

APPENDIX

A

Noel Aldana J42034
Sumter Correctional Institution
9544 CR 476B
Bushnell, FL 33513

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

NOEL ALDANA,

Petitioner,

v.

Case No. 3:17-cv-1110-J-34PDB

SECRETARY, FLORIDA
DEPARTMENT OF CORRECTIONS,
et al.,

Respondents.

ORDER

I. Status

Petitioner Noel Aldana, an inmate of the Florida penal system, initiated this action on September 27, 2017,¹ by filing a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 (Petition; Doc. 1). Aldana is proceeding on an amended petition (Amended Petition; Doc. 6). In the Amended Petition, Aldana challenges a 2010 state court (Nassau County, Florida) judgment of conviction for grand larceny by unauthorized credit card use and schemes to defraud. Aldana raises five grounds for relief. See Amended Petition at 5-27.² Respondents have submitted an answer in opposition to the Amended Petition. See Motion to Dismiss (Response; Doc. 29) with exhibits (Resp. Ex.). Aldana moved to enlarge the record, see Doc. 23, the Court granted his request, see Doc. 29, and Respondents supplemented their exhibits with the relevant records. See Doc. 27. Aldana filed three briefs in reply; Docs. 24, 28, 30; however, the Court construes the last reply as

¹ See Houston v. Lack, 487 U.S. 266, 276 (1988) (mailbox rule).

² For purposes of reference, the Court will cite the page number assigned by the Court's electronic docketing system.

his operative reply. See Petitioner's Amended Reply to Respondent's Response for Motion to Dismiss or Deny (Reply; Doc. 30). This case is ripe for review.

II. One-Year Limitations Period

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) amended 28 U.S.C. § 2244 by adding the following subsection:

(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2244(d). In McQuiggin v. Perkins, 569 U.S. 383, 386 (2013), the United States Supreme Court held that a claim of actual innocence, if proven, provides an equitable

exception to the one-year statute of limitations. The United States Supreme Court explained:

We hold that actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar, as it was in Schlup[³] and House,[⁴] or, as in this case, expiration of the statute of limitations. We caution, however, that tenable actual-innocence gateway pleas are rare: "[A] petitioner does not meet the threshold requirement unless he persuades the district court that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt." Schlup, 513 U.S., at 329, 115 S.Ct. 851; see House, 547 U.S. at 538, 126 S.Ct. 2064 (emphasizing that the Schlup standard is "demanding" and seldom met). And in making an assessment of the kind Schlup envisioned, "the timing of the [petition]" is a factor bearing on the "reliability of th[e] evidence" purporting to show actual innocence. Schlup, 513 U.S., at 332, 115 S.Ct. 851.

Id. at 386-87. "For purposes of the 'actual innocence' exception to a procedural bar, the petitioner must show 'factual innocence, not mere legal insufficiency.'" Justo v. Culliver, 317 F. App'x 878, 880-81 (11th Cir. 2008) (quoting Bousley v. United States, 523 U.S. 614 (1998)).

Respondents contend that this action is untimely. Response at 4-7. In his Reply, Aldana argues that the Amended Petition is timely because Respondents used incorrect dates to determine the dates he filed postconviction motions. Reply at 5-6. Additionally, Aldana contends that even if untimely, he is actually innocent of the charge of scheming to defraud, but, nevertheless, admits that he is guilty of grand larceny. Id. at 1-5. The following procedural history is relevant to the one-year limitations issue.

³ Schlup v. Delo, 513 U.S. 298 (1995).

⁴ House v. Bell, 547 U.S. 518 (2006).

Aldana entered a negotiated plea of guilty to grand larceny by unauthorized credit card use (count one) and schemes to defraud (count two). Resp. Ex. B. On August 19, 2010, the circuit court sentenced Aldana to a term of incarceration of fifteen years in prison as to count two and a term of probation of five years as to count one, which the circuit court ordered to run consecutively to the sentence imposed on count two. Resp. Ex. C at 30-31. Aldana did not appeal.

As Aldana's conviction and sentence became final after the effective date of AEDPA, his Amended Petition is subject to the one-year limitations period. See 28 U.S.C. § 2244(d)(1). Here, Aldana's judgment became final on September 18, 2010. See McCloud v. Hooks, 560 F.3d 1223, 1227 (11th Cir. 2009) (quoting Pugh v. Smith, 465 F.3d 1295, 1298 (11th Cir. 2006)) ("A conviction is final at 'the conclusion of direct review or the expiration of the time for seeking such review.'"); Fla. R. App. P. 9.140(b)(3) (mandating thirty-day window from date of written order imposing sentence to file direct appeal of criminal conviction). As such, Aldana had until September 18, 2011, to file a federal habeas petition. Aldana did not file the Petition until September 27, 2017. Thus, this action is due to be dismissed as untimely unless he can avail himself of the statutory provisions which extend or toll the limitations period.

On February 9, 2011,⁵ 144 days into Aldana's one-year statute of limitations period, he filed a pro se motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850 (Rule 3.850 Motion), Resp. Ex. A at 1-19, which tolled the limitations period. See 28 U.S.C. § 2244(d)(2). The circuit court denied the Rule 3.850

⁵ Respondents incorrectly rely throughout their Response on the clerk's file-stamp to determine the relevant date of Aldana's pro se filings; however, as a pro se litigant, the mailbox rule applies.

Motion on August 17, 2012. Id. at 102. Aldana appealed and Florida's First District Court of Appeal (First DCA) per curiam affirmed the denial of the Rule 3.850 Motion on June 24, 2013. Resp. Ex. H. Aldana moved for rehearing, which was denied. Resp. Ex. I. On September 17, 2013, the First DCA issued the Mandate, at which point the statute of limitations began to run again. See Nyland v. Moore, 216 F.3d 1264, 1267 (11th Cir. 2000) (noting pursuant to Florida law, a circuit court's denial of a postconviction motion is pending until the mandate is issued).

On September 30, 2013, after the statute of limitations had run for 157 days, Aldana filed a pro se motion to correct illegal sentence pursuant to Florida Rule of Criminal Procedure 3.800(a) (Rule 3.800(a) Motion), Resp. Ex. K 1-11, and a second motion pursuant to Rule 3.850 (Second Rule 3.850 Motion). Id. at 22-29. The circuit court denied both motions on November 6, 2013. Id. at 49, 53. The First DCA per curiam affirmed the denial of relief on both motions on April 15, 2014. Resp. Ex. N. Following the denial of Aldana's motion for rehearing, Resp. Ex. O, the First DCA issued the Mandate on August 8, 2014, Resp. Ex. P, restarting the statute of limitations. See Nyland, 216 F.3d at 1267.

