

*Appendix A*

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 21-13726-C

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ANIS BLEMUR,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

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ORDER:

Anis Blemur's motion for a certificate of appealability is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

/s/ Britt C. Grant  
UNITED STATES CIRCUIT JUDGE

*Appendix B*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 21-CV-22009-PCH

ANIS BLEMUR,

Petitioner-Defendant,

v.

UNITED STATES OF AMERICA,

Respondent-Plaintiff.

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**ORDER**

The matter before the Court is Anis Blemur's Motion to Vacate, Set Aside, or Correct His Conviction and Sentence Pursuant to 28 U.S.C. § 2255. [ECF No. 1]. On Friday, October 8, 2021, the Court held a hearing on the motion. [ECF No. 15]. In his motion, Blemur argues that his trial counsel's performance was constitutionally deficient because his trial counsel (1) failed to file a motion to suppress credit cards found during a search of Blemur's office, (2) failed to file a sentencing memorandum, and (3) failed to review letters of support before submitting the letters to the Court. During the hearing, the Court **DENIED** the motion and provided two bases for its decision, each of which independently led to the denial of Blemur's motion. First, and for the reasons discussed in greater detail during the hearing, the Court determined that Blemur's arguments were waived. By knowingly, voluntarily, and intelligently pleading guilty to his charges, Blemur waived all three of the alleged nonjurisdictional defects in his court proceedings. *See Wilson v. United States*, 962 F.2d 996, 997 (11th Cir. 1992) ("A defendant who enters a plea of guilty waives all nonjurisdictional challenges to the constitutionality of the conviction, and only an attack on the voluntary and knowing nature of the plea can be sustained."); *Bullard v. Warden, Jenkins Corr. Ctr.*, 610 F. App'x 821, 824 (11th Cir. 2015) (noting that a waiver of all nonjurisdictional challenges "includes any claim of ineffective assistance of counsel unless the deficient performance relates to the voluntariness of the plea itself"); *Bailey v. United States*, No. 08-cr-529, 2011 WL 2270183, at \*3 (M.D. Fla. June 6, 2011); *Castillo-Perez v. United States*, No.

10-cv-1157, 2011 WL 672356, at \*2 (M.D. Fla. Feb. 17, 2011). Second, and for the reasons discussed in greater detail during the hearing, the Court determined that each of Blemur's arguments failed on the merits. Accordingly, it is

**ORDERED** that Blemur's motion [ECF No. 1] is **DENIED**. Because the Court finds that Blemur has not made a substantial showing of a denial of a constitutional right, a certificate of appealability **SHALL NOT** issue. .

**DONE AND ORDERED** in Miami, Florida, on October 8, 2021.

A handwritten signature in black ink, appearing to read 'Paul C. Huck', written over a horizontal line.

Paul C. Huck  
United States District Judge

cc: All Counsel of Record

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

Appendix C

CASE NUMBER 21-22009-CV-HUCK

ANIS BLEMUR,

Plaintiff,

vs.

Miami, Florida

UNITED STATES OF AMERICA,

October 8, 2021

Defendant.

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VIDEOCONFERENCE PROCEEDINGS ON  
MOTION TO VACATE, SET ASIDE OR CORRECT SENTENCE  
BEFORE THE HONORABLE PAUL C. HUCK  
SENIOR UNITED STATES DISTRICT JUDGE

---

APPEARANCES:

FOR THE PLAINTIFF:

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## EXHIBITS

Exhibits Description	Marked for Identification		Received in Evidence	
	Page	Line	Page	Line
	(None)			

1 (The following proceedings were held at 11:32 a.m.):

2 THE COURT: Good morning, everyone.

3 MR. ESPINOSA: Good morning, Your Honor.

4 MR. HIRSCHHORN: Good morning, Your Honor.

5 THE COURT: I'm going to wait a minute or two, because  
6 we've got some students who want to be lawyers. They're from  
7 three different schools. We had them here this morning for some  
8 other hearings, sentencing hearings, and now I think they're  
9 outside.

10 Are they outside?

11 (There was a brief discussion off the record.)

12 THE COURT: All right. We'll start here. We're here  
13 in the matter of Blemur versus United States of America. May I  
14 have appearances?

15 MR. ESPINOSA: Stefan Diaz Espinosa on behalf of the  
16 Government.

17 MS. FRITZ: Your Honor, Allyson --

18 MR. HIRSCHHORN: Joel Hirschhorn --

19 MS. FRITZ: Excuse me. Allyson Fritz also on behalf of  
20 the Government. I'm standing in for E.J. Yera who's out today.

21 MR. HIRSCHHORN: Joel Hirschhorn on behalf of the  
22 defendant, Your Honor, and also on the Zoom is my current law  
23 clerk, Alex Ubieta. And before you say anything, I must say,  
24 Judge, I know that Mr. Diaz Espinosa's pleading was well written  
25 because I trained him. He's a former law clerk of mine.

1 THE COURT: He survived that experience. Okay. Well,  
2 that's good. He doesn't seem to be --

3 MR. HIRSCHHORN: Right.

4 THE COURT: -- in any way as a result of that.

5 MR. ESPINOSA: I did survive.

6 THE COURT: That, in and of itself, is an  
7 accomplishment.

8 (There was a brief interruption.)

9 THE COURT: Is it Mr. Ubieta?

10 THE LAW CLERK: Yes, Your Honor.

11 THE COURT: Are you currently a law student?

12 THE LAW CLERK: Yes, Your Honor.

13 THE COURT: Where?

14 THE LAW CLERK: At the University of Miami. I'm in my  
15 third year.

16 THE COURT: Third year? Have you signed up for  
17 litigation skills?

18 THE LAW CLERK: Yes, Your Honor. I took that class  
19 last year.

20 THE COURT: Who was your professor or professors?

21 THE LAW CLERK: Tamara Lave had taught the program, and  
22 I was taught by Robert Amsel and Joe Nascimento, as well as a  
23 host of other judges and attorneys for certain aspects of it.

