 47808

3. On the below date, I caused to be filed the following documents with the United States District Court, District of New Jersey, the following:

- a) Notice of Motion under 28 U.S.C. §2255 to Vacate, Set Aside or Correct a Sentence by a Person in Federal Custody;
- b) Brief in Support of Motion;
- c) Appendix in Support of Motion Volumes I-VII;
- d) \$5.00 Filing Fee;
- e) Proposed Form of Order; and
- f) Proof of Service.

3. On this date, service was made upon the following:

John Gay, Assistant United States Attorney  
Joseph N. Minish, Assistant United States Attorney  
Steven G. Sanders, Assistant U.S. Attorney  
United States Attorney's Office, New Jersey  
970 Broad Street  
Newark, New Jersey 07102

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By: \_\_\_\_\_

Dated: May 23, 2016

Paul W. Bergrin  
Reg. No. 16235-050  
FCI Terre Haute  
Federal Correctional Institute  
P.O. Box 33  
Terre Haute, IN 47808

U.S. DISTRICT COURT  
DISTRICT OF NEW JERSEY  
RECEIVED  
2016 MAY 25 P 2:22

May 25, 2016

Clerk  
United States District Court  
District of New Jersey  
50 Walnut Street  
Newark, NJ

RE: United States v. Paul W. Bergrin  
Criminal No. 09-369

Dear Sir or Madam:

Enclosed please find a Motion under 18 U.S.C. §2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody which I am sending a copy of the brief and appendix to this Honorable Court for filing.

I am respectfully requesting that the Appendix remain on record for the governments review. I do not have the funds nor capacity to duplicate.

Thank you.

Most respectfully,

/s/  
Paul Wayne Bergrin

cc: AUSA J. Gay  
AUSA J. Minish  
AUSA S. Sanders

ADDRESSEE

<b>NO.</b>	
SERVICE	
RETURN	
WAIT TIME	
ADD. STOP	
P.M.	
TOTAL	

### NEW JERSEY LAWYERS SERVICE

NEWARK — UNION — CHERRY HILL  
TEL. (908) 686-7300  
FAX (908) 686-5648

### SAME DAY DELIVERY

DATE: 5/25/15

CALL TIME: \_\_\_\_\_ SAME DAY RETURN \_\_\_\_\_

ITEM: PlauC

CLIENT/MATTER: Bergin

CLIENT/MATTER #:	
REQUESTING LAWYER:	
ORDERED BY:	

PICKUP FROM: \_\_\_\_\_

SEE: \_\_\_\_\_

DELIVER TO: Clem

5000

SEE: \_\_\_\_\_

SPECIAL INSTRUCTIONS  WAIT  DO NOT WAIT  DELIVER TO NAMED PERSON ONLY

PLEASE

BE TYPED

PHONE

10/25/15

10:00 AM

10/25/15

RECEIVED \_\_\_\_\_ DATE \_\_\_\_\_ TIME \_\_\_\_\_ AM/PM

RECEIVED BY: **X** \_\_\_\_\_ SIGNATURE

PRINT NAME: \_\_\_\_\_



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

U.S. DISTRICT COURT  
DISTRICT OF NEW JERSEY  
RECEIVED

2016 MAY 25 P 2:22

Criminal No. 09-369 (JLL)

UNITED STATES OF AMERICA,

Respondent

v.

PAUL BERGRIN,

Petitioner

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

TO: John Gay, Assistant United States Attorney  
Joseph N. Minish, Assistant United States Attorney  
Steven G. Sanders, Assistant United States Attorney  
United States Attorney's Office  
970 Broad Street  
Newark, New Jersey 07102

**PLEASE TAKE NOTICE** that Petitioner Paul Bergrin hereby moves before the Honorable Jose L. Linares, United States District Judge, District of New Jersey, for an Order Granting Petitioner's Motion under 28 U.S.C. §2255 to Vacate, Set Aside or Correct a Sentence by a Person in Federal Custody.

Petitioner relies on the enclosed Brief and Appendix filed with the Court in Support of this Motion; the Appendix and Compendium of all Pleadings, motions, and correspondence filed by all parties in the proceedings to date; and all Transcripts, Orders and documents on file with the court. A proposed form of order is filed herewith.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Respondent

v.