The statute of limitations ran for a total of 209 days until September 29, 2014, when Aldana filed a petition for writ of habeas corpus with the circuit court. Resp. Ex. U at 1-32. The circuit court denied the petition on October 21, 2014, Id. at 33, and denied Aldana's motion for rehearing on November 12, 2014. On May 27, 2015, the First DCA per curiam affirmed the denial of the petition. Resp. Ex. Y. Aldana moved for rehearing, which the First DCA denied. Resp. Ex. Z. The First DCA issued the Mandate on July 27, 2015, Resp. Ex. AA, and the limitations period began to run again. See Nyland, 216 F.3d at 1267.

On February 24, 2016, Aldana, with the assistance of counsel filed another motion pursuant to Rule 3.800(a) (Second Rule 3.800(a) Motion). Resp. Ex. BB at 1-12. By the time Aldana filed his Second Rule 3.800(a) Motion, 421 un-tolled days had passed since his judgment became final; therefore, the Second Rule 3.800(a) Motion did not toll the statute of limitations. Aldana's judgment became final on December 30, 2015.⁶ Accordingly, even though Respondents incorrectly identified the dates of some of Aldana's pro se state court filings, based on the timeline above, this action, initiated on September 27, 2017, is untimely.

Aldana alternatively argues that a manifest injustice would occur if the Court did not address the merits of the Amended Petition because he is actually innocent of count two. According to Aldana, there was no competent, substantive evidence to support the charge in count two and to demonstrate this point, he relies on the fact that the State of Florida provided no evidence at the plea or sentencing hearings to prove he was involved in the scheme to defraud. Reply at 2. The Court finds Aldana has failed to meet his burden to establish that he is actually innocent because he has not alleged any new facts that would support an actual innocence claim. It appears Aldana believes that the State did not have evidence to prove count two at the time of the plea. See generally Reply; see also Doc. 24 at 5-6. In support of this, Aldana cites to evidence the State disclosed in 2012 that included the dates of credit card charges that did not correspond to the dates alleged in the charging document. Doc. 24 at 5-6. Aldana maintains that the evidence

⁶ The Court notes that the documents Aldana sought to include in the record and which Respondents provided include the record of a pro se petition for writ of habeas corpus filed on August 25, 2016. Resp. Ex. Resp. Ex. OO. However, as the petition was filed after the statute of limitations had expired, this petition did not toll the limitations period.

shows charges were made between August 27, 2008 and February 14, 2009, which were not the dates alleged in the Information. Id. at 5-6. Aldana does not deny making illegal purchases with the stolen credit card, he just denies doing it within the time period purportedly alleged in the Information. Even assuming Aldana's allegations are correct, it would only show a defect in the charging document, not his actual innocence. Aldana has made no assertion that the State could not have amended the Information if this factual inaccuracy actually existed. Therefore, his argument fails to establish a valid actual innocence claim. See Justo, 317 F. App'x at 880-81.

Moreover, the Court notes that Aldana, under oath, stated at both the plea and sentencing hearings that he committed the charged offenses and was remorseful, Resp. Exs. B at 9; C at 10, 29-30, which contradicts his current contentions. A defendant's "[s]olemn declarations in open court carry a strong presumption of verity." Blackledge v. Allison, 431 U.S. 63, 74 (1977). As such, Aldana's current allegations that are contradictory to his "solemn declarations" in open court are insufficient to establish an actual innocence claim. Id. Based on the above analysis, Aldana has not established an actual innocence claim and, therefore, the Amended Petition is due to be dismissed as untimely.

III. Certificate of Appealability

Pursuant to 28 U.S.C. § 2253(c)(1)

If Aldana seeks issuance of a certificate of appealability, the undersigned opines that a certificate of appealability is not warranted. The Court should issue a certificate of appealability only if the petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make this substantial showing, Aldana

"must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," Tennard v. Dretke, 542 U.S. 274, 282 (2004) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)), or that "the issues presented were 'adequate to deserve encouragement to proceed further,'" Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983)).

Where a district court has rejected a petitioner's constitutional claims on the merits, the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. See Slack, 529 U.S. at 484. However, when the district court has rejected a claim on procedural grounds, the petitioner must show that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Id. Upon consideration of the record as a whole, the Court will deny a certificate of appealability.

Therefore, it is now

ORDERED AND ADJUDGED:

1. The Amended Petition (Doc. 6) is **DISMISSED WITH PREJUDICE**, and this action is **DISMISSED WITH PREJUDICE**.
2. The Clerk of the Court shall enter judgment dismissing the Amended Petition and dismissing this case with prejudice.
3. If Aldana appeals the dismissal of the Amended Petition, the Court denies a certificate of appealability. Because the Court has determined that a certificate of appealability is not warranted, the Clerk shall terminate from the pending motions report

any motion to proceed on appeal as a pauper that may be filed in this case. Such termination shall serve as a denial of the motion.

4. The Clerk of the Court is directed to close this case and terminate any pending motions.

DONE AND ORDERED at Jacksonville, Florida, this 14th day of October, 2020.



MARCIA MORALES HOWARD
United States District Judge

Jax-8

C: Noel Aldana #J42034
Counsel of record

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

NOEL ALDANA,

Petitioner,

v.

Case No: 3:17-cv-1110-J-34PDB

**SECRETARY, DEPARTMENT OF
CORRECTIONS and FLORIDA
ATTORNEY GENERAL,**

Respondents.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

That pursuant to the court's order entered on October 14, 2020, judgment is hereby entered
dismissing the Amended Petition and dismissing this case with prejudice.

**Any motions seeking an award of attorney's fees and/or costs must be filed within 14
days of the entry of judgment.**

Date: October 15, 2020

ELIZABETH M. WARREN,
CLERK

s/B. Rothamel, Deputy Clerk

Copy to:

Counsel of Record
Unrepresented Parties

APPENDIX

B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-14179-G

NOEL ALDANA,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

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

ORDER:

Noel Aldana, proceeding pro se, is a Florida prisoner serving a 15-year term of imprisonment for schemes to defraud, with a five-year term of probation for grand larceny by unauthorized credit card use. In 2017, Mr. Aldana filed a 28 U.S.C. § 2254 petition, which the District Court dismissed as untimely. Mr. Aldana now moves this Court for a certificate of appealability (“COA”) and for leave to proceed in forma pauperis (“IFP”). Following careful consideration, Mr. Aldana’s request for IFP status is granted, but his request for a COA is denied.

