

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-11801-E

RUFUS PAUL HARRIS,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

ORDER:

Rufus Harris is a federal prisoner serving a total 276-month sentence after a jury convicted him for conspiracy to execute a scheme to defraud, a scheme to commit securities fraud, and a scheme to commit wire fraud (5 counts), and false certification of financial statement. On appeal, we affirmed his convictions and sentences.

Harris filed a motion to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255, alleging 11 claims for relief:

- (1) his due-process rights were violated where crucial facts were not developed at trial as a result of "extenuating circumstances";
- (2) government witness Donald Maddalon¹ gave perjured testimony;
- (3) the government withheld exculpatory evidence;

¹ In his § 2255 motion, Harris identified the witness as "Don Madalin." However, a review of the trial transcripts shows that the proper spelling is Maddalon.

- (4) the government engaged in selective prosecution;
- (5) his sentence exceeded the maximum authorized by law;
- (6) his sentencing counsel was ineffective for failing to object to the loss amount used to calculate his guideline sentencing range;
- (7) pre-trial counsel rendered ineffective assistance by (a) failing to hire a securities expert to testify at trial, (b) failing to subpoena material witnesses for trial, and (c) failing to request a hearing regarding perjury committed by a federal agent during the grand jury testimony;
- (8) codefendant Stanley's court-appointed attorney prevented Craig Cason, a material defense witness, from giving relevant testimony;
- (9) appellate counsel was ineffective for failing to raise, as issues on direct appeal, (a) the fact that the district court's electronic equipment malfunctioned and prevented Harris from presenting documentary evidence to the jury, (b) the actions of Stanley's appointed attorney in preventing Cason from testifying, (c) perjury committed by "key Government witnesses," and (d) death threats received by Harris's family;
- (10) his due process rights were violated when the district court (a) ruled that he waived his right to be present at trial, (b) dismissed his standby counsel, and (c) refused to transcribe the jury instructions, after he was "forced[,] via a murder threat against his family, to exit the trial proceedings"; and
- (11) his Sixth Amendment rights were violated by the district court's refusal to allow standby counsel to take over representation during his "forced absence."

The district court denied Harris's § 2255 motion. The court also denied a certificate of appealability ("COA") and leave to proceed *in forma pauperis* ("IFP") on appeal. Harris now moves this Court for a COA and IFP status.

DISCUSSION

In order to obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The movant satisfies this requirement by

demonstrating that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Claims 1, 2, 3, 4, 5, and 8 are procedurally defaulted because Harris failed to raise them on direct appeal. *See McKay v. United States*, 657 F.3d 1190, 1196 (11th Cir. 2011). Nor has Harris shown cause and prejudice or a fundamental miscarriage of justice to warrant excusing his default. *See id.*

Claim 6 lacked merit, as the record demonstrated that the parties agreed to a loss amount of \$7 million to \$20 million, which was utilized by the district court to calculate Harris's advisory sentencing range. Thus, sentencing counsel was not ineffective for failing to object to the \$44 million claimed by the government as the total loss amount, as the court did not rely on that loss amount. Harris's seventh claim was speculative and conclusory and did not establish that pre-trial counsel was ineffective. *See Tejada v. Dugger*, 941 F.2d 1551, 1559 (11th Cir. 1991). Likewise, Harris's ninth claim did not show that appellate counsel was ineffective, as the claim was conclusory and provided no details regarding issues that counsel allegedly failed to raise. *See id.* Finally, Claims 9 and 10 merely reiterated an issue that Harris raised on direct appeal. Because this issue was fully considered and rejected by this Court on direct appeal, Harris is foreclosed from relitigating it through a § 2255 motion. *See Rozler v. United States*, 701 F.3d 681, 684 (11th Cir. 2012).

Because reasonable jurists would not debate the district court's denial of Harris's § 2255 motion, his motion for a COA is DENIED and his motion for IFP status on appeal is DENIED AS MOOT.

/s/ Robin S. Rosenbaum
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

-vs-

Case No. 1:09-cr-406-1-TCB

Rufus Paul Harris

Defendant's Attorney:
Howard Manchel

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant was found guilty by jury on Count(s) 1-8 of the Indictment.

Accordingly, the defendant is adjudged guilty of such count(s) which involves the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Count No.</u>
18 USC §§1348, 1343 and 1349	Conspiracy to Execute a Scheme to Defraud	1
18 USC §§1348 and 2	Scheme to Commit Securities Fraud	2
18 USC §§1343 and 2	Scheme to Commit Wire Fraud	3 - 7
18 USC §§1350(c)(1) and 2	False Certification of Financial Statement	8

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

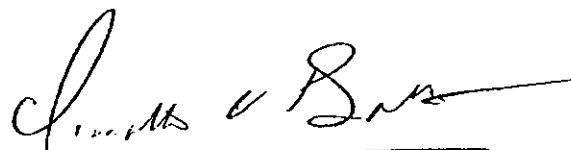
It is ordered that the defendant shall pay the special assessment of \$ 800.00 which shall be due immediately.

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No. XXX-XX-5770
Defendant's Date of Birth: 1967
Defendant's Mailing Address:
Oklahoma City, Oklahoma

Date of Imposition of Sentence: February 23, 2012

Signed this the 24th day of February, 2012.


TIMOTHY C. BATTEN, SR.
UNITED STATES DISTRICT JUDGE

1:09-cr-406-1-TCB : Rufus Paul Harris

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **276 months on Counts 1 & 2, 240 months on Counts 3-7, and 120 months on Count 8 all to run concurrent for a total of 276 months.**

The Court recommends that the defendant be incarcerated at FCI El Reno, Oklahoma.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____
Deputy U.S. Marshal