PAUL BERGRIN,

Petitioner

Criminal No. 09-369 (JLL)

ORDER

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

**THIS MATTER** having come before the Court upon Petitioner Paul Bergrin's ("Petitioner") Motion under 28 U.S.C. §2255 to Vacate, Set Aside or Correct a Sentence by a Person in Federal Custody and the Court having considered the submissions and arguments of the parties, and for good cause shown,

**IT IS** on this \_\_\_\_\_ day of \_\_\_\_\_, 2016,

**ORDERED** that Petitioner's Motion is hereby \_\_\_\_\_; and

**IT IS FURTHER ORDERED** that Petitioner be permitted to file additional requests for relief under the motion, supplemental briefs, documents and further evidence in support of this motion on or before \_\_\_\_\_, 2016;

**IT IS FURTHER ORDERED** \_\_\_\_\_

---

---

Date:

Honorable Jose L. Linares, U.S.D.J.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Respondent

v.

PAUL BERGRIN,

Petitioner

Criminal No. 09-369 (JLL)

PROOF OF SERVICE

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

I, \_\_\_\_\_, hereby certify as follows:

1. Mr. Paul W. Bergrin is appearing *pro se* in the within Motion under 28 U.S.C. §2255 to Vacate, Set Aside or Correct a Sentence by a Person in Federal Custody.
2. All notices from the court and correspondence from the parties in this matter should be noted as special legal mail and sent to Mr. Bergrin at the following address:

Paul W. Bergrin  
Reg. No. 16235-050  
FCI Terre Haute  
Federal Correctional Institute  
P.O. Box 33  
Terre Haute, IN 47808

3. On the below date, I caused to be filed the following documents with the United States District Court, District of New Jersey, the following:

- a) Notice of Motion under 28 U.S.C. §2255 to Vacate, Set Aside or Correct a Sentence by a Person in Federal Custody;
- b) Brief in Support of Motion;
- c) Appendix in Support of Motion Volumes I-VII;
- d) \$5.00 Filing Fee;
- e) Proposed Form of Order; and
- f) Proof of Service.

3. On this date, service was made upon the following:

John Gay, Assistant United States Attorney  
Joseph N. Minish, Assistant United States Attorney  
Steven G. Sanders, Assistant U.S. Attorney  
United States Attorney's Office, New Jersey  
970 Broad Street  
Newark, New Jersey 07102

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By: \_\_\_\_\_

Dated: May 23<sup>rd</sup> 2016

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

United States District Court	District of New Jersey
Name (under which you were convicted): Paul Bergrin	Docket or Case No.: 09-369
Place of Confinement: Federal Correctional Institute, Terre Haute, In.	Prisoner No.: 16235050
UNITED STATES OF AMERICA	Movant (include name under which you were convicted)
v.	Paul Bergrin

**MOTION**

1. (a) Name and location of court that entered the judgment of conviction you are challenging:  
United States District Court, District of New Jersey,  
Newark, New Jersey
- (b) Criminal docket or case number (if you know): District Court - 09-369; Third Cir. 13-3934
2. (a) Date of the judgment of conviction (if you know): September 23, 2013
- (b) Date of sentencing: September 23, 2013
3. Length of sentence: Life
4. Nature of crime (all counts): Murder, murder conspiracy, drug trafficking conspiracy, murder for hire conspiracy, aiding prostitution and evading reporting requirements.
5. (a) What was your plea? (Check one)
  - (1) Not guilty
  - (2) Guilty
  - (3) Nolo contendere (no contest)
 (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?
6. If you went to trial, what kind of trial did you have? (Check one) Jury  Judge only

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

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

9. If you did appeal, answer the following:

(a) Name of court: Third Circuit Court of Appeals, United States Supreme Court

(b) Docket or case number (if you know): 13-3934 (3d Cir.); Supreme Court - No. 14-9461

(c) Result: Convictions affirmed. Certiorari denied.

(d) Date of result (if you know): Third Cir. December 18, 2014; Supreme Court May 26, 2015

(e) Citation to the case (if you know): No. 13-3934, 2014 U.S. APP. LEXIS 23818 (3d Cir. Dec. 18, 2014)

(f) Grounds raised: (1). Repeated unfairly prejudicial rulings denied defendant his Sixth Amendment right to present a defense; (2). Failure to Order continuance; (3). Judicial interference during defendant's jury addresses; (4). Curtailed cross examination of Government witnesses; (5). Denial of funds for transcripts; (6). Preclusion of defense witnesses; (7). Prosecutorial misconduct; (8). Vouching for Government witness' credibility; (9). Rulings preventing defendant from a fair opportunity to review Government evidence; (10). Denial of access to exculpatory evidence; (11). Erroneous evidentiary hearings contributed to trial's fundamental unfairness; (12). Mis-statement of facts for sentencing.

