APPENDICES

APPENDIX A

S.D.N.Y.-N.Y.C.
13-cr-155
13-cv-5433
Stein, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 4th day of September, two thousand nineteen.

Present:

John M. Walker, Jr.,
Raymond J. Lohier, Jr.,
Susan L. Carney,

Circuit Judges.

Charles Huggins,

Petitioner-Appellant,

v. 19-817

United States of America,

Respondent Appellee.

Appellant moves for a certificate of appealability. Upon due consideration, it is hereby ORDERED that the

motion is DENIED and the appeal is DISMISSED because Appellant has not made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(e); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

FOR THE COURT:
Catherine O'Hagan Wolfe,
Clerk of Court

[SEAL]

/s/ Catherine O'Hagan Wolfe

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, -against- CHARLES HUGGINS, Defendant.	13-Cr-155 (SHS) 18-Cv-5433 (SHS) OPINION & ORDER (Filed Feb. 20, 2019)

SIDNEY H. STEIN, U.S. District Judge.

Petitioner Charles Huggins brings this petition pursuant to 28 U.S.C. § 2255 to vacate his sentence of 120 months' imprisonment on the grounds that he was denied effective assistance counsel during plea negotiations and at trial. For the reasons set forth below, petitioner's motion is denied.

As a preliminary matter, the government contends that petitioner has waived his claims of ineffective assistance of counsel by not raising them on direct appeal. This argument simply ignores a United States Supreme Court case directly refuting it. In *Massaro v. United States*, the Supreme Court held that "an ineffective-assistance-of-counsel claim may be brought in a collateral proceeding under § 2255, whether or not the petitioner could have raised the claim on direct appeal." 538 U.S. 500, 504 (2003). *Massaro* noted that in most cases, it is actually preferable to decide a claim of ineffective assistance on a petition brought under

Section 2255, a position to which the U.S. Court of Appeals for the Second Circuit has consistently subscribed. Indeed, on the appeal from Huggins's conviction, the Second Circuit affirmed his conviction and remanded the case to the district court for resentencing without certain guidelines enhancements. *United States v. Huggins*, 844 F.3d 118 (2d Cir. 2016). At the same time, citing its "baseline aversion to resolving ineffectiveness claims on direct review," *United States v. Huggins*, 666 F. App'x 88, 91 (2d Cir. 2016) (internal citations omitted), it "decline[d] to address" Huggins's claims of ineffective assistance of his sentencing counsel and stated that "the 'preferable' mechanism 'for deciding claims of ineffective assistance' was to "seek relief under 28 U.S.C. § 2255." *Id.* (quoting *Massaro*, 538 U.S. at 504). Thus, Huggins has not waived the claims he asserts in this petition.

I. BACKGROUND

A. Conviction, Appeal, and Sentence

After a two-week jury trial presided over by this Court, Huggins was convicted in October 2014 of wire fraud and conspiracy to commit wire fraud in violation of 18 U.S.C. §§ 1343 and 1349. At trial, it was established that Huggins ran a fraudulent scheme where he took money from victims under the pretense of using those funds to invest in various purported ventures, including diamond mining in Liberia and Sierra Leone, but instead used the money to fund a lavish lifestyle

for himself. Huggins's lead counsel – both prior to and during trial – was Brian Blaney, Esq.

On May 13, 2015, Huggins was sentenced to 120 months' imprisonment and three years' supervised release. The Second Circuit affirmed his conviction on appeal but remanded the sentence. *United States v. Huggins*, 666 F. App'x 88 (2d Cir. 2016); *United States v. Huggins*, 844 F.3d 118 (2d Cir. 2016). Upon resentencing on June 15, 2017, Huggins was sentenced to 100 months' imprisonment together with three years' supervised release. He is currently serving that sentence.

B. Huggins's Allegations of Ineffective Assistance of Counsel

Huggins's claims of ineffective assistance of counsel fall under two general categories: (1) Blaney's alleged ineffectiveness during plea discussions and (2) Blaney's alleged ineffective performance at trial.