24 THE COURT: How was it?

25 THE LAW CLERK: It was an excellent experience. I had

1 my final trial in front of Judge Martinez, and I won't soon  
2 forget that experience.

3 THE COURT: I understand that. The reason I ask is  
4 because I've been teaching that course for many years.

5 All right. We're here on Mr. Blemur's motion seeking  
6 relief, 2255. So the burden is on Mr. Blemur. So  
7 Mr. Hirschhorn, I think the first thing we need to talk about is  
8 the issue set forth in the Government's kind of belated Notice  
9 of Supplemental Authority that the defendant, Mr. Blemur, by his  
10 plea, has waived all non-jurisdictional claims, and I think the  
11 three claims relayed here are non-jurisdictional.

12 MR. HIRSCHHORN: Well, Your Honor, certainly, I would  
13 concede that the Motion to Suppress issue is not a viable issue  
14 for an ineffective assistance of counsel claim. However, we  
15 believe the conduct is part and parcel of the relief we're  
16 seeking, and while I respectfully suggest, because in these  
17 times, certainly in the last 10 years and certainly in the last  
18 two years, trials are almost a forgotten luxury, not because of  
19 the Court, but because of the Federal Sentencing Guidelines.  
20 Somewhere between 95 to 97 percent of all federal Indictments or  
21 Informations resolve in guilty pleas. The only real trial is  
22 trial at sentencing -- is advocacy at sentencing.

23 So if we put this in context, what we're seeking is  
24 motion to vacate the sentence for resentencing, and I believe  
25 the Court retains jurisdiction on sentencing matters. I don't

1 believe that the case cited, the cases cited in supplemental  
2 authority, addressed the fact that if you have ineffective  
3 assistance of counsel at sentencing -- let's assume that for the  
4 purpose of my response to your question -- it just doesn't get  
5 addressed. It just doesn't go away. There has to be some  
6 remedy for a wrong.

7           Because this was a guilty plea, I do concede that the  
8 Motion to Suppress -- the failure to investigate and perhaps  
9 file a Motion to Suppress is not justiciable in front of you,  
10 but I don't believe that it addresses the ineffective assistance  
11 of counsel claim at sentencing.

12           THE COURT: Do you have any legal authority for that  
13 proposition? Because that doesn't comport with my understanding  
14 of the law.

15           MR. HIRSCHHORN: We do not, Judge. We do not, Judge.  
16 And as we pointed out in our initial memorandum, the issue of  
17 ineffective assistance of counsel at sentencing, the basis for  
18 that seems to be one of first impression, certainly in this  
19 circuit.

20           So I think that the way we approach this, Judge, and I  
21 think that the appropriate way to approach it is that if you  
22 have an effective lawyer who either tries a case or negotiates a  
23 plea, but at sentencing totally drops the ball within the  
24 Strickland standards to the prejudice of the defendant, does  
25 that mean the defendant has no remedy? That can't be the law.

1 And if it is the law, I respectfully suggest it's time to change  
2 it.

3 THE COURT: Let me stop you for a second because I'm  
4 looking at the supplemental memo, Page 2, and I'll just read it  
5 verbatim.

6 "Blemur's plea of guilty" -- this is citing to another  
7 case, but it says, "Blemur's 'plea of guilty made knowingly,  
8 voluntarily, and with the benefit of competent counsel,  
9 waived all nonjurisdictional defects in his court  
10 proceedings... [which] includes any claim of ineffective  
11 assistance of counsel unless the deficient performance  
12 relates to the voluntariness of the plea itself."

13 MR. HIRSCHHORN: Well, the way we address that, Judge,  
14 is because when the defendant entered a plea of guilty, he did  
15 so voluntarily and based on, I think, a reasonable assumption  
16 that his lawyer would effectively represent his interests at  
17 sentencing and not make "mistakes" or present allocution that,  
18 frankly, clearly, based on the trial transcript, outraged or  
19 caused the Court to overreact. And the Court appropriately  
20 pointed out it didn't want to overreact.

21 THE COURT: Let me stop you again.

22 MR. HIRSCHHORN: So to the extent --

23 THE COURT: Let me stop you again, because now you're  
24 getting into the merits. I don't want to get into those quite  
25 yet. It seems you have raised three issues; Motion to Suppress,

1 which you've, I think, appropriately agreed, you have to  
2 concede, that that has been waived by the guilty plea --

3 MR. HIRSCHHORN: Correct.

4 THE COURT: -- the other items are post plea, right?  
5 He didn't file a Sentencing Memorandum --

6 MR. HIRSCHHORN: Correct.

7 THE COURT: -- and submitted letters that you think  
8 prejudiced your client's position.

9 But if you look at this quoted language from the  
10 Bullard case, the exception is -- and I'll read it again --  
11 "unless the deficient performance relates to the  
12 voluntariness of the plea itself."

13 So it seems to me based on --

14 MR. HIRSCHHORN: So my answer to that, Judge --

15 THE COURT: I appreciate it's an unreported case, but  
16 it seems to be consistent with all reported cases.

17 The two other issues that you raised, no Sentencing  
18 Memorandum and the nature of the letters, do not relate to the  
19 voluntariness of the plea. It wasn't even known. As a matter  
20 of fact, Mr. Handfield didn't represent your client, I don't  
21 believe, at the time of the plea. So how could those two  
22 items --

23 MR. HIRSCHHORN: But he --

24 THE COURT: Excuse me. Let me finish. How could those  
25 two items, the memo and the letters, relate to the voluntariness

1 of the plea itself?