I. Background

In 2010, Mr. Aldana pled guilty to a count of grand larceny by unauthorized credit card use and a count of schemes to defraud. As to the schemes-to-defraud offense, the information stated that, between March 1, 2009, and May 1, 2009, Mr. Aldana “engage[d] in a systematic, on-going course of conduct with the intent to defraud one or more persons by false or fraudulent pretenses, misrepresentations, or promises or willful misrepresentations of a future act.”

At sentencing, Mr. Aldana stated under oath that he wanted “an opportunity to pay for what [he] did” and stated that he would “never do it again.” The trial court sentenced Mr. Aldana to 15 years’ imprisonment as to the schemes-to-defraud count and five years’ probation as to the grand-larceny count. Judgment was entered on August 19, 2010. Mr. Aldana did not challenge his convictions and sentences on direct appeal.

On February 9, 2011, Mr. Aldana submitted a pro se Florida Rule of Criminal Procedure 3.850 motion for post-conviction relief. He also submitted a counseled motion to withdraw plea. The state court denied both motions. Mr. Aldana appealed to Florida’s First District Court of Appeal (“First DCA”). The First DCA affirmed, and a mandate was issued on September 17, 2013.

On September 30, 2013, Mr. Aldana filed a pro se Florida Rule of Criminal Procedure 3.800(a) motion to correct an illegal sentence, as well as a second Rule

3.850 motion, both of which were denied. Mr. Aldana appealed, and the First DCA affirmed. A mandate was issued on August 8, 2014.

On September 29, 2014, Mr. Aldana submitted a third Rule 3.850 motion, which the state court denied. Mr. Aldana appealed to the First DCA. The First DCA affirmed, and a mandate was issued on July 27, 2015.

With the assistance of counsel, Mr. Aldana filed a second Rule 3.800(a) motion on February 24, 2016, which the state court also denied. Mr. Aldana appealed, and the First DCA affirmed. A mandate was issued on September 23, 2016.

On September 27, 2017, Mr. Aldana filed a § 2254 habeas petition asserting that he was actually innocent of the schemes-to-defraud charge. He argued the state provided no evidence showing that he had committed that offense, relying on a restitution spreadsheet from August 2012 that described the dates in which the fraudulent transactions had occurred. He noted that the restitution spreadsheet showed that the fraudulent transactions had occurred between August 27, 2008, and February 14, 2009, instead of between March 1, 2009, and May 1, 2009, as the information charged. Mr. Aldana argued that the inconsistency of the dates showed his actual innocence.

The District Court dismissed Mr. Aldana's § 2254 petition as untimely, because Mr. Aldana failed to file his § 2254 petition within one year after his

convictions and sentences became final. The court further found that Mr. Aldana failed to establish his actual innocence because he did not provide new evidence supporting his claim. It reasoned that, even if the dates of the transactions described in the restitution spreadsheet varied from those in the information, Mr. Aldana's allegations showed a defect in the charging document, rather than his actual innocence. The court also denied Mr. Aldana a COA and his request to proceed on appeal IFP as moot.

Mr. Aldana now moves this Court for IFP status and a COA.

II. Discussion

A. IFP

Mr. Aldana seeks to proceed IFP pursuant to 28 U.S.C. § 1915(a). Section 1915(a) provides that a United States court may authorize the commencement of any proceeding, without prepayment of fees, by a person who submits an affidavit that includes a statement of assets and indicates that he is unable to pay such fees. We may grant a petitioner leave to proceed IFP if he "show[s] inability to pay or give security for fees and costs." 16AA Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 3970.1 (4th ed. Apr. 2020 update); see 28 U.S.C. § 1915(a)(1). Mr. Aldana's affidavit of indigency satisfies this requirement. As a result, he need not prepay fees and costs associated with this appeal.

B. COA

To obtain a COA, a habeas petitioner must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Where the District Court denied a habeas petition on procedural grounds, the petitioner must show that reasonable jurists would debate (1) whether the petition states a valid claim alleging the denial of a constitutional right, and (2) whether the District Court’s procedural ruling was correct. Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604 (2000).

The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) imposes a one-year statute of limitations on all federal habeas corpus petitions. See 28 U.S.C. § 2244(d)(1). Pursuant to the portion of the statute relevant here, the one-year limitation period begins to run from “the date on which the judgment became final by the conclusion of direct review.” 28 U.S.C. § 2244(d)(1)(A). Where a defendant does not pursue a direct appeal, his conviction becomes final when the time for filing a notice of appeal expires. Murphy v. United States, 634 F.3d 1303, 1307 (11th Cir. 2011). Under the Florida Rules of Appellate Procedure, a criminal defendant must file a notice of appeal within 30 days of the entry of judgment. See Fla. R. App. P. 9.140(b)(3).

Mr. Aldana’s convictions and sentences became final on September 20, 2010, when the 30-day period for appeal expired. See Fla. R. App. P. 9.140(b)(3);

Murphy, 634 F.3d at 1307. Thus, absent any tolling, Mr. Aldana had one year, or until September 20, 2011, to file his federal habeas petition. See 28 U.S.C. § 2244(d)(1). The limitation period is statutorily tolled during the pendency of “a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim.” 28 U.S.C. § 2244(d)(2). However, a state court filing after the federal habeas deadline does not revive an expired limitation period. Sibley v. Culliver, 377 F.3d 1196, 1204 (11th Cir. 2004).

Here, reasonable jurists would not debate the District Court’s determination that Mr. Aldana’s § 2254 petition fell outside of the limitations period. See Slack, 529 U.S. at 484, 120 S. Ct. at 1604. When Mr. Aldana filed his first Rule 3.850 motion on February 9, 2011, 142 days of the limitation period had run. The limitation period was tolled until September 17, 2013, when the First DCA issued a mandate affirming the state court’s denial of his motion. See 28 U.S.C. § 2244(d)(2). An additional 13 days of the limitation period ran until September 30, 2013, when Mr. Aldana submitted his first Rule 3.800(a) motion and second Rule 3.850 motion. The limitation period was tolled until August 8, 2014, when the First DCA issued a mandate affirming the denial of his motions. Another 52 days of the limitation period ran until September 29, 2014, when Mr. Aldana submitted a third Rule 3.850 motion.

When, on July 27, 2015, the First DCA issued a mandate affirming the denial of Mr. Aldana's third Rule 3.850 motion, Mr. Aldana had 158 days, or until January 1, 2016, to submit his federal habeas petition or initiate an action in state court that tolled the limitation period. Mr. Aldana failed to do so, filing his second Rule 3.800(a) motion on February 24, 2016, and his § 2254 petition on September 27, 2017 instead. The proceedings relating to Mr. Aldana's second Rule 3.800(a) motion, as well as any other subsequent state post-conviction proceedings, cannot toll the limitation period because those proceedings were all filed after the expiration of the statute of limitations. See Sibley, 377 F.3d at 1204. Therefore, reasonable jurists would not debate the District Court's finding that the § 2254 petition was untimely.