Huggins's claims of ineffectiveness during plea discussions are summarized in two letters he wrote to the Court around the time of his resentencing in June 2017. In a letter dated June 11, 2017, Huggins wrote:

> The Government extended me a plea offer prior to trial. I could have long since put the matter behind me, had I accepted the offer. However, my attorney (at the time he informed me of the offer) refused to even discuss the offer in detail, stating that I would have to find another attorney to represent me if I was

> considering a plea . . . Had I known that I could end up with the ten year sentence I ultimately received, I would not have allowed my attorney to convince me to proceed to trial. Instead, I would have rejected his advice and resolved this matter without a trial.

(Pet'r's Mot., Ex. C.)[1] On June 26, 2017, referring back to his letter of June 11, he wrote:

> Defendant informed the Court that the Government had extended a considerably favorable plea offer (with a stipulated sentencing range of 18 to 24 months' imprisonment) which counsel failed to discuss with him. Defendant informed the Court that former counsel [i.e., Blaney] stated that he would remove himself from the case if Defendant considered disposing of the case by any means other than a trial. Counsel never disclosed the

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[1] Huggins's attorney at his resentencing, Jonathan Savella, Esq., explicitly repudiated this letter by saying it was not in fact written by Huggins and was sent without his authority to the Court as follows:

> I did get in to see [Huggins] yesterday and he tells me that he did not intend for this letter to be sent to the Court. It was written by somebody that was in his unit, a jail house lawyer, if you will, who he was talking to in the unit who said or apparently told him that he could get points off his guidelines for failing to take or for poor advice with regard to plea bargaining . . . So, this letter, well to put it simply, we repudiate it and, again, my understanding is that he believed that the jailhouse lawyer was going to send it to me for my review but, instead, this individual opted to send it directly to the Court.

(Resentencing Tr., 8.)

> particulars of the plea offer, and advised Defendant that the Government's evidence established his actual innocence—not guilt. It only became apparent to defendant after trial that [trial counsel's advice] and misconduct was motivated by his counsel's desire to collect substantial fees that he would be entitled to only by virtue of a jury trial. Defendant informed the court that, but for counsel's unprofessional behavior, he would have accepted the Government's plea offer and would long since have been released from prison.

(Pet'r's Mot., Ex. D.) In his affidavit dated June 8, 2018, filed as part of this motion, Huggins states that Blaney told him "that he didn't want me pleading guilty, and that if I sought to, he would 'quit.'" (Pet'r's Mot., Ex. A.)

On counsel's alleged ineffectiveness at trial, Huggins bemoans that his attorney was constrained to a wheelchair and asserts a veritable grab bag of grievances. Specifically, he claims Blaney (1) was "unprepared to commence cross-examination because documents [were] not in the courtroom," (2) "ask[ed] objectionable, barely comprehensible questions," was "inaudible and unintelligible" and "paus[ed] for significant periods of time between questions while looking for documents," (3) attempted "to adduce inadmissible hearsay" and introduce inadmissible exhibits, (4) "repeatedly fail[ed] to turn over . . . discovery materials" and other defense disclosures to the government, (5) "buil[t] a defense trial strategy in reliance upon unobtainable or inadmissible, irrelevant, consuming, and misleading character, substantive, and expert witness testimony," (6)

made "false statements to the court regarding communications with a witness and scheduling," (7) "fail[ed] to secure the deposition testimony of a defense witness while they were in the United States," and (8) "conduct[ed] a self-described 'inadequate' summation." (Pet'r's Mem. at 2, 5-6, 13-14.)

Petitioner requests that his sentence be vacated as a result.

II. DISCUSSION

To establish ineffective assistance of counsel, Huggins must show (1) that his attorney's representation fell below "an objective standard of reasonableness" under "prevailing professional norms" and (2) that he was prejudiced as a result of the allegedly defective conduct. *Strickland v. Washington*, 466 U.S. 668, 687-88, 693 (1984).

A. Huggins's argument that Blaney was ineffective in plea discussions fails because petitioner has not suffered prejudice.

