UNITED STATES DISTRICT COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Case No. 22-12379-A

UNITED STATES OF AMERICA,

Appellee,

Vs.

DONTAVIOUS BLAKE,

Appellant.
_____/

APPELLANT'S APPLICATION FOR CERTIFICATE OF APPEALABLITY

MAY IT PLEASE THE COURT;
Appellant respectfully moves this honorable court to grant this motion and issues a certificate of appealabity in the above styled cause and order relief as follows:

1. Statement of the Case-Criminal-Civil Case History: Appellant was originally arrested in case number 13-MJ-08082-DLB on a criminal complaint [Cr.DE 1] and made initial appearance before the court on February 21, 2013 along with co-defendant Tara Jo Moore [Cr.DE 11, 12]. Both were appointed counsel, appellant was to be represented by the Federal Public Defender [Cr.DE 20, 15]. On March 5, 2013, after a hearing appellant was ordered detained without bail pretrial [Cr.DE 23, 24]. On March 7, 2013 a grand jury indictment was returned charging appellant and co-defendant with count 1, sex trafficking of T.H. a minor and count 2, conspiracy to sex traffic T.H. a minor (all in violation of Title 18 , United States Code, Sections 1591(a)(1) and (b)(2), and 1594(c) [Cr.DE 32], appellant entered his plea of not guilty

[Cr.DE 36], and discovery was ordered [Cr.DE 37]. Thereafter, discovery was produced [Cr.DE 50, 51, 52, 53 and 54]. On April 18, 2013 a superseding indictment was returned which amended the original by adding alleged victim E.P. to count 2 and adding a count 3 for victim E.P. (sex trafficking) [Cr.DE 72], and appellant renewed his not guilty plea [Cr.DE 81]. Following several continuances, on February 27, 2014 a second superseding indictment was returned [Cr.DE 125], the next day, February 28, 2014, appellant renewed his not guilty pleas [Cr.DE 131]. On May 22, 2014 a third superseding indictment was returned, which added count 4 (sex trafficking by force of a new victim K.T.), count 5, (sex trafficking by force of a new victim K.C.) and count 6 (conspiracy to commit sex trafficking by force with Tara Jo Moore) [Cr.DE 147]. Appellant again renewed his not guilty pleas [Cr.DE 149, 155]. It is duly noted that the original counts allege sex trafficking of the 2 minors while the added 3 counts allege sex trafficking by force of adult victims. On October 27, 2014 trial with a jury commenced [CR.DE 261]. On November 5, 2014 the district court granted a judgment of acquittal as to counts 4, 5 and 6 (the sex trafficking by force counts) and counts 1, 2 and 3 were submitted to the jury [Cr.DE 272]. On November 5, 2014 the jury returned guilty verdicts as to counts 1, 2 and 3 as to appellant and Tara Jo Moore. [Cr.DE 277 and 278]. On December 19, 2014 a presentence investigation report was filed as to appellant and Tara Jo Moore [Cr.DE 285 and 286]. On January 6, 2014, appellant filed objections to the presentence investigation report and

a sentencing memorandum [Cr.DE 287 and 288]. On February 17 and 19 appellant filed additional sentencing memorandums [Cr.DE 303 and 304]. On July 16, 2015 appellant was sentenced after hearing as to counts 1, 2 and 3 to 324 months in the Bureau of Prisons followed by supervised release for life [Cr.DE 373]. On July 27, 2015 appellant filed his direct appeal [Cr.DE 375, 377]. On October 10, 2017, appellants convictions and sentences were affirmed [Cr.DE 464]. On April 16, 2019 appellant filed his motion to vacate judgment and sentence and memorandum of law[Cr.DE 467 and 468] and on July 7, 2022 the district court denied appellant's motion to vacate [Cr.DE 481].