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

If "Yes," answer the following:

(1) Docket or case number (if you know): 14-9461

(2) Result: Denied

(3) Date of result (if you know): Certiorari denied.

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

(5) Grounds raised: (1). The Court should grant a Writ of Certiorari to clarify that the number of issues raised does not excuse an Appellate Court's obligation to perform cumulative error review;

(2). The common place conduct of criminal defense Attorney's alone may not establish key elements of conspiracy and aider/abettor liability.

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

Yes  No

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

(a) (1) Name of court: Third Circuit Court of Appeals

(2) Docket or case number (if you know): 13-3934

(3) Date of filing (if you know): 2011, 2012

(4) Nature of the proceeding: Government appealed rulings from District Court.

(5) Grounds raised: (1). Whether the District Court erred in dismissing the RICO and VICAR counts of the Indictment.

(2). Should the sitting District Court Judge, William J. Martini, be recused from the case and the case reassigned.

(3). Did the District Court err in severing counts from the Indictment.

(4). Did the District Court err in suppressing evidence.

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

(7) Result: Third Circuit reversed District Court's rulings and reassigned case.

(8) Date of result (if you know): 2011, 2012.

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

(1) Name of court:

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

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

(4) Nature of the proceeding:

(5) Grounds raised:

The cases are cited at:

(1). United States v. Bergrin, 650 F.3d 257 (3d Cir. 2011).

(2). United States v. Bergrin, 682 F.3d 261 (3d Cir. 2012).

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

(7) Result:

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

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application? The government appealed motions. We replied.

(1) First petition: Yes  No

(2) Second petition: Yes  No



(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: We replied to the government's appeal. It was our ardent and vociferous position that the Honorable Judge William J. Martini ruled in accord with the facts and law and was correct, in his rulings.

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

**GROUND ONE:**

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

(b) Direct Appeal of Ground One:

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

Yes  No

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

(c) Post-Conviction Proceedings:

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

Yes  No

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

Type of motion or petition:

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

**GROUND ONE:**

**The Government’s denial of “use immunity” to material witnesses who would have exculpated Petitioner and provided seminal impeachment of the prosecutor’s case violated Due Process of Law.**

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

The breadth of this point is submitted in the attached supplication. This is NOT a motion pursuant to the auspices of judicially granted immunity.

This issue establishes that the government clearly identified material defense witnesses such as Jamal Baskerville, Jemal McNeil, Hakeem Curry, Takeem Baskerville, Michael Lopez, Jason Nieves, Edward Peoples, Jose Bracers, Yolanda Jauregui, Ramon Jiminez, Maria Corriea, Syed Rehman, DrewRahoo, and others and intimidated, coerced, and wrongfully influenced them to consult with an attorney to improperly invoke their Fifth Amendment right against self-incrimination.

The government had a legal, moral and professional responsibility to grant each of the witnesses “use immunity” and compel their testimony. Instead, the government was allowed to present its case while Petitioner was denied calling the witnesses whose testimony would refute and/or challenge the evidence against him.

Please see Point I in the attached brief memorandum of law offered in support of this motion.

(b) Direct Appeal of Ground One:

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

Yes

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

(c) Post-Conviction Proceedings:

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

Yes.

(2) If your answer to Question (c)(1) is “Yes,” state:

Type of motion or petition:

Appeal to the Circuit Court of Appeals, Third Circuit.

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

Third Circuit Court of Appeals

Docket or case number (if you know):

13-3934

Date of the court's decision:

December 18, 2014

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

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

No.

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

Yes. As cited above

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

Yes. It was raised collaterally as dicta and part of another issue.

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

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

Third Circuit Court of Appeals

Docket or case number (if you know):

13-3934

Date of the court's decision:

December 18, 2014

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

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

**GROUND TWO:**

**Petitioner's constitutional rights to due process of law and a fair trial were infringed upon by conflicted and compromised attorneys who acted as *de facto* agents for the government.**

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

See Point II in the attached brief.

As set forth at length in Point II, Richard Roberts solicited former clients of Petitioner, offering them a discount and moved into the offices where Petitioner practiced prior to his arrest and incarceration.