Moreover, reasonable jurists would not debate the District Court's conclusion that Mr. Aldana failed to establish that the fundamental-miscarriage-of-justice exception applied to overcome the expiration of the statute of limitations. A petitioner may overcome the expiration of the statute of limitations and present an untimely constitutional claim if he makes "a convincing showing of actual innocence." McQuiggin v. Perkins, 569 U.S. 383, 386, 133 S. Ct. 1924, 1928 (2013). To invoke this exception, the petitioner must show that, in light of new evidence, it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt. Id. at 386, 399, 133 S. Ct. at 1928, 1935. The petitioner must

establish his factual, rather than legal, innocence. San Martin v. McNeil, 633 F.3d 1257, 1267–68 (11th Cir. 2011).

Even if Mr. Aldana presented new evidence showing that the dates provided in the information differed from those listed in the restitution spreadsheet, such evidence does not prove his actual, factual innocence. See San Martin, 633 F.3d at 1267–68. As the District Court determined, any alleged inconsistency regarding the dates of the fraudulent transactions suggests that there was an error in the charging document, not that Mr. Aldana was innocent of the fraudulent activity. Therefore, Mr. Aldana has failed to demonstrate that, if presented with evidence showing that the fraudulent transactions occurred on dates other than those described in the information, no reasonable juror would have found him guilty of committing schemes to defraud. See McQuiggin, 569 U.S. at 386, 399, 133 S. Ct. at 1928, 1935.

Mr. Aldana's motion for IFP status is GRANTED and the motion for a COA is DENIED.



UNITED STATES CIRCUIT JUDGE

APPENDIX

C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-14179-G

NOEL ALDANA,

Petitioner-Appellant,

VERSUS

SECRETARY, DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

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

Before: MARTIN and BRANCH, Circuit Judges.

BY THE COURT:

Noel Aldana has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's March 4, 2021, order granting leave to proceed on appeal *in forma pauperis* and denying a certificate of appealability. Upon review, Mr. Aldana's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

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1 IN THE CIRCUIT COURT, FOURTH
2 JUDICIAL CIRCUIT, IN AND FOR
NASSAU COUNTY, FLORIDA.

3 CASE NO.: 2009-CF-383

4 STATE OF FLORIDA
5
6 VS.
7 NOEL ALDANA,
Defendant.

10 TESTIMONY AND PROCEEDINGS before the
11 Honorable Robert M. Foster, Circuit Judge, Courtroom A,
12 at the Nassau County Judicial Annex, 76347 Veterans
13 Way, Yulee, Nassau County, Florida, on Thursday, August
14 19th, 2010, commencing at 1:00 p.m., reported by
15 Sharron A. McLendon, Court Reporter.

~~CLERK OF THE CIRCUIT COURT
JOHN A. CANNON~~
MASSACHUSETTS
BOSTON, MASS.
CLERK OF THE CIRCUIT COURT
JOHN A. CANNON

2011 MAR 18 PM 2:42

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1 A P P E A R A N C E S
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20

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22

23

24

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I N D E X

2 WITNESSES: DIRECT CROSS REDIRECT RECROSS

3 ARACELYS PÉREZ
(By Mr. Townsend) 6

NOEL ALDANA
5 (By Mr. Townsend) 10

6 STEPHEN GREER
(By Ms. Coggin) 11

8

9

10

E X H I B I T S

EXHIBIT NOS.

FOR IDENT.

11

12

13 (No Exhibits)

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PROCEEDINGS

3 August 19, 2010

1:00 p.m.

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5 THE COURT: All right. And I'm at you-all's
6 pleasure, if you want to call your cases in a
7 certain way.

8 MS. COGGIN: I think we can go ahead and do
9 the sentencing hearing on Noel Aldana, Your Honor,
10 with Mr. Townsend.

11 THE COURT: That's a case 2009-383.

12 MR. TOWNSEND: Mr. Aldana.

13 THE COURT: Ms. Gonzalez, good afternoon.

14 MS. GONZALEZ: Good afternoon.

15 THE COURT: If I could have you raise your
16 right hand.

17 (The interpreter was sworn in.)

18 THE COURT: If you would once again give us
19 your name and professional information.

20 THE INTERPRETER: Yes, Adrianna Gonzalez,
21 certified Spanish court interpreter for the Fourth
22 Circuit.

23 THE COURT: If you would ask the gentleman on
24 your right his name.

25 THE INTERPRETER: Noel Aldana.

1 THE COURT: Mr. Townsend, the Court has
2 received a presentence investigation report. Have
3 you been able to read it and review it with
4 Mr. Aldana?

5 MR. TOWNSEND: Yes, Your Honor. We have a
6 bilingual investigator in our office, Mr. Dennis
7 Sanchez, who reviewed it with him.

8 THE COURT: Is there anything in the report to
9 which you take factual exception to?

10 MR. TOWNSEND: No, sir.

1.1 THE COURT: How would you like to proceed?

12 MR. TOWNSEND: Your Honor, he has several
13 family members here, but there is one I would like
14 to call on, Ms. Aracelys Perez, Aracelys, I'm
15 sorry, Aracelys, A-R-A-C-E-L-Y-S Perez.

16 THE COURT: If you would come forward please.

17 And I guess just so the record is straight,
18 we are here for sentencing based on Mr. Aldana's
19 plea on June 24th, 2010 to both counts of the
20 complaint, and I believe he faces a maximum of 20
21 years.

22 MR. TOWNSEND: Yes, sir, that's correct.

23 THE COURT: Ma'am, if you'd raise your right
24 hand please.

25 ARACELYS PEREZ,

OFFICIAL REPORTERS, INC.