2. Appellant's motion to vacate was assigned case number 19-cv-80523-KAM and an amended motion and memorandum were filed on May 16, 2019 [Cv.DE 8, 9]. The government responded [Cv.DE 10] and on February 23, 2020 the district court ordered an evidentiary hearing which was held on May 12, 2022 [Cv.DE 40]. On July 7, 2022 the district court entered final judgment denying any post conviction relief [Cv.DE 46]. On July 16, 2022 appellant filed his notice of appeal [Cv.DE 47].
3. This appeal concerns the points of relief denied by the district court in [Cv.DE 46]; 1) ineffective assistance of counsel (hereinafter referred to as "IOC") as to counsel's advice regarding consequences of guilty plea [Cv.DE 46-5]; 2) IOC as to counsel's failure to object to co-defendant's counsel tactics [Cv.DE 46-7]; 3) IOC as to counsel's failure to file a motion for judgment of acquittal [Cv.DE 46-8]; and 4)

appellant's request for recusal of the district court [Cv.DE 10].

4. Legal Authority for Relief Requested: When the district court does not issue an order granting a certificate of appealability on an issue or issues appellant wishes to raise on appeal, appellant must show entitlement to a certificate of appealability. To do so, appellant must make a "substantial showing of the denial of a constitutional right." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). This generally requires a "showing that reasonable jurists could debate whether the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." 28 U.S.C. § 2253(c); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

5. Factual Basis for Relief Requested-Certificate of Appealability: At the hearing on the motion to vacate sentence numerous witnesses testified under oath before the court as follows. Nancy Marie Anderson testified that appellant is her son; that in 2013 appellant was arrested; that she attended court on several occasions, including the trial; that between the date of arrest and the trial that she spoke with appellant over the phone (appellant was in custody) "a lot"; that she and appellant discussed his case; and that "it was my understanding that he didn't have a – he was offered a plea for life.."If he took a plea, he would get life…If he went to trial, he would get life"; that based upon her discussions with her other family members that their understanding was the same as hers (that appellant was facing a life sentence

either way) [Cv. 49-6-8]. Migle Blake testified that: appellant was his son and tht he was arrested in 2013; he did not attend court or the trial, however he did attend the sentencing hearing; that it was his understanding that appellant would be sentenced to life whether or not he pleaded guilty or went to trial [Cv.DE 9-14]. Tacaria Anderson testified that: she was the cousin of appellant; that she knew appellant was arrested in 2013; that she attended the court hearings and trial; that she would speak with appellant and other family members at the home over a speaker phone; that "I was under the impression that he really didn't have an option…" that either way (guilty plea or trial) that appellant would get the same time, a life sentence [Cv.DE 16-20]. Clothilde Ann Hollis testified that: she is appellant's nephew; she knew that appellant was arrested in 2013; she attended his court hearings and trial; that appellant stayed in jail while the case was pending; she spoke with appellant and visited him at the jail; and "it was my understanding that if he had pled guilty, that he will have a life sentence" and that the same result would be after a jury trial [Cv.DE 21-24]. Shativia Hollis-Baker testified that: she is the cousin of appellant; she knew that appellant was arrested in 2013; that she spoke with appellant while his case was pending; and that her understanding was that if he had pleaded guilty he would receive a life sentence and if he went to trial he would receive a life sentence [Cv.DE 25-28]. Thereafter, appellant testified that: he was the defendant in the criminal case 13-80054-KAM; that his codefendant was Tara Jo Moore; that he filed

the two motions for post-conviction relief which were admitted into evidence; that he prepared the documents and mailed them to the court; that everything in the motions was true and correct and he signed them; that counsel was assigned to him by the court; that he and his lawyer discussed a plea bargain and trial possibilities; that the discussions were in person, face to face; that they discussed the sentencing guidelines; that as to the first indictment "my sentencing guidelines was off the charts, so I was looking at life"; as to the original indictment that he asked for a plea and was advised that the government didn't have a plea and counsel never did a guideline computation [Cv.DE 49-30-34]; as to the second indictment based upon his counsel's advice that he would have received a life sentence after either a guilty plea or a trial verdict [Cv.DE 49-35]; he asked his lawyer for a plea bargain offer from the government and that he never received any written proposed plea agreement or other document to plea guilty to [Cv.DE 49-35-36]; appellant received a third indictment which added 3 counts relating to adults and that he did not receive a guideline computation for that indictment and his understanding was that if he pled guilty to the third indictment that he would receive a life sentence [Cv.DE 49-36-37]; his counsel advised that he might receive a lower sentence if he cooperated with the government, however he did not have any information to provide to the government [Cv.DE 49-38]; he proceeded to trial "because I had no choice…I felt like I was being forced and coerced to go to trial because I had – the guidelines was so off