2 MR. HIRSCHHORN: I think he did represent the defendant  
3 at the time of sentencing, Judge. I think the docket sheet  
4 reflects he might have had one --

5 THE COURT: Time-out. I don't think I misspoke, but if  
6 I did, I meant to say at the time of the plea. If I said  
7 sentencing --

8 MR. HIRSCHHORN: No, I just misspoke. He did represent  
9 the defendant at the time of the plea, Judge. There may have  
10 been another lawyer still of record but was no longer involved  
11 in the defense of the case, but if the defendant at the time he  
12 voluntarily signed the Plea Agreement and acknowledged in open  
13 court that he was satisfied with his client -- with his lawyer's  
14 services, implicit in that is, I think, human nature which says,  
15 I'm satisfied with my client's [sic] services, as he pointed out  
16 in the plea transcript, to date. But I think any defendant  
17 would claim, would believe, would argue that he believed his  
18 presumptively qualified lawyer would continue with competent  
19 representation. And thus, the plea was voluntary to that  
20 extent.

21 If he had known that his lawyer would fall down on the  
22 job, as we have alleged with respect to the sentencing, the most  
23 important aspect of this case, I seriously doubt that the plea  
24 would have been voluntary, but it would have been instead  
25 coerced or misled. Because when you went through the plea

1 colloquy --

2           THE COURT: Let me just stop you there because I just  
3 -- that's an interesting argument, but I don't think it comports  
4 with the law. Cases, even the reported cases, such as the  
5 Wilson case and Castillo-Perez case, all the cases that are  
6 cited are inconsistent with your position and they are very  
7 specific. It's about whether the challenge is directed to the  
8 voluntariness or the knowing nature of the plea itself.  
9 Everything else, other than jurisdictional issues, are waived.  
10 And as I point out, I don't see how your client can make that  
11 argument legitimately saying that after the plea, counsel  
12 dropped the ball.

13           I'm convinced that the law precludes your client from  
14 proceeding on this case because pursuant to these cases; the  
15 Bullard versus Warden and Jenkins, Wilson versus United States  
16 -- I'll just read them -- United States versus Broce, B-r-o-c-e,  
17 Castillo-Perez versus United States, Bailey versus United  
18 States, United States versus Patti, P-a-t-t-i.

19           And frankly, I was wondering when the Government was  
20 going to file such a supplemental memo because it's pretty much  
21 always been the law, at least as I understand it, that there's a  
22 waiver when you enter a guilty plea, except for jurisdictional  
23 issues, and things that go to the nature of the plea, and that  
24 is, the voluntariness and it's counseled and knowingly made.  
25 And I think the record indicates that it was voluntarily and

1 knowingly made. Therefore, I think the client is precluded as a  
2 matter of law from proceeding on the merits. So I would grant  
3 the motion.

4 MR. HIRSCHHORN: Your Honor, before --

5 THE COURT: Let me finish. Let me finish. So I find  
6 that your client is precluded from going to the merits of the  
7 case. However, I am going to also deal with the merits. So  
8 even though you've conceded the Motion to Suppress, we'll even  
9 talk about that, just in case there's an issue.

10 I've read your motion. I have read the Government's  
11 answer and your reply. Do you contend there was anything wrong  
12 with the search warrant itself?

13 MR. HIRSCHHORN: The only contention with respect to  
14 the search warrant, Judge, in light of what appears to be the  
15 law with respect to the search warrant, I don't think it's  
16 relevant that we proceed to discuss the merits of the search  
17 warrant, except when the Government says that it had more than  
18 ample evidence of the defendant's alleged credit card fraud.  
19 Why wouldn't the search warrant have specified --

20 THE COURT: Mr. Hirschhorn, let me stop you.

21 I'm taking it one step at a time. The first step is I  
22 think with regard to the Motion to Suppress, the question is  
23 whether the search warrant itself is valid or not. Then the  
24 next question is, if they went outside the bounds of the search  
25 warrant, was there an exception that applies here.

1           So my first question to you is, do you have any  
2 objection or concern about the nature of the search warrant  
3 itself?

4           MR. HIRSCHHORN: Only because it failed to describe  
5 with particularity the scope of the search to include a desk,  
6 for example, or a file cabinet, specifically.

7           THE COURT: Okay. All right. So your real argument is  
8 that it should not extend to the credit cards.

9           MR. HIRSCHHORN: Because the credit cards were in a --  
10 as I understand the facts and the Government's response, the  
11 credit cards were in a desk occupied by the defendant, and the  
12 justification for the plain view or inevitable discovery is,  
13 well, it was his desk. But the point is, if the Government knew  
14 in advance that it was likely to be in his desk, because that's  
15 where people keep documents or things of this nature, the search  
16 warrant should have asked for authority to search the desk just  
17 as it should have asked for authority to search for a safe or a  
18 file cabinet.

19           THE COURT: Well, you know, my experience has been -- I  
20 haven't dealt with search warrants recently, but you don't need  
21 that specificity. You're going to go look for whatever the  
22 contraband is, whatever it is, in the house or maybe an  
23 apartment or a room or some such thing like that. It's  
24 implicit, and reasonably implicit in my mind, that when you look  
25 for things like thumb drives and floppy disks and storage



1 devices and all those kind of things that you would look in a  
2 desk, and that seems just common sense and not an unexpected  
3 extension of looking for those kind of items. I think we all  
4 agree that's what happened here. They were looking for  
5 information that would be found on data storage devices, et  
6 cetera, et cetera, et cetera, and in doing so, they opened up  
7 the drawer and there were some in plain view it seems to me, and  
8 there's nobody to contest that, in plain view in the desk were  
9 these credit cards.