1 having been produced and first duly sworn as a witness,
2 testified as follows:

3 THE COURT: Thank you. You're going to have
4 to speak loudly for me.

5 MS. PEREZ: Everything is true.

6 THE COURT: Thank you.

7 DIRECT EXAMINATION

8 BY MR. TOWNSEND:

9 Q Ms. Perez, would you please state your name
10 for the record?

11 A Yes, my name is Aracelys Perez.

12 Q And you are a family friend of Mr. Noel
13 Aldana?

14 A I'm a friend from 2002, 2003, one of those
15 years.

16 Q There are several other people with you here
17 today, correct?

18 A Uh-huh.

19 THE COURT: Is that a yes?

20 THE WITNESS: Yes.

21 BY MR. TOWNSEND:

22 Q One of them is his mother?

23 A His mother, his sister, my husband, his
24 friend too, and sister and boyfriend, he's a friend
25 too.

1 Q These are all family members and friends of
2 Mr. Aldana?

3 A Yes.

4 Q They're all here to support him and help him
5 in any way they can?

6 A Yes.

7 Q Do you and your husband own a trucking
8 company?

9 A Yes.

10 Q What's the name of that trucking company?

11 A It's A Perez.

12 Q And you actually lease through another
13 company?

14 A Yes, with Pinnacle Transport.

15 Q Pinnacle Transport?

16 A Pinnacle.

17 Q Yes, ma'am. Thank you.

18 A Sorry on my English.

19 Q Now, if Mr. Aldana, whenever he does get out
20 of jail, where would he be living?

21 A For now he can go to my house and he can stay
22 over there.

23 Q So he can live with you and your husband?

24 A Yes.

25 Q And the two of you would also be employing

1 him; is that correct?

2 A Yes.

3 Q How would you be employing him?

4 A So he can drive one my tractor-trailers. He
5 can make some money to pay anything he needs to pay
6 for.

7 Q And one of your -- one of the trucks you have
8 is a tractor, a semi-trailer?

9 A Yes.

10 Q And the other is a dump truck?

11 A Yes.

12 Q And you anticipate -- right now you actually
13 have someone that's working for you that --

14 A It's a temporary driver.

15 Q A temporary driver?

16 A Yes, just till he can take the truck.

17 Q And Mr. Aldana will be taking his job?

18 A Yes.

19 Q And is it full time?

20 A Yes.

21 Q And what do you anticipate Mr. Aldana would
22 be able to earn, just average or estimate, in any given
23 week driving a truck for you?

24 A It's about 1000 a week.

25 Q And he could earn approximately 1000 a week?

1 A Yes.

2 Q You understand that he -- his restitution
3 amount in this case is over \$44,000. Are you aware of
4 that?

5 A Yeah, yeah. I can hold the money so that he
6 has money.

7 Q Are you willing to assure this Court that you
8 would garnish his wages or deduct that money from him
9 as payment of this restitution before he is paid?

10 A Yes.

11 Q How many children does Mr. Aldana have?

12 A He have three children that really need him.

13 Q Who is supporting those children now?

14 A Right now his uncle and grandparents and
15 sometimes my husband will send money to them and
16 children stuff.

17 MR. TOWNSEND: I have no further questions,
18 Your Honor.

19 MS. COGGIN: I don't have any questions, Your
20 Honor.

21 THE COURT: Thank you, ma'am.

22 MR. TOWNSEND: Thank you, Ms. Perez. You can
23 take a seat.

24 MR. TOWNSEND: Your Honor, I believe
25 Mr. Aldana would like to address the Court before

1 sentencing as well.

2 THE COURT: Sir, could you raise your right
3 hand.

4 NOEL ALDANA,

5 having been produced and first duly sworn as a witness,
6 testified as follows through the interpreter:

7 THE COURT: All right. I'd be happy to hear
8 his statement.

9 DIRECT EXAMINATION

10 BY MR. TOWNSEND:

11 Q Could you have him please introduce himself
12 for the record?

13 A Noel Aldana.

14 THE COURT: Mr. Aldana, you're going to need
15 to speak a little louder.

16 A Yes.

17 Q What -- ask him what he would like this Court
18 to know prior to sentencing?

19 A I would like to ask him for an opportunity to
20 pay for what I did. I ask forgiveness to God and
21 everybody here for what I did. I ask to be forgiven
22 for what I did. I'll never do it again. I want to be
23 able to be with my family again and be able to work and
24 support them.

25 THE COURT: Does the State wish to inquire?

1 MS. COGGIN: No, sir.

2 THE COURT: Anything else from Mr. Aldana?

3 THE INTERPRETER: No, sir.

4 THE COURT: MS. Coggin, how did the
5 restitution get to be \$44,000.

6 MS. COGGIN: Your Honor, we have -- and we
7 have Mr. Greer, I have him here to testify, from
8 the Secret Service. He has the breadth of every
9 single credit card that was used.

10 THE COURT: Oh, okay.

11 MS. COGGIN: So I have him here to...

12 THE COURT: Mr. Greer, if you'd come forward,
13 sir. If you'd raise your right hand.

14 **STEPHEN GREER,**

15 having been produced and first duly sworn as a witness,
16 testified as follows:

17 THE COURT: Thank you.

18 DIRECT EXAMINATION

19 BY MS. COGGIN:

20 Q Can you please state your name for the
21 record?

22 A Stephen Greer. It's S-T-E-P-H-E-N G-R-E-E-R.

23 Q And by whom are you employed?

24 A The U. S. Secret Service.

25 Q And what is your current title with them?

1 A I'm a special agent criminal investigator.

2 Q Okay. And how much experience do you have in
3 your area in investigating crimes of a financial
4 nature?

5 A A little over three years now.

6 MR. TOWNSEND: If I may just interrupt. I
7 would just like to ask Ms. Coggin and the gentlemen
8 to slow down. We have an interpreter and she's
9 trying to interpret.

10 MS. COGGIN: Oh, I apologize, you're right,
11 sorry.

12 MR. TOWNSEND: Not too fast.

13 MS. COGGIN: Sorry, I apologize.

14 BY MS. COGGIN:

15 Q Are you familiar with the defendant, Noel
16 Aldana?

17 A Yes, ma'am, I am.

18 Q Okay. How are you familiar with him?

19 A He, Noel Aldana, was brought to our attention
20 by the Nassau County Sheriff's Office, who was
21 conducting an investigation into credit card fraud
22 being conducted here in Nassau County.

23 Q Okay. And what did your investigation reveal
24 in regards to Mr. Aldana?

25 A Mr. Aldana was part of a large organized

1 scheme or organized credit card scheme operating out of
2 Jacksonville, and they were -- they were expanding
3 outside of Jacksonville in areas in Nassau County and
4 some portions of Georgia and south of Jacksonville.

5 Q And were you able to interview the defendant
6 at any point?

7 A Yes, ma'am.

8 Q And was he cooperative with you?

9 A Initially, no, ma'am.

10 Q Okay. At some point did he become
11 cooperative?

12 A Yes, ma'am.

13 Q And what was he able to tell you involving
14 the scheme to defraud?

15 A Noel Aldana confessed, with his attorney
16 present, to his involvement of this, this larger credit
17 card scheme where they were able to receive credit card
18 numbers and re-encode them on the backs of gift cards
19 and credit cards and then, in turn, use those credit
20 cards as if they were their own, initially to purchase
21 large amounts of fuel. These purchases of fuel were
22 later taken to, through the use of those trucking
23 companies, were used to undercut the local businesses,
24 the local gas stations' prices by selling to the
25 commercial truck drivers at discounted prices, in most

1 cases at half price.