the chart, that I would have been looking at life…so I just went to trial because I was just facing life, life, in the way in goes" [Cv.DE 49-39]; he never received any plea offer for any term of years and he really didn't have any choice and if he had had a choice to throw himself on the mercy of the court and get a term of years he would have done that [Cv.DE 49-40]; as to ground 2 of his motion counsel did not object to his codefendant's lawyer adding things to the evidence that were not part of the trial [Cv.DE 49-41]; specifically counsel did not object to text messages that were admitted into evidence that were "bad for my case" and the text messages were "related to other stuff" not before the court[Cv.DE 49-41-42]; the court then admitted the excerpt of the trial transcript relevant to this point [Cv.DE 49-42]; during the trial counsel did not object to the text messages; the text message were not related to his case; and concerned his relationship with his codefendant; there were no charges pending between appellant and the codefendant [Cv.DE 49-43-44]; ground 3 of his motion concerned counsel's failure to file a motion for judgment of acquittal as to counts 1, 2 and 3 of his indictment; that the court granted a judgment of acquittal as to counts 4, 5 and 6; the evidence presented by the government did not prove the element of "enticing a minor to engage in commercial sex act" and that the evidence presented on counts 4, 5 and 6 was prejudicial and fabricated and false and "it ran over to the other counts…it didn't have nothing to do with the first – 1, 2 and 3 and he was afraid that the jury could not be fair to him as to counts 1, 2 and 3

based upon what they were presented with on counts 4, 5 and 6" and tht is why he wanted counsel to file the motion for judgment of acquittal [Cv.DE 49-45-47]; the court accepted the transcript of the motion for judgment of acquittal hearing of November 25, 2014 into evidence and that the sufficiency of the evidence or the prejudicial spillover issues were not argued [Cr.DE 49-48]; ground 4 of appellant's motion was a request to recuse the court; the court admitted a transcript of the July 16, 2015 sentencing hearing which appellant reviewed on the stand, appellant remembered the court stating on the transcript, referring to the codefendant that "I think she was a victim of Mr. Blake, which is different…She's not a victim of a crime; she's a victim of a manipulative, controlling, unscrupulous individual, who preyed upon victims of the crimes"; appellant recalled hearing that statement by the court and feeling that the court was biased against him and asked the court to recuse itself [Cv.DE 49-48-51]; the court admitted into evidence Bureau of Prison's certificates earned by appellant showing that he was a model prisoner supportive of his testimony and that he "wanted to better himself" [Cv.DE 49-53]; appellant identified his certificate of waiver of confidentiality which was admitted into evidence [Cv.DE 49-54]; appellant identified his affidavit filed in support of his motion and that the affidavit was true and correct when he signed it and that he stated there that "I would get a life sentence, possibility either by pleading guilty or going to trial" which was and is a true statement and that his options were to "plea to

life or get found guilty and receive life" and that he had no other choices "I even asked my lawyer if they would give me 15 or 10 years…and he said no; [Cv.DE 49-55-56]; the court admitted the trial transcripts concerning the inconsistent defense issue as well as the recusal of the court issue, reiterating that the text messages hurt his case [Cv.DE 49-56-58]; the final exhibit admitted was appellants memorandum filed in support of his motion to vacate [Cv.DE 49-60]; appellant affirmed that the information in the memorandum is true and correct, reaffirming that the arguments on page 9 thereof were the same as those presented at the hearing, specifically, uncharged evidence concerning text messages about another person named "Wayne" which had nothing to do with his case; [Cv.DE 49-62]; appellant testified that the government had objected to the evidence but that his lawyer had not objected that he wanted counsel to object but he did not and that he was "being prejudiced because this evidence of uncharged crimes was coming in against him" [Cv.DE 49-63]; if appellant were afforded a chance to plead guilty and throw himself on the mercy of the court that he would do that [Cv.DE 49-64]; appellant felt he did not get a fair trial because of the text messages and wants another trial [Cv.DE 49-65]; appellant wants his motions for judgment of acquittal granted [Cv.DE 49-65}; appellant wants the district court recused…"to be fair and not biased" [Cv.DE 49-65].