10 Let me tell you. I would have been the judge on this.  
11 Ultimately, it might have gone to the magistrate judge for the  
12 R&R, but ultimately I would have decided. I would not have  
13 granted the Motion to Suppress under these facts.

14 The search warrant itself is perfectly fine. It  
15 describes the location and the type of items that were being  
16 sought, and it seems to me this is clearly a case of in clear  
17 sight. So that doctrine would apply here, and I would have  
18 denied the motion.

19 So in this case, let's assume that Mr. Handfield was  
20 deficient in not filing the motion. There's no prejudice  
21 because had he filed it, it would have been denied.

22 MR. HIRSCHHORN: Your Honor --

23 THE COURT: And I guess additionally, since it would  
24 have been denied, it's not deficient performance.

25 MR. HIRSCHHORN: Your Honor, I appreciate what you



1 said. I don't necessarily disagree with anything you said,  
2 except I'd point out that you did say implicit within the  
3 warrant is where these kinds of things are likely stored, and as  
4 a result of that, when they went into the desk to look for the  
5 items they were specifically authorized to look for, in plain  
6 view were the credit cards.

7 But my point is, if it's implicit in the warrant and  
8 everybody knows that's where people store things, why not make  
9 it explicit? That's my whole argument.

10 THE COURT: Let's use a different example. Let's say  
11 drugs are involved. By your analysis, you would say the warrant  
12 should say, go to 1345 Southwest 8th Street, Apartment 6, and  
13 look under the bed, under the mattress, in the closet, in the  
14 kitchen, in the utensils in the kitchen, on and on, and it would  
15 be page after page after page. And that, I think, would create  
16 some real practical problems. So I don't have any problem on  
17 the merits of this case. I would not have granted the motion,  
18 clearly. So both it's waived and it would not have been  
19 successful and, therefore, there's no harm, no foul in that  
20 case.

21 So let's talk about the Sentencing Memorandum, which  
22 again I think has been waived because it doesn't deal directly  
23 with the voluntariness of the counseled plea which occurred,  
24 obviously, two or three months before the sentencing, so... I  
25 was struck by your reply, Mr. Hirschhorn -- and by the way, I

1 give you credit for reading some friendly advice, because judges  
2 do not like surprises.

3 MR. HIRSCHHORN: I didn't read it. Alex, my law clerk,  
4 did, Judge. He's the one that found it.

5 THE COURT: But do you know how he got that?

6 MR. HIRSCHHORN: I was aware of it.

7 THE COURT: Do you know how he got that? He got it  
8 probably from Ms. Kettles (phonetic). I handed it out to my  
9 students and maybe it made its way around.

10 But essentially, on Page 6 of your reply, you referred  
11 to United States versus Crane, which is from the Middle  
12 District, and then another case -- there are at least a couple  
13 of cases where it talked about a Sentencing Memorandum or  
14 effectively arguing mitigating factors. So that implies that  
15 you don't have to have a memorandum.

16 My experience has been -- and it's probably close to  
17 50/50, maybe less than 50/50, lawyers filing Sentencing  
18 Memoranda. I don't require it. I don't, frankly, expect it in  
19 certain cases.

20 What I expect is that if there's something particularly  
21 unusual about a case, I think it's probably helpful to the  
22 Court, but I don't require it and I don't think the law requires  
23 it and even your cases.

24 So your argument comes down to, I guess, that  
25 Mr. Handfield did not effectively argue the case orally; am I

1 correct?

2 MR. HIRSCHHORN: Yes. If you look at the language in  
3 Crane on Page 6, the third paragraph of the quoted language,  
4 "By both failing to file a Sentencing Memorandum and failing  
5 to clearly articulate his arguments during the sentencing  
6 hearing, the Court was left unable to make much sense of the  
7 arguments he made on defendant's behalf. As a result,  
8 Mr. Walker's performance fell below an objective standard of  
9 reasonableness."

10 And in going to the transcript of the proceedings,  
11 Judge, at Pages 5, 10, 12 and 13 of the sentencing transcript,  
12 which is document 11, entered on the docket on August 31st --  
13 I'm sorry -- entered on the docket on August 19th, 2019, that  
14 those pages, we see the Court questioning whether it was the  
15 acoustics and your hearing or whether it was confusion being  
16 created by an inarticulate, perhaps not well-thought-out  
17 sentencing presentation.

18 For example, on the top of Page 5 you say, "Wait.  
19 You're mixing things up here. Let's see if we can agree at  
20 least on the loss what the number is."

21 Then when you go to Page 10 --

22 THE COURT: Wait just a second. Was this in your memo,  
23 you're quoting from, your motion?

24 MR. HIRSCHHORN: We've referenced it, Judge, but I'm  
25 now looking at the transcript, the trial transcript.

1 THE COURT: Okay. But you quoted --

2 MR. HIRSCHHORN: I mean, the sentencing transcript.

3 THE COURT: You quoted certain things in the reply, and  
4 so maybe it would be helpful to me if you could just refer to  
5 that.

6 MR. HIRSCHHORN: Well, in our reply, Judge, or I think  
7 actually in our initial memorandum, but also at Page 7 of our  
8 reply, when you asked Mr. Handfield for his recommendation, and  
9 we've quoted it at length, you conclude -- excuse me. It's  
10 clear that you're having difficulty following Mr. Handfield's  
11 argument because you say, "Maybe I misheard. What is it with  
12 regard to Counts 1 and 9?" And then he goes back. And then you  
13 say, "Wait a minute. Wait a minute. Either I'm not hearing you  
14 or my math is wrong." And so that is part of what seems to be a  
15 theme of inarticulate presentation by Mr. Handfield. Perhaps he  
16 wasn't as prepared -- it strikes me that he was not as prepared  
17 as he could have been and thought it out, but it's clear from  
18 the record that we have in the sentencing transcript, Pages 12  
19 and 13, which we quoted -- actually, that starts on Page 10, but  
20 we quoted it all and it's clear that there is a lack of  
21 articulate, clear advocacy.