To establish prejudice, Huggins must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. With respect to sentencing, "the defendant must show a reasonable probability that, but for counsel's substandard performance, he would have received a less severe sentence." *Gonzalez v. United States*, 722 F.3d 118, 130 (2d Cir. 2013). "Even

a petitioner who establishes that his attorney has failed to convey a plea offer must still prove prejudice to successfully raise an ineffective assistance of counsel claim." *Melo v. United States*, 825 F. Supp. 2d 457, 462 (S.D.N.Y. 2011) (citing *Pham v. United States*, 317 F.3d 178, 182 (2d Cir.2003)). The Supreme Court has advised that "[t]he 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." *Strickland*, 466 U.S. at 697. The Court will indeed follow the Supreme Court's lead.

The plea offered to Huggins by the government, dated and sent to Brian Blaney on August 19, 2014, consisted of a stipulated guidelines range of 97 to 121 months' imprisonment. (Resp't's Mem. in Opp'n, Ex. A.) The defendant was ultimately sentenced to 100-months' imprisonment. Therefore, even assuming *arguendo* counsel's performance during plea discussions was subpar – and the Court is not reaching the issue – there is no "reasonable probability that, but for counsel's substandard performance, he would have received a less severe sentence." *Gonzalez*, 722 F.3d at 130. Courts in this District have found even sentencing disparities of two to three years between a rejected or hypothetical plea deal and the Section 2255 petitioner's actual sentence to be non-prejudicial in the *Strickland* context. *See, e.g.*, *Alkhabbaz v. United States*, No. 12 CIV. 4801 LAP, 2014 WL 7190874, at *6 (S.D.N.Y. Dec. 5, 2014) (finding a 34-month difference to be

non-prejudicial and collecting cases from this District). Here, there is no meaningful disparity whatsoever.[2]

The government and petitioner both state in their briefs that the August 19, 2014 offer was the only offer issued by the government to Huggins. (*See* Resp't's Mem. in Opp'n, at 33 ("[t]his was the only plea offer issued by the Government to Huggins"); Pet'r's Reply Mem., at 5 ("the Government's singular plea agreement called for a non-advisory sentencing Guidelines range of 97-121 months.")) Although there is a cursory mention in Huggins's June 26, 2017 letter of a plea offer with a stipulated sentencing range of 18 to 24 months' imprisonment, there is no mention of this offer in Huggins's affidavit or in any of Huggins's attorney's submissions on this petition. Even in the context of statements made under oath, "[i]n most circumstances a convicted felon's self-serving testimony is not likely to be credible." *Purdy v. Zeldes*, 337 F.3d 253, 259 (2d Cir. 2003). Not a smidge of evidence has been provided suggesting that there was such an offer, and this Court

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[2] The 100-month sentence is *within* the guidelines range encapsulated in the proposed plea deal, and on the low end of it. While the very low end of the guidelines range in the plea is 97 months, that is not sufficient to show prejudice. This is easily distinguishable from *Glover v. United States*, 531 U.S. 198 (2001), where the Supreme Court held that an increase in prison sentence of at least 6 months and up to 21 months, if resulting from a miscalculation in the sentencing guidelines range by defense counsel, constituted prejudice required for establishing ineffective assistance of counsel. Here, the sentence is well within the guidelines range of the proposed plea deal.

will accordingly assign no weight to its purported existence.

B. Huggins's argument that Blaney was ineffective at trial fails both prongs of the *Strickland* test.

Even when taken all together, the alleged deficiencies in counsel's trial conduct do not amount to "errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Strickland*, 466 U.S. at 687. Nor is it the case that petitioner was prejudiced because "counsel's errors were so serious as to deprive the defendant of a fair trial." *Id.*

This Court presided over the trial and cannot say that Huggins's attorney provided constitutionally deficient counsel. While the attorney at times entered and left the courtroom in a wheelchair, he sat in a courtroom chair while at the defense table and stood while participating in the trial proceedings. In short, he physically performed his duties as trial counsel for Huggins. Although Huggins alleges that whatever physical ailment Blaney suffered from began to deteriorate during trial and led to cognitive impairment, (*see* Pet'r's Mem. at 3,) he has provided no evidence for that assertion and the Court observed none.