6. On cross examination appellant: admitted to the offense conduct which would provide a factual basis for any guilty plea [Cv.DE 49-68] and that he wanted

to plea guilty, and that he told his attorney he was guilty and wanted to plea guilty [Cv.DE 49-69]; counsel did not perform to appellant's approval, did not really work hard for him, and did not take the case seriously, and counsel did not prepare for trial efficiently and did not do a good job at trial; counsel did not communicate to appellant about the elements and the rules of procedure; counsel did discuss the evidence and the guidelines with appellant and assisted in the trial preparation [Cv.DE 49-69-71]; appellant told counsel he wanted to plead guilty, and would plead guilty to help his codefendant and counsel advised that was not a good idea [Cv.DE 49-72]; counsel discussed the specific evidence with appellant [Cv.DE 49-73-74]; appellant recalled conversations with counsel concerning potential cooperation [Cv.DE 49-77-78].

7. On redirect examination appellant testified that: appellant affirmed that he was guilty and would plead guilty given the opportunity; counsel advised him that his guideline level was 49 and with 3 levels off for acceptance of responsibility he would still receive a life sentence [Cv.DE 49-83]; appellant spoke with his lawyer about the 10 or 15 year proposal and that he never received any kind of counter proposal other than the level 49, which was life at the top and bottom guideline range [Cv.DE 49-84].
8. Movant rested his case [Cv.DE 49-84].
9. The government called attorney Neison Marks who testified: Marks represented appellant at trial, that he met with appellant, discussed the case and took notes, that the case was a challenge, and 17

government exhibits were admitted by the court [Cv.DE 86-88]; counsel recognized his handwriting in the exhibits and described his notes a memorialization of parts of his conversation with appellant, beginning 1 month after the indictment; reviewing the notes counsel recalled that there was no offer but the possibility of cooperation [Cv.DE 49-91] (this recollection is consistent with appellant's testimony); counsel recalled efforts to obtain a plea offer, however the government had not agreed with any offer discussed and he met with appellant and advised that the proposal was rejected by the government [Cv.DE 49-94-96]; counsel recalled proposing a guilty plea, and acceptance and the possibility of a variance sentence and the possibility of the codefendant cooperating against him and his cooperating with the government(no firm offer at all and numerous moving parts) [Cv.DE 49-97-99]; counsel recalled a concern about appellant receiving bad advice from "jailhouse lawyers" and his mother [Cv.DE 49-100]; following numerous other meetings there was still no plea offer pending, and again reiterated there was no government counteroffer ever[Cv.DE 49-106-108]; counsel advised appellant that he had seen other defendants with similar cases go to trial and get life in prison afterward [Cv.DE 49-109]; counsel recalled additional discussions including with another prosecutor and plea discussions however no formal agreement or offer was ever proposed [Cv.DE 49-114-115].

10. On cross-examination counsel testified that: his hand written notes reflected that sentencing guidelines were at all times very high and that "Once

you get in the mid 40's, it's off the guideline chart and there was never any agreement with the government on a plea deal [Cv.DE 49-119]; that appellant's guidelines computed in the PSI report, assuming a three level downward adjustment for acceptance of responsibility would still be life [Cv.DE 49-121]; counsel recalled that there were some possible defense witnesses and evidence however none were called at trial so there was no affirmative defense to present {Cv.DE 49-123].