Roberts represented, met with, counseled and/or solicited movie deals with the majority of cooperating witnesses in Petitioner's case. Cooperating witnesses with whom Roberts made contact included: Albert Castro, Abdul Williams, Rondre Kelley, Eugene Braswell, Yolanda Jauregui and Maria Correia.

Most disturbing is that a number of Roberts' clients gave contrary claims of Petitioner's complicity. At least two of Roberts' clients falsely implicated Petitioner. Roberts and the government knew or should have known Roberts' clients were lying when it was evident the allegations against Petitioner contradicted one another. Both could not be true.

(b) Direct Appeal of Ground Two:

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

No.

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

This issue was not known fully nor developed at the time of appeal.

(c) Post-Conviction Proceedings:

No.

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

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

Type of motion or petition:

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

Docket or case number (if you know):

Date of the court's decision:

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

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

No.

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

No.

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

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

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

Docket or case number (if you know):

Date of the court's decision:

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

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

It was not fully known nor developed at the time the appeal was filed and perfected.

**GROUND THREE:**

**The government's failure to delineate recorded conversations proving Petitioner's "actual innocence" violated Petitioner's constitutional rights.**

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

During pre-trial discovery, the government provided Bergrin with over 100 CDs containing over 20,000 pages of records, discovery, including testimony from other trials and evidence, telephone records, tax records, real estate records, and multiple CDs containing approximately 40,000 recorded conversations from Title III interceptions in United States v. Hakeem Curry.

The government buried and camouflaged these recordings amongst the massive mounds of un-itemized and unindexed mounds of paperwork. The government made it very clear that they were not using the conversations against Petitioner.

Moreover, the government emphatically stated there were no exculpatory conversations nor interceptions that would help Petitioner's case; all the time being abundantly cognizant there were a multitude of conversations proving Petitioner's "actual innocence" and evidence which would have eviscerated their sole witness' (Anthony Young) in the Kemo murder.

(b) Direct Appeal of Ground Three:

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

No.

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

It was not ripe.

(c) Post-Conviction Proceedings:

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

Yes.

*Pro Se* Motion subsequent to sentencing and at R. 29 Fed. R. Crim. P.

Yes.

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

Type of motion or petition:

Letter Brief to the District Court prior to sentencing and supplementing R. 29.

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

Honorable Judge Dennis Cavanaugh, United States District Court, District of New Jersey  
07102

Docket or case number (if you know):

09-369

Date of the court's decision:

Post-conviction and at sentencing on September 23, 2013

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

No written opinion. Oral denial

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

No.

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

Yes.

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

Yes. Not in the form or substance evidenced in the attached brief.

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

United States Court of Appeals for the Third Circuit

Docket or case number (if you know):

13-3934

Date of the court's decision:

December 18, 2014

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

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



**GROUND FOUR:**

**Petitioner is actually, factually and legally innocent and should never have been charged with aiding and abetting in the murder of Kemo.**

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

The government based its aiding and abetting charge of the murder of Kemo Deshawn McCray ("Kemo") solely upon Petitioner's speech -- statements which its sole witness Anthony Young claimed Petitioner made regarding Kemo's testimony.

The government charged Petitioner for murder --the most serious of all criminal acts--for Petitioner's words. But words -- speech-- is not a crime regardless of how others interpret or act upon another's statements

*Assuming arguendo*, the statements Young claimed Petitioner made actually were stated, the statements are not enough to prove Petitioner intended to aid and abet a specific crime let alone the specific crime of murder. The statements were vague and subject to various interpretations--acts which do not entail murder, i.e, convince, threaten, bribe or no criminal act at all. They do not prove an intent to aid and abet the murder of a witness.

No rational jury could have found Petitioner aided and abetted the Kemo murder because the government offered no evidence of the requisite *mens rea* and *actus rea* elements.

In U.S. v. Rosemond, a decision that came down after Petitioner's verdict, the Supreme Court held a defendant can be found to have aided and abetted IF AND ONLY IF he obtained advance knowledge of the specific substantive crime the principal committed, shared the intent, and knowingly performed an act to make carrying out the crime a success.

Despite the utter lack of evidence, the government charged Petitioner with involvement in the Kemo murder as a strategy to bolster its RICO case, fully knowing that no jury would be able to compartmentalize the evidence in a RICO mega trial.

Please see argument Point IV attached.

(b) Direct Appeal of Ground Four:

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

No.