In every criminal case counsel's actions are accorded a "strong presumption" of reasonableness. *Strickland*, 466 U.S. at 689. "Even the best criminal defense attorneys would not defend a particular client in

the same way." *Id.* Ineffective assistance claims "are quite often the law's equivalent of 'buyer's remorse' or 'Monday morning quarterbacking' . . . [and d]ecisions by criminal defense counsel are often choices among bad alternatives that are only rarely shown [to meet the *Strickland* standard]." *Mui v. United States*, 614 F.3d 50, 57 (2d Cir. 2010).

Huggins points to several specific instances of allegedly deficient conduct on the part of counsel, as noted above. Going through those allegations, it is clear that – both when taken individually as well as collectively – these contentions do not amount to deficient representation. For example, a single instance of trial counsel requesting a 10-minute break prior to commencing a cross-examination (Tr. 462) or the Court requesting that counsel speak more loudly (Tr. 503) plainly do not demonstrate ineffectiveness.

When Huggins points to the portion of the trial transcript where the Court suggests that defense counsel ask questions more rapidly (Tr. 505), he neglects to point to the paragraph right above it, where the Court admonished the government for slowing the trial down by making too many objections (Tr. 504-05).[3] Regardless, pausing between questions does not constitute ineffective assistance of counsel. Similarly, a lawyer asking questions that lead to objections that are

[3] Similarly, Huggins also points to counsel putting on the record that he had apologized to his client for an "inadequate" summation (Tr. 1459-60), but he neglects to mention that the Court noted in reply that "all counsel covered the relevant bases in their summations and in their opening[s]" (Tr. 1460).

sustained, whether on hearsay or other grounds (Tr. 494, 499, 538, 568, 719, 1126), is par for the course at trial.

While it is true that the Court rebuked trial counsel for failing to turn over materials such as witness and exhibit lists until the trial-day before the defense would commence its case (Tr. 717-19), that does not suffice to show that counsel provided ineffective assistance to Huggins. If anything, the government would have been the party inconvenienced by such delay.

Huggins notes several occasions where trial counsel attempted to call a witness but was ultimately prevented from doing so either because the Court precluded the testimony as irrelevant or the proposed witness communicated through his lawyer that he intended to assert his Fifth Amendment right not to testify (Tr. 969, 1039-41, 1272-73). This also does not rise to ineffective assistance of counsel. Even if the Court had not precluded any testimony, "[a] failure to call a witness for tactical reasons of trial strategy does not satisfy the standard for ineffective assistance of counsel." *United States v. Eyman*, 313 F.3d 741, 743 (2d Cir. 2002) (citing *United States v. Luciano*, 158 F.3d 655, 660 (2d Cir.1998)). The same reasoning applies to counsel's failure to take a defense witness's deposition abroad based on a reliance on that witness's assertion that he would be available to testify at trial (Tr. 1209-10). "[I]n case after case, we have declined to deem counsel ineffective notwithstanding a course of action (or inaction) that seems risky, unorthodox or

downright ill-advised." *Tippins v. Walker*, 77 F.3d 682, 686 (2d Cir. 1996).

The complained-of conduct, even collectively, does not overcome the strong presumption that trial counsel acted reasonably in the moment. To hold otherwise would be impermissible "Monday morning quarterbacking." *Mui*, 614 F.3d at 57.

Petitioner's claim of ineffective assistance at trial also cannot satisfy the second prong of the *Strickland* test because he was not prejudiced as a result of his counsel's conduct. Not only was his counsel's conduct within the realm of reasonableness, as set forth above, but the evidence against Huggins was substantial – even overwhelming – and included trial testimony from numerous victims and a co-conspirator as well as extensive documentary evidence authored by Huggins himself. In sum, there was no "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694.