11. Relief Requested-Reasons for Granting this Application for Certificate of Appealability: In appellant's motion under 28 USC § 2255, appellant asserted ten claims for relief and requested an evidentiary hearing [Civ.DE 1]. At the threshold the district court construed appellant's claims raised (in consideration of the liberal construction of pleadings afforded to pro se litigants pursuant to *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972)) the following claims: a) (Ground One) IOC concerning the advice that appellant would receive a life sentence after either a guilty plea or a trail guilty verdict; b) (Ground Two) IOC for failure to object to the prejudicial text messages and references to uncharged conduct between appellant and the codefendant Tara Jo Moore; c) (Ground Three) IOC concerning failure to move for a judgment of acquittal as to counts 1, 2 and 3 of the second superseding indictment on grounds that the enticement element proof failed and, the evidence from dismissed counts 4, 5 and 6 was unduly prejudicial against appellant as to counts 1, 2 and 3;and, d) (Ground Four) Appellant's request for recusal of the district court due to the courts on the record statements regarding appellant.

12. (Ground One) IOC concerning the advice that appellant would receive a life sentence after either a guilty plea or a trail guilty verdict: When a defendant challenges a guilty plea after sentencing on the ground that his lawyer provided him ineffective assistance of counsel, the defendant must demonstrate that his counsels advice and assistance was not within the range of competence demanded of attorneys in criminal cases, and that there is a reasonable probability that, but for counsel's misadvise, he would not have pleaded guilty but would have had a jury trial. *Hill v. Lockhart*, 474 U.S. 52 (1985). The record here before the court demonstrates that there was at a minimum a failure to adequately advise appellant as to his range of options in advance of his jury trial which in all criminal cases is the last resort. Where counsel fails to communicate to defendant a plea offer, in order to show prejudice where a plea offer has lapsed or been rejected because of counsel's deficient performance, the defendant must demonstrate a reasonable probability that he would have accepted a more favorable plea offer had he been afforded effective assistance of counsel and that the plea would have been entered without the prosecution's

cancelling it or the district court's refusing to accept it, if they had the authority to exercise that discretion under state law. *Missouri v. Frye*, 132 S.Ct. 1399 (2012). When counsel's ineffective advice leads to an offer's rejection, and where the prejudice alleged is having to stand trial, a defendant must show that but for the ineffective advice, there is a reasonable probability that the plea offer would have been presented to the court, that the court would have accepted the terms, and that the sentence would have been less severe that under the actual sentence imposed. Lafler v. Cooper, 132 S.Ct. 1376 (2012). Appellant and all witnesses testified that it was understood by all that appellant would be facing a life sentence on a guilty plea as well as a trial guilty verdict due to the application of the guidelines with the final sentencing range being life at the low end and life as a maximum sentence. The testimony of appellant was corroborated by that of the witnesses and counsel. There was no factual challenge that appellant was never made any firm plea offer of any range. Further, counsel and appellant both testified that there were lengthy plea discussions amongst themselves and that while the government was

involved at times, an affirmative effort was made to propose specific settlement terms to the government. Counsel and appellant both testified that there was never any government response or counter-offer to their offer. Appellant's guideline range was a combined offense level of 46, with an added chapter 4 enhancement of 5 levels for a level 51 (all of counsel's shared concerns regarding the application of the guidelines were realized) which was reduced to 43 (the top of the guidelines) by Chapter 5, Part A (comment note 2); thus, the testimony of appellant, counsel, and all witnesses was consistent that even with a guilty plea and acceptance of responsibility adjustment (-3 levels), appellants guidelines would be unchanged (level 43, a sentence of life regardless of criminal history category; appellant scored a criminal history category of IV). Thus, the undisputed portion of the record supports appellant's testimony that indeed he believed that he would be sentenced to life in prison after a trial verdict or plea allowing no incentive to enter a guilty plea and throw himself upon the mercy of the court. It is also undisputed that appellant's final sentence was determined by the district court to be a term of 324 months in the