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

The Rosemond decision was handed down after Petitioner's trial.

(c) Post-Conviction Proceedings:



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

No.

(2) If your answer to Question (c)(1) is “Yes,” state:

Type of motion or petition:

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

Docket or case number (if you know):

Date of the court’s decision:

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

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

No.

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

No.

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

No.

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

Docket or case number (if you know):

Date of the court’s decision

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

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

**GROUND FIVE:**

**In accordance with Rosemond v. U.S., the instructions on aiding and abetting were so erroneous that it infected the entire trial that the conviction violates due process.**

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

The instructions given to the jury on aiding and abetting deviated from the Third Circuit's model jury charges. An entire paragraph explaining what the jury must consider before it could find Petitioner satisfied the *actus rea* elements needed to aid and abet.

The modified instructions substantially lessened the burden of proof and caused a "grave danger" that the jury convicted Petitioner for an act of negligence or because the consequences of his statements could have been foreseeable.

Moreover, the very same instructions given to the jury in Petitioner's case were rejected by the Supreme Court in its 2015 Rosemond decision.

The District Court clearly erred in its instructions to the fact finder on the charges of aiding and abetting, thereby requiring reversal of Petitioner's convictions; especially since the Kemo murder inflamed the passions of the jury against Petitioner and prejudiced the jury's verdict on all counts.

The facts enunciated in Point V in the attached memorandum of law depict that no rational jury applying the correct instructions would ever have found the government met its burden of proof. Moreover, the government failed to prove that Petitioner shared Yong's intent murder Kemo to prevent his testimony or to possess or use a handgun when committing the murder.

(b) Direct Appeal of Ground Five:

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

Yes.

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

(c) Post-Conviction Proceedings:

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

No.

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

Type of motion or petition:

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

Docket or case number (if you know):

Date of the court's decision:

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

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

No.

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

No.

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

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

Docket or case number (if you know):

Date of the court's decision

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

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

Ineffective assistance of appellate counsel whom did not raise as a direct and singular issue.

**GROUND SIX:**

**Petitioner's jury did not determine Petitioners' guilt or innocence based on the law and evidence offered. No jury could have understood complicated, contradictory and confusing jury instructions. Nor could the court, an attorney and the most learned legal scholars.**

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

The jury was asked to apply 160 pages of instructions to an 130 page indictment alleging 23 counts, -- predicate acts. In all, the jury was asked to decide whether sufficient evidence to find ##number of acts or charges.

The instructions were impossible to apply. Crimes by the same name, such as conspiracy were given different definitions, elements and burdens of proof depending upon the state law applicable (New York or New Jersey) as well as federal law.

Because the jury could not understand the instructions, Petitioner was denied due process of law and his conviction cannot stand.

(b) Direct Appeal of Ground Six:

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

No.

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

Appellant counsel did not assert this argument in the appeal.

(c) Post-Conviction Proceedings:

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

No.

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

Type of motion or petition:

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

Docket or case number (if you know):

Date of the court's decision:

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

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

No.

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

N/A

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

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

Docket or case number (if you know):

Date of the court’s decision

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

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

**GROUND SEVEN:**

**The RICO statute is unconstitutional.**

**The RICO statute is unconstitutional as applied to Petitioner's case.**

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

The statute is unconstitutional because it is vague. No one can understand its meaning and no jury or court can be expected to apply it consistently. Moreover, it is unconstitutional because it is overly broad. Normally used to challenge statutes on First Amendment grounds, the overbreadth doctrine should apply to an analysis of RICO. The RICO statute gives the government too much discretion over what acts it will and will not seek to prosecute. The point at which a crime committed more than once in a ten year period becomes a "pattern of racketeering" as opposed to multiple conspiracies.

The statute is unconstitutional as applied to the charges against Petitioner. The multiple conspiracies which involve different crimes, individuals, and do not share a common purpose would never be charged against Petitioner unless they fell under RICO. As explained in the jury charge arguments, the statute's application to multiple conspiracies makes it vague and overly broad for the reasons stated above. The statute also prevented Petitioner from testifying as to certain charges and alleged conspiracies unless he chose to testify to all of the 23 counts in the indictment.

(b) Direct Appeal of Ground Seven:

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

No,

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

Appellate counsel did not pursue a constitutional challenge on appeal

(c) Post-Conviction Proceedings:

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

No.

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

Type of motion or petition:

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

Docket or case number (if you know):

Date of the court's decision:

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

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

No.