2 THE COURT: Explain that to me again.

3 THE WITNESS: The credit card numbers that
4 they were receiving, they would encode on to the
5 back of their credit cards, and I'm talking bulk
6 credit cards, not just one or two, they were
7 purchased in bulk.

8 These credit cards were being used at
9 unmanned -- where there is no cashier at the gas
10 pumps to purchase large amounts of fuel in their
11 vehicle. Their vehicle were customized to carry as
12 much as 100 gallons, so that they could continue to
13 pump additional fuel into the truck, spending 4- or
14 \$500 on these credit cards and put the fuel in the
15 truck.

16 Once they drove away from the gasoline
17 station, they would communicate to somebody else to
18 find out where the truckers were that needed the
19 fuel, and they would meet up with those truck
20 drivers.

21 THE COURT: So sell them gas at a discount?

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: I got you.

24 THE WITNESS: This was a pretty large
25 operation, with refuel sites at two separate

1 locations that we know of in Jacksonville, in
2 addition to meeting them on the side, I guess, off
3 exits where the trucking companies or, you know, we
4 had a lot of it consolidated in one location.

5 BY MS. COGGIN:

6 Q And you heard us discuss the restitution
7 figure of \$44,715.53. How did you come to that number?

8 A All right. This doesn't really kind of give
9 you an idea of how big this is. In their
10 confessions -- in his confession to us, he was able to
11 turn over a lot of goods that had not been -- a lot of
12 goods that he had purchased. In addition to the fuel,
13 he was also purchasing items for himself. In doing so
14 he had enough material that he had purchased from
15 various establishments to build an entire new house,
16 and I'm talking from the cement for the foundation, the
17 hardwood floors, all the way up to the ceiling, the
18 shingles, you know, high energy efficient washer and
19 drier, stainless steel refrigerator, Whirlpool tubs,
20 sinks, you know, the toilets. They had everything in a
21 storage facility in Jacksonville. These items were
22 still in their boxes, so we were able to take them
23 back, you know, bring them back to our office, and we
24 literally had to go to like a Lowe's website to find
25 the exact item and model number to get that, those

1 prices, and then, of course, we had to cut them in half
2 because of the resale value.

3 And in addition to that, we have Flash Foods'
4 account of all credit cards that were used. That's
5 done in the Excel spreadsheet that we were able to
6 produce that they -- that Noel Aldana has confessed to
7 using these re-encoded credit cards to purchase his
8 fuel at.

9 I think that's where our bulk of it comes
10 from, but obviously we had to cut the investigation
11 short as well, once we felt that we had enough to go
12 forward with him. We could continue to go on and on
13 and on trying to identify more credit cards that he
14 used, but at a certain point you have to cut it off
15 because it's just too voluminous.

16 THE COURT: Who else was arrested other than
17 Mr. Aldana and I think his wife?

18 THE WITNESS: In the entire operation, Your
19 Honor, that's an ongoing investigation that
20 actually is going international at this point, and
21 I'll tell you that at least a couple dozen have
22 been arrested in the State of Florida in regards to
23 this. In Jacksonville alone we have approximately
24 eight or nine, to include the top figureheads, but
25 it stretches through Orlando and Miami.

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22 been arrested in the State of Florida in regards to
23 this. In Jacksonville alone we have approximately
24 eight or nine, to include the top figureheads, but
25 it stretches through Orlando and Miami.

1 THE COURT: And are they all being prosecuted.
2 in state court?

3 THE WITNESS: It's kind of split up. Our
4 investigation in Jacksonville has remained in state
5 court because it was initially discovered by the
6 Nassau County deputies. Out of respect for them,
7 the State Attorney's Office here, we felt
8 comfortable leaving that here and with the State
9 Attorney's Office in Jacksonville. Orlando they
10 have it split up where some are going federal and
11 some are going state, and Miami most of which are
12 going federal.

13 BY MS. COGGIN:

14 Q Just briefly, and we'll wrap it up here,
15 after you spoke with the defendant, were you able to
16 judge where he was in the -- in this organization, as
17 far as what level he would be?

18 A Yes, ma'am. Based on what he gave us and
19 what we believed was his full cooperation in the second
20 interview, he was able to identify major individuals in
21 Jacksonville responsible for trafficking in these
22 high -- these credit card numbers, because of his
23 knowledge of those individuals, where they lived, what
24 they looked like, the vehicles they drove, it would --
25 it's not like the private is going to know all the

1 generals in an operation. In this case, he knew them
2 all, and that firmly established to us that he knew
3 everyone that was of importance.

4 Q And after you spoke with the defendant, was
5 he able to bond out of jail?

6 A Yes, because we believed that he was giving
7 us full cooperation, I did offer to contact Detective
8 Michelle Christianson with the Nassau County Sheriff's
9 Office, in order to speak to the judge to try to reduce
10 the bond so he could spend time with his family, so his
11 bond was eventually reduced and he was able to bond out
12 and be with his family.

13 Q And what did you learn after the defendant
14 was released?

15 A That a short time later Noel Aldana went into
16 Jesup, Georgia, into another jurisdiction and attempted
17 to purchase items, allegedly attempted to purchase
18 items at the Wal-Mart there using credit cards. When
19 he was stopped, when the loss prevention officers
20 attempted to stop him, he fled from the establishment,
21 leaving his wife and kids back at the store, and he was
22 later found in the wood line across the street, across
23 the highway by the Jesup Police Department I believe.

24 Q And how many credit cards did he have with
25 him at that time, do you know?

1 A Thirty.

2 Q What, based on your training and experience
3 and based on the scope of this, this case, what do you
4 believe is an appropriate sentence?

5 A I would -- the short answer is the maximum
6 sentence. I've been in law enforcement now for over
7 ten years, and in very few instances can I say with a
8 clear conscience that the defendant deserved the
9 maximum sentence. In this case, the number of victims
10 that he was able to touch is just astronomical, it's in
11 the hundreds, if not thousands, and there is no way we
12 can conclusively put a, you know, number on that.

13 The manpower that it takes to investigate
14 these cases is extremely labor intensive, and Nassau
15 County did a fantastic job and we were lucky we would
16 be able -- we were able to come in and assist them with
17 the investigation, because other jurisdictions may have
18 never caught this and he could -- people like him could
19 just escape and be handled with a slap on the wrist.