C. Huggins is not entitled to an evidentiary hearing.

A petitioner is entitled to an evidentiary hearing on his Section 2255 motion "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." 28 U.S.C. § 2255(b). A hearing is warranted if the motion "set[s] forth specific facts supported by competent evidence, raising detailed and controverted issues of fact that, if proved at

a hearing, would entitle him to relief." *Gonzalez*, 722 F.3d at 131. Section 2255 "does not imply that there must be a hearing where the allegations are 'vague, conclusory, or palpably incredible.'" *Id.* at 130-31.

Huggins is not entitled to an evidentiary hearing here because even if all of his allegations are true, he has not made out a plausible claim of ineffective assistance of counsel under *Strickland.* As set forth above, he has not suffered prejudice from any hypothetical ineffective assistance of counsel during plea discussions, and he has failed to demonstrate the ability to establish a "*prima facie* case for relief," *Puglisi v. United States*, 586 F.3d 209, 213 (2d Cir. 2009), under *Strickland* for his assertions of ineffective assistance of counsel at trial. There are simply no "controverted issues of fact that, if proved at a hearing, would entitle him to relief." *Gonzalez*, 722 F.3d at 131. Huggins's request for an evidentiary hearing is therefore denied.

III. CONCLUSION

For the reasons set forth above, Huggins's petition is denied. Because Huggins has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. 28 U.S.C. § 2253(c)(2); *Lucidore v. N.Y. State Div. of Parole*, 209 F.3d 107, 111-13 (2d Cir. 2000). Pursuant to 28 U.S.C. § 1915(a)(3), the Court certifies that any appeal from

this Order would not be taken in good faith. *See Coppedge v. United States*, 369 U.S. 438, 445-46 (1962).

Dated: New York, New York
February 20, 2019

SO ORDERED:

/s/ Sidney H. Stein
Sidney H. Stein, U.S.D.J.

APPENDIX C

15-1676

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

CHARLES HUGGINS,
Defendant-Appellant.

MOTION BY ATTORNEYS DOUGLAS T. BURNS & RANDY ZELIN PURSUANT TO LOCAL RULE 4.1(d) OF THE LOCAL RULES AND INTERNAL OPERATING PROCEDURES FOR THE SECOND CIRCUIT TO WITHDRAW AS COUNSEL FOR DEFENDANT-APPELLANT CHARLES HUGGINS

On Appeal From the United States District Court For the Southern District of New York
Case no. 1:13-cr-00155 (SHS)

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ATTORNEYS FOR DEFENDANT-APPELLANT
CHARLES HUGGINS

MOTION BY ATTORNEYS DOUGLAS T. BURNS & RANDY ZELIN PURSUANT TO LOCAL RULE 4.1(d) OF THE LOCAL RULES AND INTERNAL OPERATING PROCEDURES FOR THE SECOND CIRCUIT TO WITHDRAW AS COUNSEL FOR DEFENDANT-APPELLANT CHARLES HUGGINS

Pursuant to Federal Rules of Appellate Procedure ("FRAP") 27 and Local Rule 27.1 of the Local Rules and Internal Operating Procedures for the Second Circuit ("Local Rules" or "Local Rule ___") Douglas T. Burns, Esq. and Randy Zelin, Esq. ("Burns" and "Zelin" respectively) move for permission to withdraw as counsel for appellant Charles Huggins ("Mr. Huggins"). Burns and Zelin move to withdraw pursuant to Local Rule 4.1(d) because Burns and Zelin are likely to be fact witnesses on Mr. Huggins' behalf on appeal or in connection with a motion pursuant to 28 U.S.C. §2255 with regard to the effectiveness of Mr. Huggins' lead trial counsel, Brian Blaney, Esq. ("Mr. Blaney"). Mr. Blaney was apparently was suffering from one or more debilitating and perhaps life-threatening illnesses leading up to, and during the trial which will place his effectiveness