Bureau of Prisons [Cr.DE 373] (with a criminal history category of IV Level 38, range 324-405) representing a 5 level downward variance from the total offense level of 43 to a low end sentence of level 38. It strains all credulity and logic to assume that had appellant pled guilty and received some credit for acceptance of responsibility that he would receive a 324 month sentence, all other factors remaining equal. Counsel confirmed appellant's testimony that no counter-offer was ever received to the original settlement proposals made by the defense which clearly indicate an intention on the part of appellant that he did not want to have a trial. Further, appellant freely admitted his guilt before the court under oath. There is no evidence in the record that appellant ever demanded a jury trial. There is no evidence that there was some affirmative defense that could have been presented, a mistake as to identity, entrapment, duress, insanity were never mentioned. Counsel referred vaguely in his testimony to some possible witnesses who might support the defense in some way, however in the end, no defense was presented and appellant was left with weak credibility challenges to government's witnesses. Counsel testified that while

there was some impeachment material that in large part, the case witness testimony was bolstered by stronger, relevant electronic and other documentary evidence. Under these circumstances, the only rationale for proceeding to jury trial would be as the last resort, with on other possible options. Clearly, appellant and the other witnesses were at a minimum not connected with counsel on this critical point of fact. Additionally, there is no record evidence of any colloquy by the court as to any plea discussions nor and waiver of defendant of his right to throw himself on the mercy of the court and plead guilty to without any deal with the government. But for counsel's errors appellant would have pled guilty and thrown himself on the mercy of the course, his only practical option, forgoing a hopeless jury trial. *Coulter v. Herring*, 60 F.3d 1499 (11th Cir. 1995). In the case at bar, reasonable jurists could debate whether the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further, considering the factual basis presented in the record before the court that, appellant would forego a hopeless jury trial, in favor of sentence that would surely have

been less severe than the 324 month sentence imposed had that option been clearly put before him.

13. (Ground Two) IOC for failure to object to the prejudicial text messages and references to uncharged conduct between appellant and the codefendant Tara Jo Moore: Counsel's failure to object to the text messages offered by the co-defendant which where damaging to his defense and generally were offered to show bad character on the part of appellant in order to deflect culpability from the co-defendant. The trial court is required to assess the evidence of whether or not the presented defenses are antagonistic and then make a finding of whether to allow the evidence at a joint trial would compromise a specific trial right and/or prevent the jury from making a reliable judgment of guilt or innocence. *Zafiro v. United States*, 506 U.S. 534 (1993). Appellant was never afforded these remedies as the text messages and related evidence were admitted without objection. It cannot be argued that there was no other relevant purpose of the evidence other that to deflect blame from the co-defendant upon appellant. This point cannot be argued as the government made a specific effort not to present this evidence for the very reason the co-defendant offered the evidence (to deflect blame). Appellant as a defendant in a

criminal case was entitled to effective assistance of trial counsel. Strickland v. Washington, 466 U.S. 688 (1984). Appellant's counsel asserted no objection whatsoever to irrelevant evidence. "Marks: Yes, I am familiar, and – the messages talk about domestic violence and that's not mentioned in here, so – you know, it's a little dis-favorable to Blake (appellant) but I'm not concerned about it". Thereafter, the government objected to the same evidence. Under the factual basis presented in the record below reasonable jurists could debate whether or not appellants trial rights were affected by the failure to object to the prejudicial text message evidence offered by the codefendant violated appellant's right to a fair trial and effective assistance of counsel. The tactic was clearly effective as the court concluded on the record that "She's (Moore) not a victim of a crime, she's a victim of a manipulative, controlling, unscrupulous individual, who preyed upon her in a similar way to the way he preyed upon the victims of the crimes." [Sent.Tr.P. 225]. *Cuyler v. Sullivan*, 446 U.S. 335 (1980) Reasonable jurists could debate whether the petition should have been resolved in a different

manner or that the issues presented were adequate to deserve encouragement to proceed further.