20 THE COURT: So you believe that his
21 cooperation should not be mitigation?

22 THE WITNESS: Not anymore, Your Honor. After
23 the -- when we interviewed him the second time,
24 when he gave us the information, he -- it turns out
25 that he had an opportunity to give us even more, to

1 continue his cooperation, and that certainly would
2 have been taken into consideration, and it was. I
3 would -- like I said, I did go out of my way to
4 have his bond reduced so that he could be with his
5 family, and he in turn went back to the same people
6 and got more cards, and this is information we
7 could have used, you know, to go after these
8 individuals to stop it, but he just facilitated it.

9 I mean I can't tell you -- the most important
10 part is significant community impact, Your Honor,
11 and there are victims here in Nassau County,
12 individuals whose credit card numbers were
13 compromised, whose personal credit that they spent
14 a lifetime building was compromised because of this
15 defendant.

16 MR. TOWNSEND: I have no further questions.

17 THE COURT: Mr. Townsend, do you wish to
18 inquire?

19 MR. TOWNSEND: No, sir.

20 THE COURT: Thank you.

21 THE WITNESS: Yes, sir.

22 THE COURT: Any additional testimony?

23 MS. COGGIN: No testimony, Your Honor, just
24 brief argument.

25 THE COURT: All right, Go ahead.

1 MS. COGGIN: Okay. Your Honor, we've reviewed
2 the PSI in this case and also in speaking with
3 Secret Service in working on this case for an
4 extended period of time, we feel that the State is
5 also seeking the maximum in this case and believe
6 anything less, honestly, than ten years would be
7 just unjust for the amount of victims this
8 defendant has touched, the amount of people he has
9 injured.

10 This defendant was high up in this
11 organization. He knew people that were in charge.
12 He provided that information, that's how they know
13 it was correct. He agreed to cooperate, Your
14 Honor, and this defendant got out of jail and went
15 within weeks, within days went back to the same
16 activity, was discovered with 30 credit cards.
17 Upon discovery actually fled from the Georgia
18 police, leaving his wife and children there to deal
19 with it.

20 He is a flight risk. He has little to no
21 ties to the community. I understand he has friends
22 and a mother here today, but he has no job. In
23 fact, the job that they could trace before this,
24 this trucking was part of this refueling scheme.
25 He has no way other than, you know, the job that

1 they say he can have today to pay this large amount
2 of restitution.

3 And, quite honestly, Your Honor, some of
4 these victims whose credit was injured will not
5 recover, even with monetary repayment. We don't
6 feel at all he's a good candidate for probation,
7 based on his past behavior where he was released on
8 a bond and again began criminal behavior. These
9 schemes to defraud encompasses such a wide spot of
10 crime that it just -- it just -- it does nothing
11 but deserve prison.

12 Your Honor, this refueling scheme also, this
13 gas scheme, the State believes is inherently
14 dangerous to the community as well, the driving
15 around in cars that are rigged with these large
16 amount of tanks, refueling trucks in areas that are
17 not equipped to be refueled, could cause a
18 dangerous death or a victim injury or anything else
19 on the highways of the State of Florida or even in
20 the State of Georgia where he was.

21 So, Your Honor, again, the State is seeking
22 20 years in this case, and I believe anything less
23 than 10 years just does not justify the crimes the
24 defendant committed.

25 THE COURT: Well, then I assume we have a

1 second and third degree felony.

2 MS. COGGIN: Yes, sir.

3 THE COURT: Which is which?

4 MS. COGGIN: The schemes to defraud is a
5 second, Your Honor, and the grand larceny by
6 unlawful use of credit card is the third.

7 MR. TOWNSEND: Your Honor, if I may,

8 Mr. Aldana had no -- no prior record, no
9 significant prior record prior to these charges.

10 He's admitted his involvement in this. There
11 was --

12 THE COURT: He was given an opportunity to
13 come clean and make good.

14 MR. TOWNSEND: That's correct, that's correct,
15 and he --

16 THE COURT: Based on that --

17 MR. TOWNSEND: And he --

18 THE COURT: -- the Court was prevailed upon to
19 release him, and then he went out and did the same
20 thing.

21 MR. TOWNSEND: Yes, sir, he understands that.
22 He understands that he -- that there will be a
23 punishment for that, but he has also shown remorse,
24 he's taken responsibility for his actions, Your
25 Honor, we would --

1 THE COURT: Let me just ask you, did he show
2 remorse after the first time or the second time?

3 MR. TOWNSEND: He showed remorse after, Your
4 Honor. He's accepting responsibility for the
5 restitution figure that's been provided by the
6 State, \$44,715, Your Honor, that he knows he owes
7 to the victims in this case, and he would like an
8 opportunity to get out and get to work and repay
9 that. This is not a -- this is not a hypothetical
10 let me out of jail so I can go to work and do that.
11 His employer is here. The people that will --

12 THE COURT: But he was let out of jail once
13 before.

14 MR. TOWNSEND: Yes, sir.

15 THE COURT: And he re-offended.

16 MR. TOWNSEND: Yes, sir. He wasn't let out --

17 THE COURT: He's been given a chance.

18 MR. TOWNSEND: -- on probation, Your Honor, is
19 the point I'm making.

20 THE COURT: What's the difference whether
21 you're let out prior to sentencing or you're let
22 out on probation, in terms of how you behave?
23 Shouldn't you behave in both situations or is there
24 a difference in the factual scenario such that if
25 one re-offend prior to sentencing then it's okay?

1. MR. TOWNSEND: No, Sir.

2. THE COURT: What assurance do I have he's not
3. going to re-offend for a second time?

4. MR. TOWNSEND: Your Honor, it's never okay, I
5. mean, you're supposed to act a certain way. That's
6. why we're here today is because he didn't act the
7. way he was supposed to act, not before, not when he
8. got out the first time, he didn't. He didn't do
9. what he was supposed to do. That's why we're here.
10. We understand that.

11. The issue here is that there is a real and
12. tangible opportunity that exists from this Court
13. for Mr. Aldana to repay the money that was stolen.
14. There are individuals here that own a business,
15. that have two trucks, who say we will take him into
16. our home, we will put him to work immediately,
17. working full time. He can earn up to
18. approximately, according to them, \$1000 a week.
19. They're willing to garnish his wages and take money
20. out before it even gets to him to help make these
21. victims whole. This is a real and tangible
22. opportunity for him to fix the damage that he did.