as counsel squarely in issue. In fact, Mr. Blaney had no role in Mr. Huggins' presentence preparation nor did Mr. Blaney appear at sentencing for Mr. Huggins, notwithstanding the fact that Mr. Blaney had not been relieved as counsel by the District Judge. Burns and Zelin, who were retained on the eve of trial by Mr. Huggins to assist Mr. Blaney at the trial, have been advised on repeated occasions by Mr. Huggins and his family both prior to and subsequent to sentencing that they were going to be substituted out as Mr. Huggins was retaining new appellate counsel to replace Burns and Zelin. However, to date, Burns and Zelin have not been provided with a document or statement pursuant to Local Rule 4.1(2)(A) that new counsel has been retained or appointed to represent Mr. Huggins – thus the necessity for this motion. As Burns and Zelin are likely to be fact witnesses on Mr. Huggins' behalf, Burns and Zelin cannot continue as advocates for Mr. Huggins before this Court.

RELEVANT PRELIMINARY PROCEDURAL HISTORY

1. Mr. Huggins was sentenced by the United States District Court for the Southern District of New York (Stein, J.) on May 13, 2015 principally to 120 months in custody (see Exhibit A, Docket Sheet) upon Mr. Huggins' conviction after trial on October 10, 2014 (see Exhibit B, Docket Sheet). Burns and Zelin represented Mr. Huggins at sentencing, although they were not lead counsel for Mr. Huggins. Mr. Blaney neither appeared for Mr. Huggins at sentencing, nor performed

any function as Mr. Huggins' attorney post-trial and during the pre-sentencing phase.

2. Burns and Zelin timely filed a Notice of Appeal for Mr. Huggins on May 22, 2015 (see Exhibit C, Docket Sheet, Docket no. 354) so as not to run afoul of Local Rule 4.1(a). The filing fees in connection with the filing of the Notice of Appeal were also paid on June 4, 2015 (see Exhibit D, Docket Sheet).

RELEVANT FACTUAL HISTORY REGARDING SUBSTITUTION AS COUNSEL

3. As is more fully set forth in the annexed declarations of Burns and Zelin, they have been repeatedly advised that they were being replaced with new counsel for purposes of all post-sentencing and appellate proceedings. Attached as Exhibit E are examples of email communications reflecting and confirming Mr. Huggins' intent to replace Burns and Zelin with new counsel (redacted to preserve all privileges). Burns and Zelin held off on filing this motion only because they were assured that Mr. Huggins was retaining new counsel and were waiting for the documentation reflecting the substitution to accompany this motion.

4. Burns and Zelin have cooperated fully with Mr. Huggins' desire to replace them with new counsel – including, but not limited to having already begun to turn over their files to Mr. Huggins' family for Mr. Huggins new counsel pursuant to request (see Exhibit E).

COMPLIANCE WITH
LOCAL RULE 4.1(d)(1) & 2

5. Burns and Zelin respectfully submit that they have done their best to comply with Local Rule 4.1(d)(1) and (2), but exceptional circumstances prevent them from completely complying with Local Rule 4.1(d)(2)(A)–(D).

Advice to Defendant (Local Rule 4.1(d)(1))

a. In response to being advised that they were being substituted out as Mr. Huggins' attorneys, Burns and Zelin have advised Mr. Huggins that he must promptly obtain new counsel. Mr. Huggins and his family have repeatedly advised Burns and Zelin that Mr. Huggins was retaining new counsel (see Exhibit E).

Content of the Motion

b. With regard to Local Rule 4.1(d)(2)(A), Burns and Zelin have repeatedly requested written proof that new counsel has been retained (see Exhibit E).

c. With regard to Local Rule 4.1(d)(2)(B), Burns and Zelin have repeatedly requested written proof that new counsel has been retained and that Mr. Huggins was not seeking the appointment of counsel (see Exhibit E).

d. With regard to Local Rule 4.1(4)(2)(D), Burns and Zelin have have been repeatedly advised that new

counsel was being retained to replace them (see Exhibit E).