22 THE COURT: Well, we were having some trouble  
23 communicating a little bit and part of it was my fault and part  
24 of it was Mr. Handfield's fault, but I think we got to the  
25 bottom line and his recommendation.

1           What I always try to do for sentencing purposes, I  
2 always want to find the bottom line for both sides and ask the  
3 Government, what's your bottom line, and then ask the defendant,  
4 what's your bottom line? So I can kind of see where the parties  
5 are going and can evaluate the discussion as we proceed.

6           I will say this: Yeah, we did have some problems  
7 communicating, but I think the bottom line was we came out and  
8 understood it.

9           And for Mr. Blemur's edification, I'll tell you this:  
10 Going into the sentencing and looking at the PSI, I was thinking  
11 of a higher sentence than I came up with. I was thinking in  
12 terms of low end of the guidelines plus, you know, 24 months.  
13 The Government had requested that, if I recall, 120 months, and  
14 that seemed to be reasonable. It was during the oral  
15 presentation and having then read the letters, I felt that there  
16 was some give and take here and that maybe I should do below the  
17 guidelines sentence based on what was presented at sentencing  
18 together with the letters. I think I said somewhere along the  
19 line that it appeared to me this was a -- I'm trying to think of  
20 what the language was -- two tales or -- excuse me. I need a  
21 drink of water here.

22           MR. ESPINOSA: A tale of two cities, Your Honor.

23           THE COURT: Yeah. On the one hand when you read the  
24 PSI and what he did to his friends and countrymen and people  
25 like that -- because this was that kind of fraud. They were not

1 strangers for the most part. They were people that knew him and  
2 relied on him. I thought that was a very egregious crime, quite  
3 frankly, but then I came to appreciate the fact that, you know,  
4 this was somewhat different than his nature. He had done some  
5 pretty good things throughout his life, and so I gave him the  
6 benefit of the doubt based on what happened at the sentencing  
7 hearing, and I went below the guidelines. So I think in that  
8 respect, Mr. Handfield was pretty persuasive.

9 I will say I think his oral presentation is probably  
10 better than his written presentation. That's just my guess, but  
11 he's a very effective advocate, and I think in this case,  
12 because of his advocacy, I was convinced that this guy -- you  
13 know, he did some really outrageous things with regard to the  
14 fraud on his friends and family and churchgoers, as I recall,  
15 and listeners, things like that. But final analysis, you know,  
16 I gave him that benefit. So I think Mr. Handfield kind of  
17 carried the day for Mr. Blemur quite frankly.

18 I don't have an absolute recall of the sentencing, but  
19 I have a fairly good recollection of the sentencing because it  
20 was kind of unusual in some ways. You know, he was a radio  
21 commentator, as I recall, and was he a lay priest or minister or  
22 something like that and how he was dealing with friends and  
23 neighbors. So I don't know, I kind of doubt that in regard to  
24 what else would have been said I would ever have gone any lower  
25 than I did. I think I actually gave him the benefit of going

1 below the guidelines. I did [audio distortion] for home  
2 confinement for a number of months, as I recall.

3 So I just don't see -- you know, maybe someone could  
4 have been more articulate. Maybe someone could have been able  
5 to bring the Court around to where the Court eventually got to  
6 better than Mr. Handfield, but I don't see where it falls under  
7 either prong of Strickland, either ineffective assistance or of  
8 prejudice.

9 I mean, he got a very good result for Mr. Blemur. He  
10 really did. One that, frankly, I sometimes question myself  
11 about whether that was the right thing, but that's mainly on  
12 things that happened subsequently, I guess.

13 MR. HIRSCHHORN: May I respond to that, Judge?

14 THE COURT: Sure.

15 MR. HIRSCHHORN: And I appreciate the Court advising us  
16 what was going through your mind and where you were thinking.  
17 But in the first place, he was a radio personality of sorts and  
18 a real estate investor. He was not, to my knowledge, a man of  
19 the cloth.

20 But I think what the area --

21 THE COURT: Wasn't there something that relates to  
22 that?

23 MR. HIRSCHHORN: Yes. He called this or someone called  
24 it a divinity fraud because it was either his former in-laws or  
25 his in-laws at the time that were duped into that. So I think

1 that's where -- and he was also in law school, in his second  
2 year of law school during some of the stuff.

3 But I can't help but wonder where Mr. Blemur would have  
4 been on a sentence if there had been an objection, an effective  
5 objection to the loss amount written and articulated  
6 appropriately and then litigated, objecting to loss amount is  
7 overstating the seriousness of the offense. There was an  
8 objection to the inclusion of the credit cards because it pushed  
9 him over the threshold limit and you did say it was that close  
10 and you would take it into consideration, but that's different  
11 than articulating and litigating appropriately the loss amount  
12 overstating the seriousness of the offense, one. Two, the  
13 sentencing motion, written sentencing motion filed prior to  
14 sentencing gives the Court an opportunity to reflect on the  
15 defendant's side of his life and the 3553(a) factors in detail.

16 As we pointed out in our memorandum, more often than  
17 not, right or wrong, it is what it is, probation department  
18 frequently aligns almost lockstep with the Government's position  
19 not only with the offense, but also its recommendations, and so  
20 the only thing a defendant has is artful, persuasive advocacy  
21 within the context of the 3553(a) factors. And we believe that  
22 had a motion been filed in support of a reasonable sentence and  
23 carefully articulated 3553(a) factors, we know the Court would  
24 have looked at that motion in advance of sentencing, probably  
25 just like you looked at the letters.