23. I think the State is right, some of these
24. individuals who have had their credit harmed,
25. they're probably going to be dealing with that for

1 the rest of their lives, but they can be
2 recompensed for their loss and there is a chance
3 here, I think, to do that. Mr. Aldana wants that
4 opportunity.

5 He understands now, I don't think he
6 understood then, but he understands now that if he
7 doesn't do what he's supposed to do, if he doesn't
8 repay back this debt that he owes he's going to
9 prison for 20 years. That's what's hanging over
10 his head now, Your Honor. That's the difference
11 now and that's what he'll be looking at if he
12 misbehaves now.

13 THE COURT: But the same sentence was hanging
14 over his head when I released him earlier, wasn't
15 it?

16 MR. TOWNSEND: Yes, sir. I'm not sure that he
17 fully under -- I'm not sure that he fully grasped
18 the severity of the sentence he was looking at at
19 that time. We didn't represent him.

20 THE COURT: So if he didn't grasp that, then
21 his thinking was I don't have a big sentence
22 hanging over me so I'm going to go ahead and try to
23 do it again because I won't be punished very much,
24 but when he does it and is caught and he finds out
25 it's a big sentence he's remorseful.

1 MR. TOWNSEND: Your Honor, again, I didn't
2 represent him during that time. It was a private
3 attorney that was representing him. I'm not sure
4 what his thinking was then, but I know that since
5 I've represented Mr. Aldana he has expressed to
6 me -- he has not denied his involvement. He's
7 admitted he did it. He's admitted his involvement.
8 He's shown remorse to me from day one and has
9 expressed from day one a desire to repay these
10 victims for the money that he took.

11 THE COURT: Ms. Coggin, have you talked to
12 many of the victims?

13 MS. COGGIN: No, sir. We've just handled it
14 mostly through Mr. Greer with the Secret Service
15 Office, because basically the Flash Foods
16 Department we have, and they were the ones who were
17 able to provide all of the gas charges. Home Depot
18 and Wal-Mart and all these other individuals that
19 had credit cards stolen, it's just simply too many,
20 but we have talked to the main people from where
21 those credit cards came, and along with Steve
22 Greer. He may be able to tell you if he's talked
23 to any of the individual victims.

24 THE COURT: Mr. Greer, if you'd come forward
25 again.

1 Ms. Coggin, the Flash Foods people to whom
2 you have talked.

3 MS. COGGIN: Yes, sir.

4 THE COURT: Do they have a preference?

5 MS. COGGIN: Well, Your Honor, I mean I think
6 that every -- everyone involved and, again, I can
7 defer to Mr. Greer, including the people at
8 Wal-Mart would seek prison on this. I mean
9 obviously they were damaged, as well, from all of
10 the people that were using their credit cards in
11 these locations, but have you spoken to the
12 individual victims?

13 MR. GREER: As far as the individual victims,
14 they've been made whole by their banks and,
15 unfortunately, as prescribed in the interest rates
16 in a lot of these places too, so I have spoken to
17 the banks that have been victimized in this, and I
18 spoke to some of the businesses that have been
19 victimized in Jacksonville.

20 Right now credit card fraud is proliferating
21 so they do absolutely seek prison sentences for
22 this. We have weekly task force meetings with
23 these fraud investigators to be kept up to speed
24 with any new developments in these credit card
25 scams. So, yes, Your Honor, I have spoken to some

1 of these victims.

2 THE COURT: So they would prefer prison over
3 possible restitution?

4 MR. GREER: Yes, Your Honor, they don't
5 expect to get the restitution back.

6 THE COURT: Thank you.

7 Mr. Townsend.

8 MR. TOWNSEND: I did want to inquire of
9 Mr. Greer, if I could?

10 What happened to the merchandise and stuff
11 that was recovered?

12 MR. GREER: It's been seized and it's going
13 to be donated to Habitat for Humanity.

14 MR. TOWNSEND: That's all.

15 THE COURT: Thank you.

16 MR. GREER: Yes, Your Honor.

17 MR. TOWNSEND: Mr. Aldana did want to address
18 the Court and address a few things.

19 THE COURT: Yes, sir.

20 THE INTERPRETER: I want to tell Your Honor
21 that I cooperated with the FBI. I gave them
22 everything. I did not keep anything to myself. I
23 have never been in jail before. I have been in
24 jail for a year and a half now, and I would like to
25 express my remorse. I'll never do this again. I

1 want to express my remorse. I am willing to pay
2 everything back. And if they need more
3 cooperation, they can count on me. I will
4 cooperate with them.

5 THE COURT: Anything else?

6 MR. TOWNSEND: No, sir.

7 MS. COGGIN: No, sir.

8 THE COURT: Anything else before I announce
9 the sentence?

10 MR. TOWNSEND: No, sir.

11 THE COURT: As to count two of the
12 information, the Court will adjudicate the
13 defendant guilty, sentence him to 15 years in the
14 Florida State prison, with credit for time served.
15 As to count one of the information the Court will
16 also adjudicate the defendant guilty and sentence
17 him to five years probation to run consecutive to
18 his incarceration, subject to the special condition
19 that he make restitution in the amount of
20 \$44,715.53, at a minimal rate of \$1000 per month,
21 that he pay court costs in the amount of \$398, a
22 State Attorney's fee of \$100, as well as Public
23 Defender fees and costs of \$150.

24 In addition, Mr. Aldana, you must comply with
25 all the standard conditions of probation found in

1 Florida Statutes 948.03.

2 MS. COGGIN: Your Honor, for the record, if we
3 have not already done so, by agreement of him
4 pleading straight up the State did agree to not go
5 forward on 09-CF-420, 419, 415, 384 and 421, as
6 well as his outstanding Duval case.

7 THE COURT: Thank you.

8 Is he still wanted up in Georgia?

9 MS. COGGIN: Yes, sir.

10 MR. TOWNSEND: Yes, sir.

11 THE COURT: Mr. Aldana, do you have any
12 questions?

13 MR. ALDANA: No, sir.

14 THE INTERPRETER: No, sir.

15 THE COURT: Thank you very much.

16 Thank you, Ms. Gonzalez.

17 THE INTERPRETER: Thank you, Your Honor.

18 (Whereupon, the proceedings were concluded.)

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1 C E R T I F I C A T E

2 STATE OF FLORIDA)

3 COUNTY OF NASSAU)

4

5 I, Sharron Ann McLendon, certify that I was
6 authorized to and did stenographically report the
7 foregoing proceedings and that the transcript is a true
8 and complete record of my stenographic notes.

9 DATED this 7th day of March, 2011.

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Sharron A. McLendon
Court Reporter

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