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

No.

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

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

Docket or case number (if you know):

Date of the court's decision

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

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

**GROUND EIGHT:**

**Petitioner lacked the requisite mental state, *mens rea* and scienter to be convicted of the Kemo Deshawn McCray murder, the attempted murder of witnesses, witness tampering and related offenses.**

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

See supporting memorandum of law attached.

The Government's use of an "objective indicia" or factual criteria in their quest to prove Petitioner's "specific" intent was erroneous; especially in light of the newly decided Supreme Court precedent; and, *assuming arguendo*, Petitioner ever made the alleged statements. Elonis v. U.S., 135 S. Ct.2001, 192 L.Ed. 1, 2015 U.S. LEXIS 3719, No. 13-983 (2015) clearly re-defines the court's progressive analysis of intent.

Point VIII of the attached memo delineates this point meticulously and how the district court's jury instructions on this issue requires reversal of the convictions.

(b) Direct Appeal of Ground Eight:

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

No.

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

The Elonis case had not been decided by the Supreme Court.

(c) Post-Conviction Proceedings:

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

No.

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

Type of motion or petition:

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

The Elonis case was decided in 2015.

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

Docket or case number (if you know):



Date of the court's decision:

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

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

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

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

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

Docket or case number (if you know):

Date of the court's decision

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

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

**GROUND NINE:**

**The government, to an absolute certainty, obstructed justice, committed outrageous misconduct, suborned perjury and eviscerated the Constitution's Due Process Clause.**

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

See detailed memorandum.

This motion will conclusively prove that Anthony Young, the government's sole and exclusive witness against Petitioner in the charges relating to the Kemo murder, contrived, fabricated and perjured evidence; and the government knew about it, suborned the perjury and assisted in its preparation.

This motion explains the magnitude of the Title III intercepted recordings in proving blatant perjury and government misconduct. It also examines issues relevant to Brady and Giglio with the recordings.

It also establishes Petitioner's innocence and that he could not have uttered the material substance of what Young alleged.

This motion argues facts and law to aver that the government presented evidence and argued facts they knew were false and coached witnesses to support later theories and perjure themselves. A copious analysis and presentation of false and misleading evidence is presented.

(b) Direct Appeal of Ground Nine:

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

No. Partially but not fully. The recordings, theories and enormous prosecutorial misconduct was not argued on appeal.

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

It was not fully developed.

(c) Post-Conviction Proceedings:

No.

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

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

Type of motion or petition:

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

Docket or case number (if you know):

Date of the court's decision:

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

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

No.

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

No.

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

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

Docket or case number (if you know):

Date of the court's decision

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

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

It was not ripe.

**GROUND TEN:**

**The Government violated Bergrin's Constitutional Due Process Rights by Failing to Reveal Favorable Evidence and deliberately concealing it.**

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

See Point X in attached memorandum of law attached.

This motion proves through conclusive and uncontroverted facts that the government knowingly, intentionally, purposely and even recklessly withheld favorable evidence from Petitioner as well as compelling impeachment materials which would have vindicated his cause.

Based upon the facts presented and law argued on this issue, the government eviscerated any opportunity Petitioner had to Due Process of law and subverted the truth seeking process of justice.

The court is implored to consider the cumulative effect of the suppressed evidence. From the Third Circuit, Petition vociferously avers that the government violated the holdings in U.S. v. Tykarsky, 446b F.3d 458, 478 (3d Circ. 2006).

(b) Direct Appeal of Ground Ten:

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

Partially and not as an individual issue.

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

Ineffective assistance of appellate counsel.

(c) Post-Conviction Proceedings:

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

No.

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

Type of motion or petition:

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

Docket or case number (if you know):

Date of the court's decision:

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

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

No.

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

No.

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

No.

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

Docket or case number (if you know):

Date of the court's decision

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

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

It was not ripe until now.

**GROUND ELEVEN:**

**Petitioner would have been vindicated if he had effective assistance of his investigator.**

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

See Point XI of memorandum of law attached.

Petitioner's investigator Lou Stevens failed to competently perform his responsibilities as an investigator, appointed pursuant to the Criminal Justice Act (CJA). The motion will detail how Stevens was suffering from illness; how the failure to receive CJA payments affected the quality and quantity of his duties and performance; and how he even contrived how he performed investigation, which he never did.