1 THE COURT: Well, let me ask you, what could have been  
2 said that wasn't said by Mr. Handfield?

3 MR. HIRSCHHORN: Well, okay, there was a two and a half  
4 page single-spaced -- not memorandum, but letter drafted by  
5 Mr. Blemur and his wife which set forth all his charitable and  
6 community activities with specificity which he had engaged in  
7 prior to, during, and during the time of the fraud, and there  
8 were details provided to Mr. Handfield in that letter which  
9 should have found its way into a Sentencing Memorandum for the  
10 Court's consideration as a human being.

11 THE COURT: Let me stop you.

12 I'm not a big fan of relying on a Sentencing  
13 Memorandum. I like the give and take during the sentencing  
14 hearing.

15 MR. HIRSCHHORN: Okay.

16 THE COURT: And I can better appreciate what's being  
17 said. I can maybe have a question and answer, give and take,  
18 maybe challenge some things, clarify some things, and frankly, I  
19 don't particularly like to go over everything two or three  
20 times. If we do at a Sentencing Memorandum, I'm less likely to  
21 be willing to spend a lot more time going over the same thing  
22 and repeating it in oral argument. That's just me. Maybe  
23 that's a fault I have, and so I thought he got credit for his  
24 good deeds, his good works, and I think I made that clear in the  
25 transcript. Maybe I didn't make it clear enough, but that is

1 basically the reason that he got a below the guideline sentence.  
2 Had it not been for that, he would have gotten a guideline  
3 sentence, most likely.

4 I mean, I remember, you know, realizing that -- I mean,  
5 didn't we have some letters from some of the victims, as I  
6 recall, that were submitted?

7 MR. HIRSCHHORN: Yes. Yes.

8 THE COURT: And those were also impactful, I thought,  
9 but even in view of those, I still gave him below the guideline  
10 range. I mean, there were some people that if you read the  
11 letters, you almost see the tears. They lost their life savings  
12 and they were elderly people, as I recall, things like that.

13 So I just can't imagine that I would sentence to less  
14 than I did based on good works and I say there was -- that's why  
15 I refer to him almost like the tale of two cities, the tale of  
16 two people. There was the good works Blemur and then there was  
17 this guy who just took very, very significant advantage against  
18 his friends and relatives. I think he got what he could have  
19 gotten.

20 MR. HIRSCHHORN: Fair enough, Judge.

21 THE COURT: While we're on it, you always think you're  
22 so persuasive in persuading the judge, but sometimes the judge  
23 comes to these conclusions on their own, and I think that's what  
24 I did in this case. I heard all the presentation and I don't  
25 think as capable and persuasive as you are, Mr. Hirschhorn, I'm

1 fairly confident you wouldn't have gotten any better result  
2 because I pretty much came to that result on my own after  
3 listening to both sides of the argument, both the good guy and  
4 then the bad guy as represented by some of the victims, and, of  
5 course, the guidelines and the actual crime itself.

6 MR. HIRSCHHORN: Fair enough, Judge. You're not the  
7 first judge to say that you could have an oral argument  
8 sentencing presentation, but try not to repeat what's in your  
9 Sentencing Memo. I get that and I understand it. However, you  
10 were getting letters, character letters that were not screened  
11 by Mr. Handfield in which --

12 THE COURT: Okay. Time-out. Time-out. Now, we're  
13 going to the third item, right, the letters?

14 MR. HIRSCHHORN: Because that relates to sentencing.  
15 That relates to the sentence.

16 THE COURT: Right, right, but that's the third point.  
17 One was the Motion to Suppress and I denied that both on the  
18 waiver and on the merits, and now with regard to the Sentencing  
19 Memorandum, I think that's also resolved by the waiver, but also  
20 on the merits because I don't think that prejudices your client  
21 in any way. So I'm going to deny it, both the first two.

22 Now we go to the letters, the supporting letters.

23 MR. HIRSCHHORN: Okay. So on the letters, Judge, at  
24 the time of sentencing, Mrs. Blemur was called as a witness, and  
25 I respectfully suggest she was not as prepared as a lay person

1 as she should have been with respect to her anticipated  
2 testimony.

3 But she said in the sentencing transcript, Page 21,  
4 Line 11, "I believe that in life we all make mistakes."

5 Now, that word "mistakes" rubbed you wrong, clearly  
6 rubbed you wrong because at Page 25 of the sentencing  
7 transcript, as we pointed out in our memo in support of our  
8 2255, you said, with regard to the letter, Page 11 -- I'm  
9 sorry -- Page 25, Line 11:

10 "With regard to the letters written in Mr. Blemur's  
11 support" -- and then I'm going to skip the rest of that  
12 quote and drop down to where you say at Line 20, "But in  
13 these letters I will note that -- not every one of them but  
14 several letters, including some of his family members --  
15 described what he did as, in one case, consequential  
16 mistakes and another letter says a few mistakes. Others  
17 just refer to them as mistakes.

18 "I do not view this episode as any kind of a mistake,  
19 few mistakes or consequential mistakes." I'm over on Page  
20 26. "This is a long-standing criminal scheme lasting more  
21 than two or three years involving a lot of victims. These  
22 are not mistakes. These are deliberate criminal acts."