14. (Ground Three) IOC concerning failure to move for a judgment of acquittal as to counts 1, 2 and 3 of the second superseding indictment on grounds that the enticement element proof failed and, the evidence from dismissed counts 4, 5 and 6 was unduly prejudicial against appellant as to counts 1, 2 and 3: The defense motion for judgment of acquittal under Rule 29 directly challenges to the sufficiency of the evidence presented against the defendant. *United States v. Aibejeris*, 28 F.3d 97, 98 (11th Cir. 1994) In considering a motion for the entry of judgment of acquittal, the district court must apply the same standard used in reviewing the sufficiency of the evidence to sustain a conviction. *United States v. Ward*, 197 F.3d 1076, 1079 (11th Cir. 1999) In ruling on a motion for judgment of acquittal, a district court must decide whether, viewing all the evidence in the light most favorable to the government and drawing all reasonable inferences and credibility choices in favor of the jury's verdict, a reasonable trier of fact could find that the evidence established guilt beyond a reasonable doubt. *United States v. Grigsby*, 111 F.3d 806, 833 (11th Cir. 1997) The factual basis before the court presents two concerns regarding the

government's evidence. Regarding the element of enticement as to counts 1, 2 and 3, there was no evidence admitted of any active enticement by appellant. Under the record presented, reasonable jurists could debate whether the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further as appellant's substantial trial rights were violated by counsels failure to file a specific motion for judgment of acquittal warranting relief.

15. (Ground Four) Appellant's request for recusal of the district court due to the courts on the record statements regarding appellant: At the sentencing of Tara Jo Moore the district court stated as follows: "But I think she is a victim of Blake, which is different. She's not a victim of [a] crime; she's a victim of a manipulative, controlling, unscrupulous individual, who preyed upon her in a similar way the way he preyed upon the victims of the crimes. He saw a vulnerable, undereducated, insecure, weak individual who had a troubled past, just like the victims, used her as a victim of prostitution, and then used her as his right-hand person to perpetrate the crimes that we're here for today. So her psychological background made her easy pickings for Mr. Blake. And it's not an excuse for her to engage in the conduct, but it explains why she's here." [Sent.Tr.P. 225] This reflected point of view and predisposition against appellant rises to the level of "an inability to render a fair judgement against [appellant] as the predisposition [here] can also deserve to be characterized as "bias" or "prejudice" because, even though it springs from the facts adduced or the events occurring at trial, it is so extreme as to display

clear inability to render fair judgment". *Liteky v. United States*, 510 U.S. 540 (1994). Reasonable jurists could debate whether the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further where appellant's request that the district enter and order of recusal was denied under the factual basis presented.

16. Meet and confer: The government counsel Lisa Rubio, was not consulted as the government has already announced objection to the relief requested.

WHEREFORE, defendant respectfully prays the court to approve this application and issue a certificate of appealability.

DATED this 30th day of December, 2022.

Appellant respectfully files this certificate as follows:

CERTIFICATE OF INTERESTED PERSONS

1. Brannon, Hon. Dave Lee
2. Caruso, Michael
3. Cone, Timothy E.P.
4. Fajardo Orshan, Ariana
5. Ferrer, Wifredo A.

6. Gonzalez, Juan Antonio

7. Greenberg, Benjamin G.

8. Hopkins, Hon. James M.

9. K.C.

10. K.T.

11. Mallonee, Brian Hobbs

12. Marks, Neison Max

13. Marra, Hon. Kenneth A.

14. Matthewman, Hon. William

15. Moore, Tara Jo

16. Morris, Lothrop

17. Nucci, Edward C.

18. Patanzo, Peter Thomas

19. Rabinowitz, Adrienne

20. Reid, Hon. Lisette M.

21. Rubio, Lisa Tobin

22. Shulevitz, Sara Sharon

23. Stage, Gail Marie

24. T.H.

25. Tucci, Victor A.

26. Wallace, III, Arthur Louis

I HEREBY CERTIFY that a true and correct copy or the foregoing was served by ECF upon the prosecutor, this 30th day of December, 2022.

/s/ A. Wallace

_____
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CERTIFICATE OF COMPLIANCE WITH RULE 32(A)(7)

The Appellant hereby certifies that this motion complies with the type-volume limitation set forth in FRAP 32(a)(7). This motion contains 5,473 words as computed using Microsoft Word 2000.

/s/ A. Wallace

_____
Arthur L. Wallace III, Esq.