Additionally, the evidence will clearly prove how Petitioner implored Stevens to conduct extremely important material investigation, which would have proven Petitioner's innocence and impeached critical witnesses but to no avail.

(b) Direct Appeal of Ground Eleven:

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

No.

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

It was not ripe.

(c) Post-Conviction Proceedings:

No.

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

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

Type of motion or petition:

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

Docket or case number (if you know):

Date of the court's decision:

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

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

No.

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

No.

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

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

Docket or case number (if you know):

Date of the court’s decision

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

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



**GROUND TWELVE:**

**Petitioner's Due Process Rights and Fifth and Sixth Amendment Rights were egregiously violated by the government's and court's interference with his right to present a defense.**

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

Petitioner represented himself *pro se* in the trial, defending against twenty-three counts. He did not testify in his defense.

Yet, throughout the entire trial, the court and the government showed open and obvious contempt and hostility toward Petitioner. The government mocked Petitioner and commented on his lack of a defense, i.e., telling the jury that Petitioner had years to contrive what to say and commenting on not calling witnesses to counter the government's evidence.

The government and the court constantly interrupted Petitioner's, more than 700 times. The court *sua sponte* interrupted Petitioner more than seven times during his opening. Both the government and the court continually disparaged Petitioner throughout the trial and falsely led the jury to believe that Petitioner was engaging in misconduct in the proceedings before the jury.

The government's innumerable speaking objections coached witnesses' answers, vouched for their credibility and misled the jury.

Moreover, the court vouched for several witnesses including the government's key witness Anthony Young. In some instances, the judge attested to the truthfulness of the government's witnesses and led the jury to believe Petitioner acted improperly when he attempted to impeach witnesses.

The judge refused to let objections be heard at sidebar. The judge's bias was shockingly apparent when he acted as an advocate for the government by giving his "view" in front of the jury and *sua sponte* refuting the Petitioner's points on direct and cross instead of waiting for the government do so on cross or redirect

While Petitioner did not testify in his defense, the government and the court treated statements Petitioner made while presenting his defense as "testimony," and constantly made remarks and comments aimed at impeaching him. The government consistently misled the jury into believing that Petitioner was attempting to trick the witnesses or the jury during his examinations. This was especially damaging, given the allegations in the indictment was criminal conduct committed by Petitioner in his capacity as a lawyer.

The interference with Petitioner's defense inflamed the jury's passions against Petitioner and his credibility was improperly diminished without him ever taking the witness stand. This resulted in a partial jury who closed their ears to anything Petitioner would offer as impeachment or witnesses in his defense. This intruded upon the jury's fact finding



function.

The indefensible and outrageous conduct so infected the trial that it undermined any confidence in the jury's verdict.

Point XII in the attached memorandum of law documents at length specific instances of the above.

(b) Direct Appeal of Ground Twelve:

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

Partially with respect to witness vouching. Arguments with respect to the testimonial treatment of statements made by Petitioner when acting in his own defense, interfering with the fact finding of the jury and creating such bias among jurors that it deprived Petitioner of a fair trial were not argued.

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

Appellate counsel chose the issues which were argued on appeal and the cites to the record offered in support of the witness vouching.

(c) Post-Conviction Proceedings:

No.

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

No.

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

Type of motion or petition:

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

Docket or case number (if you know):

Date of the court's decision:

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

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

No.

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

No.

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

Partially as explained above.

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

Third Circuit Court of Appeals

Docket or case number (if you know):

13-3934

Date of the court’s decision:

December 28, 2014

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

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

See response above regarding appellant counsel’s choice of issues to pursue on appeal among the many to choose from.

**GROUND THIRTEEN:**

**The indictment was inexcusably and wrongfully delayed in order to achieve tactical and strategic advantage**

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

See Point XIII in the attached brief.

(b) Direct Appeal of Ground Thirteen:

In May of 2005, William Baskerville was indicted for the murder of Deshawn Kemo McCray and tried in April, May of 2007. During the course of Baskerville's jury trial, AUSA's Minish, Frazier and FBI SA Shawn Brokos either testified or argued that Petitioner was a co-conspirator and guilty of murder.

In January of 2007, Petitioner was indicted in New York County for the crimes of conspiracy to commit money laundering, conspiracy to promote prostitution and misconduct by an attorney. The offense conduct was alleged to have occurred in 2004, 2005.

The federal government violated Petitioner's due process, constitutional rights and delayed the indictment to achieve a tactical and strategic advantage. See Point XIII in the attached brief which explains factually and legally the basis of the ground.