6. Burns and Zelin respectfully submit that exceptional circumstances are in fact extant, which prevent them from completely complying with Local Rule 4.1(d)(2)(A)–D). As is more fully set forth below, Burns and Zelin are faced with being called as witnesses for Mr. Huggins in support of his claims of ineffective counsel against Mr. Blaney – but in the same breath they will be invariably defending their own effectiveness. In that backdrop, giving Mr. Huggins any further advice at this juncture is rife with peril.

THE NEW YORK RULES OF PROFESSIONAL CONDUCT PRECLUDE BURNS AND ZELIN FROM CONTINUING AS ADVOCATES SINCE THEY OUGHT TO BE CALLED AS WITNESSES BY HUGGINS

7. Mr. Blaney's effectiveness as Mr. Huggins' lead trial counsel is sure to be a centerpiece of Mr. Huggins' appeal and collateral attack on the trial and sentence. Rule 3.7(a). Burns and Zelin, whom were retained by Mr. Huggins on the eve of trial to assist Mr. Blaney at the trial ought to be called as witnesses by Mr. Huggins or otherwise provide facts on Mr. Huggins' behalf as part of the prosecution of the appeal and collateral attack on the trial and sentence.

8. That being the case, Burns and Zelin cannot continue on as attorneys for Mr. Huggins, lest they be

barred from being offered as fact witnesses for Mr. Huggins.

9. Rule 3.7(a) of the New York Rules of Professional Conduct ("RTC" or "RPC ___") provides the statutory authority to warrant Burns' and Zelin's withdrawal as Mr. Huggins' attorneys because of the "advocate-witness rule," providing in relevant part

> "[a] a lawyer shall not act as an advocate before a tribunal in a matter in which the lawyer is likely to be a witness on a significant issue of fact"

10. Certainly, Burns and Zelin will be putting their own credibility at issue as to Mr. Blaney's effectiveness as Mr. Huggins' lead counsel *Murray v. Metropolitan Life Ins. Co.*, 583 F. 3d 173 (2d Cir. 1998). Burns and Zelin were retained on the eve of trial by Mr. Huggins to assist Mr. Blaney; Burns and Zelin were present at Mr. Huggins' trial to assist Mr. Blaney, and Burns and Zelin essentially were forced to take over Mr. Huggins' representation in connection with sentencing.

11. If Burns and Zelin continue as Mr. Huggins' attorneys, Burns and Zelin will be faced with a difficult and perhaps unresolvable conflict – on the one hand defending their effectiveness while at the same time advancing Mr. Huggins' claims that Mr. Blaney was ineffective – all in the same trial. Imagine the greater oddity in Burns and Zelin facing potential cross-examination by the government on the issue of Mr. Blaney's effectiveness, as the government will surely

be advocating that Mr. Blaney was in fact effective in his representation of Mr. Huggins.

12. If Burns and Zelin continue as Mr. Huggins' attorneys, the stage is being set for Burns and Zelin to find themselves laboring under a potential – if not an actual conflict of interest. *United States v. Williams*, 372 F. 3d 96 (2d Cir. 2004). With the headlights of a conflict of interest coming into view, Burns and Zelin should be permitted to withdraw as Mr. Huggins' attorney in order to prevent potential further ineffective assistance of counsel claims by Mr. Huggins against Burns and Zelin.

CONCLUSION

13. Mr. Huggins' rights are best served and protected by the withdrawal of Burns and Zelin as Mr. Huggins' attorneys. Burns and Zelin can best serve Mr. Huggins as his witnesses.

Dated: July 1, 2015

Respectfully submitted,

/s/ Douglas Burns
Douglas T. Burns

Randy Zelin
Attorneys for Record for Defendant-Appellant Charles Huggins

APPENDIX D

Republic of Liberia
MINISTRY OF LANDS,
MINES AND ENERGY

[SEAL] MINERAL CADASTRE INFORMATION MANAGEMENT UNIT [SEAL]
P. O. BOX 10-9024
1000 MONROVIA 10, LIBERIA
(231) 27224021

To whom it may concern

January 14.2016

Dear Sir/Madam:

REF.: LETTER OF AFFIRMATION OF EXISTANCE

It is with revered compliments that I write to affirm the existence of **UROGO Liberia Ltd.**, a registered Artisanal Mining Cooperative with the Government of Liberia through the Ministry of Lands, Mines and Energy.