23 And then, regrettably -- so it's clear that while you  
24 were getting those letters prior to sentencing and reading them  
25 prior to sentencing, the use of the word "mistakes" did not sit

1 well with you and I agree. This was not a mistake and people  
2 who wrote letters trying to mitigate what he did, in essence,  
3 did the reverse and trivialized what he did to a judge appointed  
4 by the President of the United States for life who has sat on  
5 hundreds, if not thousands of cases and knows that his conduct,  
6 Blemur's conduct was not a mistake. It was not one isolated  
7 incident which could have been a mistake. It was not even a  
8 mistake in judgment. It was a scheme, as you correctly pointed  
9 out.

10           And then what exacerbated it from Mr. Handfield's  
11 perspective was, A, not reviewing these letters before they were  
12 sent to you and that you read in anticipation of sentencing and  
13 no doubt ruminated on, how could these people really tell me  
14 it's a mistake? And then at Page 29, Mr. Handfield is  
15 articulating on -- Mr. Handfield is advocating and providing  
16 allocution. He starts at Page 28. I'll skip that and start at  
17 Page 29 where he's still talking to you in the last moments of  
18 Mr. Blemur's presentation about someone that he unfortunately  
19 believed was reasonably competent, but it turned out, in our  
20 judgment, was not.

21           "I would just ask the Court --" Quote, Page 29, Line 1,  
22           "Mr. Handfield: I would just ask the Court to -- obviously,  
23           this Court has to give a punishment. I know this Court.  
24           I've been knowing this Court for a long time. I would just  
25           ask this Court to allow him to do everything he can to make

1 good on trying to, in this last chapter of his life, try to  
2 correct all of the mistakes he had made."

3 And your response, Judge, quick response -- now, this  
4 is a black-and-white transcript. It's not like we have a video,  
5 but I can imagine.

6 At Line 7 of Page 29: "The Court: They're not  
7 mistakes. I don't like to hear that word. Let me tell you,  
8 I do not like to hear that word in this context. I thought  
9 I made that clear. It is not a mistake. It's every day  
10 getting up and deliberately defrauding his countrymen,  
11 churchgoers, former relatives and friends. Frankly, I don't  
12 understand how someone can live with himself every day doing  
13 that."

14 And Mr. Handfield said, "Yes," and then you continued  
15 on Line 15.

16 "The Court: So it's not a mistake. I don't mean to  
17 overreact to that. But when I hear someone say, oh, these  
18 mistakes, there are a few mistakes, consequential mistakes  
19 or inconsequential mistakes, that's not what this is about."

20 And then the last thing I want to quote is  
21 Mr. Handfield's response. Mr. Handfield at Line 19:

22 "What he did was wrong. He understands what he did was  
23 wrong. I understood what he did was wrong, and I understand  
24 that he has to be punished for his decisions."

25 Never once did Mr. Handfield apologize to the Court or

1 seek to withdraw his ill-gotten statement which clearly, clearly  
2 upset the Court, that it was a mistake.

3 THE COURT: Okay. Let me stop you. Time-out.

4 MR. HIRSCHHORN: And so I, as an advocate, Judge --

5 THE COURT: Let me stop you. Let me stop you.

6 You know, I guess I have to reveal something.  
7 Sometimes things I say on the bench I do for effect and this is  
8 precisely what I do in this matter and it's not for  
9 Mr. Handfield, it's not for Mr. Blemur. It's for all those  
10 people sitting in the audience. There were people sitting in  
11 the audience who wrote those letters. I do it on a regular  
12 basis when I get those kind of letters, and in these letters I  
13 get in support of various defendants, dozens and dozens, maybe  
14 hundreds, typically, somebody along the line, a family member or  
15 a good friend will talk about mistakes. I use that as an  
16 opportunity to educate not Mr. Blemur, not Mr. Handfield, not to  
17 educate myself with regard to what the proper sentence is, but  
18 just to let the people sitting out in the audience know, as I  
19 did on this occasion, that this is not a mistake, folks, and  
20 those of who you have sympathy for him must realize that this is  
21 more than a mistake, it's a criminal act. It had nothing to do  
22 whatsoever about my view of where in the guidelines he should be  
23 sentenced. It had no effect on the sentence itself.

24 It is my way of just trying to educate those people who  
25 come into court on what's really going on here, and it's not a

1 mistake. That's it. It did not affect in any way, in any way  
2 the sentence. I guarantee you that. I do this time and time  
3 again. Maybe I'm going to stop doing it because you seem to  
4 make more of it than I made of it. Yes, I do tell those people,  
5 I say, that's not a mistake. We have a criminal act here. It  
6 does not affect the sentence. It didn't affect the sentence  
7 here and it didn't affect the sentence on the other dozens and  
8 dozens, maybe hundreds of cases where letters that say "mistake"  
9 are written there. And I usually don't say it unless there are  
10 people in the audience. I can think of a number of occasions --

11 MR. HIRSCHHORN: I can't respond?

12 THE COURT: You can.

13 MR. HIRSCHHORN: I can.

14 THE COURT: But you're not going to change my mind.  
15 You're not going to change my mind because I know what my mind  
16 was at the time and what my thinking was and whether it affected  
17 the sentencing or not, and it did not in any way affect the  
18 sentence.

19 MR. HIRSCHHORN: I can't, obviously, respond. I accept  
20 what the Court said because the Court was revealing its  
21 innermost thoughts. All I can say is that as a post conviction  
22 look back, as Mr. Blemur sat there and was about to be  
23 sentenced, he heard you say to his lawyer, "I don't want to  
24 overreact," which means you reacted regardless of what -- you  
25 reacted to the use of the word "mistake" which was made worse by

1 Mr. Handfield, his advocate, his lawyer, Blemur's warrior, who  
2 made it worse by his use of it. And, in fact, if Handfield was  
3 as experienced as he claims to be and before you as often as he  
4 claimed to be, you would think he would know better than to use  
5 the word "mistake." I certainly know --

6 THE COURT: You've never used that word? I kind of  
7 doubt --

8 MR. HIRSCHHORN: I have used that word for isolated  
9 incidents.

10 THE COURT: Time-out. I believe we're going around and  
11 around. I'm not going to change my mind on this. I know what I  
12 had in mind and I know why I do that. And maybe I won't do it  
13 anymore, but I think it's good -- I think I will continue to do  
14 it because I think it's good to let those people know who come  
15 in to support somebody who has done some bad thing, that it's  
16 more serious than they let on to be. Sometimes they're misled  
17 as to what the crimes were.