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

No.

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

Ineffective assistance of Appellate Counsel who missed this vital legal and factual issue.

(c) Post-Conviction Proceedings:

No.

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

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

Type of motion or petition:

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

Docket or case number (if you know):

Date of the court's decision:

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

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

No.

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

No.

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

No.

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

Docket or case number (if you know):

Date of the court's decision

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

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

**GROUND FOURTEEN:**

**Petitioner's prosecution was malicious retaliation and the result of vindictiveness.**

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

See memorandum attached, Point XIV. This issue pertains to Petitioner's career as a state and federal prosecutor, defense attorney and dedicated soldier who refused to permit fellow soldiers and law enforcement to be scapegoated, abused and wrongfully sentenced to a life in prison; and more importantly, held criminally and wrongfully culpable for crimes and misconduct they were not responsible for.

This ground presents the monumental and consistent acts committed against Petitioner because of his defenses and successes as a soldier and defense attorney.

(b) Direct Appeal of Ground Fourteen:

No.

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

No.

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

Appellate counsel refused.

(c) Post-Conviction Proceedings:

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

No. I attempted to raise it at sentencing but the judge ordered me to not raise it.

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

Type of motion or petition:

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

Docket or case number (if you know):

Date of the court's decision:

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

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

No.

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

No.

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

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

Docket or case number (if you know):

Date of the court's decision

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

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

I am raising it now. Appellate Counsel believed it would politically harm his firm if it was raised.

**GROUND FIFTEEN:**

**The District Court denied Petitioner his constitutional right to due process and violated the sentencing guideline when it declined to hold a hearing to resolve disputed facts and, instead, relied upon facts that lacked sufficient indicia of reliability in calculating and sentencing Petitioner to more than Six (6) Life Terms. .**

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

See argument in Point XV of attached memorandum of law regarding deviating from sentencing guidelines and *Alleyne v. U.S.* which requires any fact by law which increases the penalty for a crime must be submitted to the jury.

(b) Direct Appeal of Ground Fifteen:

No.

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

Although sentencing arguments were made, the specific arguments above were not made.

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

Appellant counsel pursued the sentencing arguments he thought were strongest.

(c) Post-Conviction Proceedings:

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

No.

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

Type of motion or petition:

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

Docket or case number (if you know):

Date of the court's decision:

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

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

No.



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

No.

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

No.

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

Docket or case number (if you know):

Date of the court's decision

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

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

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

- a. Point VIII Elonis v. U.S., 135 S. Ct. 2001, 192 L.Ed. 1, 2015 U.S. Lexis 3719, 83 U.S.L.W. 4360, 13-983 (2015) was decided subsequent to submission of Petitioner's appeal.
- b. Point V and VI regarding Rosemond v. U.S., 134 S. Ct. 1240 (2014) was decided subsequent to Petitioner's appeal being perfected.
- c. Point XI was not ripe for appeal but for Habeas Corpus filing.

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

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

(a) At preliminary hearing: Gerald Shargell, Madison Avenue, NY, NY

(b) At arraignment and plea: Gerald Shargell, Madison Avenue, NY, NY

(c) At trial: *Pro Se* with standby counsel Lawrence Lustberg, Gibbons, P.C., One Gateway Center, Newark, NJ 07102

(d) At sentencing:



*Pro Se* with standby counsel Lawrence Lustberg, Gibbons, P.C., One Gateway Center, Newark, NJ 07102

(e) On appeal: Lawrence Lustberg, Gibbons, P.C., One Gateway Center, Newark, NJ 07102

(f) In any post-conviction proceeding: *Pro Se*

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

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes.

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

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

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

(c) Give the length of the other sentence:

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

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

N/A filed within one year of U.S. Supreme Court's denial of Certiorari, which occurred on May 26, 2015.

---

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

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

(1) the date on which the judgment of conviction became final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was

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

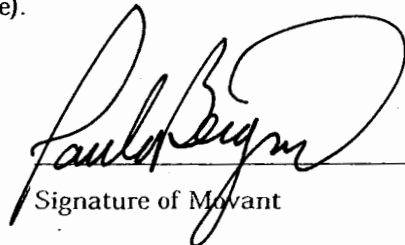
or any other relief to which movant may be entitled.

---

Signature of Attorney (if any)

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

Executed (signed) on 18 April 2016 (date).



---

Signature of Movant

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