Records at the Mining Cadastre show that the aforementioned Company is in its final stage of renewal of its 100 Class C Mining Licenses.

Accept the assurances of my appreciation while I anticipate any further inquiry. Best regards.

Truly yours,

/s/ [Illegible]
Rudolph M. Topoe
Administrator/MCIMU
Cell No 0886523155

APPENDIX E

TRULINCS 68101054 - HUGGINS, CHARLES - Unit: FTD-V-A

FROM: Huggins, Don
TO: 68101054
SUBJECT: RE: Checking In
DATE: 02/27/2016 07:36:07 PM

Filed: 10/27/2015, Entered: None Court Filing

FINAL ORDER OF FORFEITURE: as to (S3-13-Cr-155-01) Charles Huggins. . . . [See this Order] . . . WHEREAS, on or about April 7, 2013, the Government filed a Bill of Particulars identifying the following property, among other things, as being subject to forfeiture as property that constitutes or is derived from proceeds traceable to the commission of the offenses described in Counts One and Two of the Indictment: a. Approximately 1,000 assorted types of diamonds, seized on or about February 15, 2013, from safe deposit box number 1156, registered to Charles and Melba Huggins, at Bank of America, 7311 River Road, North Bergen, NJ (the "Safe Deposit Diamonds"); b. $35,600 in United States currency, seized on or about February 15, 2013, from safe deposit box number 1156, registered to Charles and Melba Huggins, at Bank of America, 7311 River Road, North Bergen, NJ; and c. Approximately 30 assorted types of diamonds, seized on or about February 7, 2013, from Anne Thomas, in South Cliffside Park, NJ; (a. through c. collectively, the "Subject Property"); . . . [See this Order] . . .

WHEREAS, on or about July 10, 2015, Oraco Resources, Inc. (the "Petitioner") filed a petition asserting an interest in the Safe Deposit Diamonds; WHEREAS, on or about August 3, 2015, Flawless Trading Corporation filed a petition alleging interest in the Subject Property (the "Flawless Petition"); WHEREAS, on or about September 17, 2015, the Court endorsed a letter written by counsel for Flawless Trading Corporation withdrawing the Flawless Petition; WHEREAS, on or about October 20, 2015, the Court entered a Stipulation and, Order (the "Stipulation") resolving the petition filed by Oraco Resources, Inc.; . . . [See this Order] . . . NOW, THEREFORE, on the application of Preet Bharara, United States Attorney for the Southern District of New York, by Jonathan Cohen, Assistant United States Attorney, IT IS ORDERED, ADJUDGED AND DECREED THAT: 1. All right, title and interest in the Subject Property is forfeited and vested in the United States of America, and shall be disposed of according to law and pursuant to the stipulation and Order defined above. 2. Pursuant to 21 U.S.C. Â§ 853(n)(7) the United States of America shall and is hereby deemed to have clear title to the Subject Property. 3. The United States Marshals Service, or its designee, shall take possession of the Subject Property and dispose of the same according to law, in accordance with 21 U.S.C. Â§ 853(h) and the terms of the Stipulation and Order. 4. After the sale of the Safe Deposit Diamonds, 30% of the net proceeds shall be paid to the petitioner pursuant to the terms of the Stipulation and Order. 5. The Clerk of the Court shall forward four certified copies of the Order to Assistant United States Attorney

Jonathan Cohen, Money Laundering and Asset Forfeiture Unit, United States Attorney's Office, Southern District of New York, One St. Andrew's Plaza, New York, New York 10007. SO ORDERED: (Signed by Sidney H. Stein on 10/26/2015) [*** NOTE: The Clerk of the Court has forwarded four certified copies of this Order to AUSA Jonathan Cohen, by inter-office mail on 10/28/2015. ***] (bw) (Entered: 10/28/2015)