18 So to me, I think it's important to send the message  
19 not to the defendant, not to affect the sentencing, not to  
20 berate the lawyer, but to let the people sitting out in the  
21 audience know why I'm doing what I'm doing and that there's some  
22 seriousness to these criminal acts and they're more than  
23 mistakes. It's nothing more, nothing less than that. It  
24 happens all the time. I get these kinds of letters all the  
25 time.

1 I got some ahead of a sentencing today. I have one  
2 case, five defendants. I'm fairly sure every defendant had a  
3 number of letters and I'm fairly confident that each of the  
4 group of letters, at least one person referred to this as a  
5 mistake or something similar to that. It's just done all the  
6 time. It doesn't affect the sentencing. I don't think it  
7 affects any judge.

8 But yes, I want to send out that message and I do it  
9 and I think it's a worthwhile enterprise. So I'll probably  
10 continue to do it, but it did not affect the sentence in any  
11 way. So it did not prejudice your client in any way, I  
12 guarantee you that.

13 So I don't know if there's anything else we need to  
14 talk about because I think your client has waived all these  
15 charges, all these claims by the guilty plea, because none of  
16 them are jurisdictional and none of them go to the voluntariness  
17 of being counseled or being knowingly made, and I don't think  
18 any of them survive on the merits as I've tried to indicate. I  
19 know you've done a good job in trying to convince me otherwise,  
20 but I just know -- I have the advantage of knowing what I did at  
21 this sentencing, and I know what I would have done on the  
22 motions to suppress.

23 MR. HIRSCHHORN: Your Honor, you haven't uttered your  
24 final ruling, but when you do, may I be heard for a brief  
25 moment? Because it sounds to me like you haven't -- I mean, I

1 guess you're saying you're denying it both on jurisdictional --

2 THE COURT: I deny it on all three grounds for two  
3 reasons. One, because your client has waived it by his guilty  
4 plea; two, each of those three arguments you have made, I'm  
5 denying them on the merits.

6 MR. HIRSCHHORN: Understood.

7 Two comments, if I might: In 1979 and 1980 when I  
8 argued a motion that was deemed by the then judge to be  
9 frivolous, and he actually used the word "ridiculous," the  
10 judge's denial of that motion to preclude cameras from the  
11 courtroom over a defendant's objection, got me all the way to  
12 the United States Supreme Court. I only say that sometimes I am  
13 undaunted. Having said that, Judge -- well, I lost, by the way,  
14 in the United States Supreme Court, too, but I got there.  
15 Having said that, I would ask the Court if it would issue a  
16 Certificate of Appealability on the issue of whether or not the  
17 sentencing questions survive -- ineffective assistance of  
18 counsel at sentencing survive a guilty plea.

19 THE COURT: I don't think they do. I don't think the  
20 COA or Certificate of Appeal is appropriate in this case. I  
21 wouldn't normally grant it, and I'm not going to grant it in  
22 this case, either. I don't think it's a close question under  
23 current law. Maybe they can change the law, but I think under  
24 the current law it's not a close question.

25 MR. HIRSCHHORN: Well, we do have that -- we, defense

1 lawyers, have that obligation to seek in good faith an extension  
2 of the existing law.

3 THE COURT: And you also have the right to convince the  
4 Eleventh Circuit that it's a matter they should take up. I'd be  
5 interested. You know, maybe they're going to change the law and  
6 carve out another exception, but I don't see it there yet.

7 MR. HIRSCHHORN: Time will tell.

8 THE COURT: Time will tell.

9 All right. So anyway, I guess it's pretty obvious I'm  
10 denying the motion for the reasons I've set forth here and I'll  
11 probably just give you a very brief order denying it for the  
12 reasons I said here today and you have the transcript. You have  
13 all the discussions, the give and take. It's been kind of an  
14 interesting discussion. I think you have an uphill battle. You  
15 never know. You always do a good job, Mr. Hirschhorn.

16 MR. HIRSCHHORN: Well, I hope your students enjoyed the  
17 academic discussion. You know, the thing about the pandemic  
18 that really troubles me is I miss the repartee in being in  
19 court. I miss that and I know you do, too.

20 THE COURT: And try as we may, it doesn't work as well  
21 on Zoom, but Zoom, you know, does serve a purpose.

22 All right. That's my decision and I'll be interested  
23 in seeing what happens in the Eleventh Circuit and maybe the  
24 Supreme Court.

25 You all have a good day and stay safe.

1 MR. ESPINOSA: You too, Your Honor. Thank you.

2 MR. HIRSCHHORN: Thank you, Judge.

3 MS. FRITZ: Thank you.

4 (The hearing concluded at 12:25 p.m.:)

5

6 C E R T I F I C A T E

7 I hereby certify that the foregoing is an accurate  
8 transcription of proceedings in the above-entitled matter.

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10 ----- 11-12-21 -----  
Date

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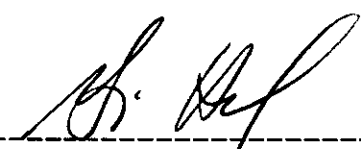
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